National Engineering Industries Ltd.

Vs

State of Rajasthan and Others

Civil Appeal No. 16832 of 1996

(S. B. Majmudar, D. P. Wadhwa, A. P. Misra JJ)

01.12.1999

JUDGMENT

D. P. WADHWA, J.: -

1. The appellant, an employer, is aggrieved by judgment dated 25-3-1996 of the Division Bench of the Rajasthan High Court affirming in appeal the judgment dated 15-12-1992 of the learned Single Judge. By this judgment the learned Singh Judge negatived the challenge of the appellant to the validity of the notification issued by the State Government under Section 10(1)(d)[1] read with Section 12(5)[2] of the Industrial Disputes Act, 1974 (for short "the Act") to adjudicate the disputes between the appellant and the National Engineering Industries Workers' Union (for short "the Workers' Union") in respect of the demands raised by the Workers' Union. This notification is as under:

> "Government of Rajasthan
>
> Department of Labour
>
> No. P1 (1) (14171)/L&E86 Jaipur, dated 17-3-1989

1 "10. *Reference of disputes to Boards, courts or tribunals.* –(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at nay time, by order in writing,-

> (a)-(c) * * *
>
> (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a tribunal for adjudication:

Provided that where the dispute relates to nay matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c):

> Provided further…..
>
> Provided also……..

2."12. *Duties of Conciliation Officers.*-(1) Where nay industrial dispute exists or is apprehended, the

Conciliation Officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at tin the course of the conciliation proceedings the Conciliation Officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the Conciliation Officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, tribunal or national tribunal it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute."

Whereas an industrial dispute[3] (3 "2. (k) ‘industrial dispute’ means any dispute or difference between employers and employers, or between employers an workmen, or between workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, or any person;") as described below has arisen between the Management of National Engineering Industries Ltd., Jaipur and President, National Engineering Industries Workers’ Union, B-4, MLA Quarters, Jaipur.

Whereas the Conciliation Officer, Jaipur has reported that no settlement was arrived at:

Whereas the State Government after considering the report of the above Conciliation Officer satisfied that the matter is fit to be referred to the Industrial Tribunal.

Therefore, now the State Government under powers conferred on it under Section 10 sub-section (1) clause (d) read with Section 12 sub-section (3) [sic (5)] of the Industrial Disputes Act, 1947 (Act 14 of the year 1947) hereby refers the above dispute for adjudication to Industrial Tribunal, Rajasthan, Jaipur duly constitute by the State Government under the Industrial Disputes Act, 1947 (Act 14 of the year 1947).

DISPUTE

In the 24-point charter of demands made by the President, National Engineering Industries Workers' Union, B-4, MLA Quarters before the Management of National Engineering Industries Ltd., Jaipur charter of demands annexed is fair and proper.

If not to what the workmen are entitled?

Annexed: charter of demands

By order of the Governor

(R. P. Tiwari)

Special Secretary to the Government"

2. It would be appropriate at this stage to know the background under which the reference came to be made.

3. The appellant is a company registered under the Companies Act with its registered office at Calcutta. One of its factories is located at Khatipura Road, Jaipur in the State of Rajasthan. There are three unions with which we are concerned and these are (1) National Engineering Industries staff Union (for short "the Labour Union"); (2) National Engineering Industries Staff Union (for short "the Staff Union"); and (3) the Workers' Union refereed to above. It is stated that the Labour Union has majority of the workers on its roll; is recognized, and is the representative union and registered as such under the provisions of the Act as amended by the Rajasthan Industrial Disputes Amendment Act, 1958. In 1983 all the three unions made their charter of demands. A tripartite settlement[4] (4 "2. (p) '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 authorized in this behalf by the appropriate Government and the conciliation officer,") was arrived at between the Management, the Labour Union and the Staff Union. In respect of demands made by the Workers' Union failure report was submitted. The Workers' Union made a representation to the State Government for referring their disputes for adjudication. This request was however, declined by the State Government in view of the tripartite settlement already reached between the representative union, the Staff Union and the Management. The settlement was to remain valid and operative till September 1986. All the three unions made fresh charters of demands in 1986 which were identical in almost all respects. Conciliation proceedings were initiated and though failure report was submitted by the conciliation Officer in respect of the proceedings regarding the Workers' Union, conciliation settlement was arrived at with the Labour Union and the Staff Union. It was a conciliation settlement and was to be in operation for a period of three years ending 30-9-1989. It is not disputed that all the employees of the appellant including the members of the Workers' Union accepted the benefits under this tripartite settlement.

4. On the charter of demands raised by the Workers' Union and on which the Conciliation Officer had submitted a failure report, the State Government did no make any order for reference of the disputes nor did it refuse to make reference. The Workers' Union then filed a writ petition in the High Court requiring the State Government to make reference of their disputes to the Industrial Tribunal under the provisions of the Act. This writ petition was decided by a Division Bench of the

High Court on 23-3-1989 whereby it was directed to the State Government to decide the question on the failure report of the Conciliation Officer whether to make or not to make the reference. The State Government was required to decide the question within two months from the date of the judgment, i.e., 23-3-1989. The High Court also observed that it would be open to the appellant to raise all the contentions before the State Government and the State Government would or would not make a reference only after hearing the parties. However, before the decision of the High Court, the State Government, in the meantime, issued the notification dated 17-3-1989 for reference of the disputes relating to the demands raised by the Workers' Union. We have already set out above the notification dated 17-3-1989 for reference of the disputes relating to the demands raised by the Workers' Union. We have already set out above the notification dated 17-3-1989 making reference of the disputes to the Industrial Tribunal. The appellant thereafter submitted a representation dated 3-4-1989 to the State Government drawing its attention to the decision of the High Court and requesting that the State Government might withdraw the reference and take a fresh decision after hearing the appellant. This, it appears, was not acceded to. The fact that the State Government had already made a reference on 17-3-1989 was not brought to the notice of the High Court when it decided the writ petition of the Workers' Union on 23-3-1989. Since the State Government did not accept the request of the appellant, it filed a writ petition in the High court challenging the validity of the reference. As noted above, the writ petition was dismissed by the learned Single Judge. The appeal filed by the appellant before the Division Bench also met the same fate. That is how the matter has come before us, after this Curt granted leave to appeal against the judgment of the High Court.

5. The appellant has challenged the notification on the following counts:

1. There was no dispute pending at the time which could be the subject-matter of the reference inasmuch as under the tripartite settlement the members of the Workers' Union had also already taken advantage of the benefits thereunder. The State Government had thus no jurisdiction to make the reference.

   2. The Workers' Union was not a representative union within the meaning of Section 9-E[5] (Registration *of Union* – (1) On receipt of an application from a Union for registration under Section 9-D and on payment of the fee prescribed, the Registrar shall, if, after holding such inquiry as he deems fit he comes to the conclusion that the conditions requisite for registration specified in the said section are satisfied and that the Union is not otherwise disqualified for registration, enter the name of the Union in the appropriate register in such form as Section 9-C and issue a certificate of registration in such form as may be prescribed)

   Provident that

   (i) where two or more Unions fulfilling the conditions necessary for registration under this Act apply for registration in respect of the same unit of an industry, the Union having the largest membership of employees employed in the unit of the industry shall be registered; and

   (ii) the Registrar shall nor register any Union if he is satisfied that application for its registration is not made bona fide in the interest of the workmen but is made in the interest of the employers to the

prejudice of the interest of the workmen.

(2) Once a union has been registered as a representative union under this Act the registration of the union shall be held valid for a period of two years from the date of its registration and shall continue to hold valid unless the registration is cancelled under Section 9-F of this Act or another union is registered in its place according to Section 9-G of this Act." of the Rajasthan Act 34 of 1958 as amended by the Rajasthan Act 14 of 1970.

3. The charter of demands, most of which were already covered by the tripartite settlement. Reference could not have been made in respect of that very demand. Moreover, the State Government failed to consider that the Workers' Union was not representing the majority of workers and could not have given notice in view of Section 19(7)[6] (*Period of operation of settlements and awards.* –(1)A settlement shall come into operation on such date as is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no date is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to he other party or parties to the settlement.

(3)-(6) * * *

(7) No notice given under sub-section(2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be."

7 "18. *Persons on whom settlements and awards are binding.*-I (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who refereed the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3-A) of Section 10-A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on

a. all parties to the industrial dispute;

b. all other parties summoned to appear in the proceedings as parties to the dispute unless the Board arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be records the opinion that they were so summoned without proper cause;

c. where a party refereed to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

d. where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.")of the Act. There was non-application of mind by the State Government in making the reference. In spite of the judgment of the High Court, no opportunity was granted to the appellant to place it case before the State Government. The order of the State Government making reference could not be termed as an administrative order inasmuch as there was a direction by the High Court that the appellant be heard. The State Government should have brought to the notice of the High Court the reference having already been made when the matter was still pending before the High Court.

6. On the other hand, it was contended by the Workers' Union that:

1. The tripartite settlement was invalid inasmuch as it was entered into on a Sunday.

1. All the demands raised by the Workers' Union had not been covered in the tripartite settlement and reference could have been made in respect of those demands.
2. The tripartite settlement was not entered into during the course of conciliation proceedings and, thus, a bar could not have been raised against the reference. In this connection reference be made to Section 18(2)7 of the Act.

7. In support of his submissions, Mr. G. B. Pai, learned counsel for the appellant said that it was not open to the State Government to invoke its power of reference under Section 10 of the Act during the pendency of the tripartite settlement dated 4-10-1986 arrived at during the conciliation proceedings. The settlement was binding on the members of the Workers Union as well as under Section 18(3) of the Act who had in fact taken advantage of the benefits under the settlement. It could not be said that nay industrial dispute existed or was even apprehended at the time the State Government invoked its power under Section 10(1) of the Act in making the impugned reference of the alleged dispute between the Management and the Workers' Union. The State Government lacked jurisdiction in making the reference and that was the question which was not addressed by the High Court. The Industrial Tribunal to whom the reference was made could not have gone into the question of jurisdiction. The High Court erred in leaving the issue of settlement being just and far to be decided by the Industrial Tribunal.

8. Elaborating, Mr. Pai submitted that the impugned reference was destructive of the industrial peace and defeated the very purpose and objective of the Act. Once a conciliation settlement in entered into, there is no scope under the Act fo9r further investigation by an Industrial Tribunal about the justness of fairness again of the settlement and no individual workman or even a union representing a few workmen not party to conciliation proceedings could question the validity of settlement during its pendncy. This was particularly so in the present case as the charter of demands raised by the Workers' Union was itself claimed by it to be identical to the charter of demands

raised by the recognized representative Labour Union. Reference by the State Government was not only ex facie bad and incompetent but the demands in respect of which the reference was made had already been settled during the course of conciliation proceedings by was of the tripartite settlement between the recognised representative Labour Union and the Staff Union. This settlement was binding on all the workers of the appellant. The State Government was under a legal obligation to see that the reference was not opposed to any other provision of the Act. The State Government by making the reference dated 17-3-1989 rendered ineffective and inoperative the directions issued by the High Court by its order dated 23-3-1989 to give an opportunity to the appellant of hearing before taking a decision as to whether or not any reference should be made at the instance of the Workers' Union. The order of reference was made during the pendency of the writ petition by the Workers' Union and only six days before the High Court passed the order. In these circumstances the State government was not justified in directing the appellant to raise the issued of contraception of the direction of the High Court before the Industrial Tribunal. The State Government should have recalled its order of reference or not.

9. Mr. Pai further submitted that the conciliation settlement has been equated with an award by various judgments of this Court. A settlement being a conciliation settlement was, thus, fully binding on the members of the Workers' Union. The settlement could be challenged on the grounds of fraud, undue influence or it being mala fide. There was no such plea raised by the Workers' Union. The Industrial Tribunal could not examine the justness and fairness of the settlement entered into during the conciliation proceedings. As a matter of fact, a perusal of the comparative charter of demands that was raised by the Labour Union and the Workers' Union would being the same, similar or identical to the demands raised by the Workers' Union. Rather the Labour Union had raised some additional demands not raised by the Workers' Union. There was total non-application of mind by the State Government in making the reference. Reference was not proper or legal which was made after two and a half years of the settlement dated 4-10-1986 by the order dated 17-3-1989. By entertaining the reference, the Industrial Tribunal would be acting beyond its jurisdiction inasmuch as nay award or reference would be directly and substantially against the conciliation settlement which is binding on all the workmen. The High Court failed to consider that the very purpose of creating a machinery under the Act is for establishing industrial peace and harmony. It is in consonance with the said aim and object of the Act that the settlement arrived at in between the parties during the course of conciliation proceedings is kept at the highest pedestal and the courts have been consistently taking a view that when a particular charter of demands is decided by means of conciliation proceedings then the same would not be allowed to be (sic stultified) on any ground whatsoever including the ground of conflict between the various unions. The High Court was not correct in observing that disputed questions of fact because both the charter of demands raised by the Labour Union and that raised by the Workers' Union were on record. The authority assigned with the duty of finding as to whether any industrial dispute exists between the parties was required to see both the charter of demands and to come to a conclusion as to whether the same, similar or identical demands have been raised by both the unions for which the tripartite settlement had been arrived at during the course of conciliation proceedings. As stated earlier, the Workers' Union has itself stated in its writ petition that its demands were of similar and identical nature to the demands of the Labour Union. There was thus, no disputed question of fact involved and the High Curt failed to exercise its jurisdiction envisaged under Article 226 of the Constitution. All through this period since 1972, the appellant had entered into more than six settlements with the Labour Union which is a recognised and representative union. A substantial number of workers of the appellant are members of the representative Labour Union which fact has not been denied by the Workers' Union. It is not necessary to give nay notice to the Workers' Union for entering into any settlement when

the settlement is with the recognized representative union. The charter of demands of the Workers' Union cannot be termed as a notice under Section 19 of the Act. Thus concluded Mr. Pai.

10. In the counter-affidavit filed by the Workers' Union, the fact that the charter of demands of the workers' Union was identical to that of the Labour Union has been denied though if we refer to the writ petition filed by the Workers' Union, it has been so stated. This is how the Workers' Union said in its writ petition:

> "The petitioner Union was also not asked to participate in those conciliation proceedings though the demand charter was identical in almost all the respects."

11. The learned Single Judge in his judgment which was upheld by the Division Bench, however, stated that "it is also borne out from the charter of demands submitted by Respondent 3 (Workers' Union) and the settlement dated 4-10-1986 that all the demands raised by Respondent 3 are not covered by the settlement". It is submitted by the Workers' Union that its demands at Serial Nos. 5,6,11,18,19,20,21 and 23 of its charter of demands dated 24-7-1986 were not raised in the charter of demands dated 16-6-1986 was of the Labour Union and, thus, they were not covered by the settlement dated 4-101986. It was in these circumstances that the Workers' Union requested the Conciliation officer to treat its charter of demands as notice of two months in terms of Section 19(2) of the Act for termination of the earlier settlement dated 11-11-1983. The tripartite settlement dated 11-11-1983 was valid for three years with the Labour Union and the Staff Union while again ignoring the demands of the Workers' Union submitted earlier to 11-11-1983. It is admitted by the Workers' Union that at that time it did not challenge the settlement dated 11-11-1983.

12. It was further submitted by Mr. Aman Hingorani, learned counsel for the worker's Union that when the Conciliation Officer gave notice to the appellant in pursuance of its charter of demands dated 24-7-1986, the appellant Company by its letter dated 10-9-1986 said that the workers' Union has no locus standi to give the notice under Section 19(2) of the Act. It was on this account that the Conciliation Officer on 1-10-1986 gave his failure report and then, at the same time, the appellant entered into negotiations with the Labour Union and the Staff Union and entered into the settlement dated 4-10-1986 again ignoring the Workers' Union. It was on this account that the Workers' Union approached the High Court for a direction to the State Government to make a reference of the industrial dispute raised by it to the Industrial Tribunal which writ petition was allowed by order dated 23-3-1989 but before that the State Government itself made the reference which was impugned by the appellant and is the subject – matter of the present appeal.

13. We may now refer to the decision of this Court cited at the Bar.

14. *In Express Newspapers (P) Ltd.* v. *Workers*[8] the State Government made reference to the Industrial Tribunal under Section 10(1)(d) of the Act on the following two items of dispute:

> "1. Whether the transfer of the publication of Andhra Prabha and Andhra Prabha Illustrated Weekly to Andhra Prabha Private Ltd. in Vijayawada is justified and to what relief the workers and the working journalists are entitled?
>
> 2. Whether the strike of the workers and working journalists from 27th April, 1959, and the consequent lockout by the management of the Express Newspapers Private Ltd. are justified and to what relief the workers and the working journalists are entitled?"

This was challenged by the appellant by filing a writ petition in the Madras the Division Bench in appeal filed by the respondents reversed the same. This was challenged by the appellant by filing a writ petition in the Madras High Court. While the learned Single judge held by the respondents reversed the same. This Court to entertain the appellant's petition even at the initial stage of the proceedings proposed to be taken before the District Tribunal was not in dispute. It said that there was no dispute that in law, the appellant was entitled to move the High Court even at the initial stage to seek to satisfy it that the dispute is not an industrial dispute and so, the Industrial Tribunal ahs no jurisdiction to embark upon the proposed inquiry. The Division Bench of the High Court in appeal was, however, of the view that having regard to the nature of the inquiry involved in the decision of the preliminary issue, it would be inappropriate for the High Court to take upon itself the task of determining the relevant facts on affidavits. A proper and a more appropriate course to adopt would be to let the material facts be determined by the Industrial Tribunal in the first instance. This was the question which was before this Court if the view taken by the Division Bench was erroneous in law. This Court after examining the facts of the case was of the opinion that having regard to the nature of the dispute, the Division Bench has made it clear that any party who felt aggrieved by the finding of the Industrial Tribunal on this plea of the issue might move to the High Court in accordance with law. Then this court said as under:

> "It is hardly necessary to emphasise that since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it under Section 10 is limited by Section 10(4) to the points specifically mentioned in the reference and maters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided."

15. In *Sirsilk Ltd. v. Govt. of A.P.*[9] industrial disputes were referred for adjudication. The Industrial Tribunal gave it s award and forwarded the same to the State Government for publication as require under Section 17 of the Act. Before, however, the publication of the award, parties to the dispute came to a settlement. Request was, therefore, made to the State Government to withhold the publication of the award. The State Government, however, did not acceded to this request as, according to it, it was a mandatory provision of law to publish the award. A writ petition was filed in the High Court under Article 226 of the Constitution praying that the Government might be directed to withhold the publication of the award. This was dismissed as the High Court was also of the view that the provisions of Section 17 of the Act were mandatory and no writ, therefore, could be issued. The matter then came to this Court. The Court rejected the argument that the provisions of Section 17 of the Act were directory and not mandatory. This Court then noticed the provisions of Section 2(p), Sections 18(1) and (3) and Section 19 of the Act. It was contended that the main purpose of the Act was to maintain peace between the parties in an industrial concern and where, therefore, parties to industrial disputes had reached a settlement which was binding under Section 18(1), the dispute between them really came to an end. It was submitted 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. The Court observed that there was no doubt that the settlement of disputes between the parties themselves was to be preferred, where it could be arrived at, to industrial adjudication, as the settlement was 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. The Court said that even though that might be so,

still the provisions of Section 17(1) which are mandatory requiring publication of the award had to be reconciled with the equally mandatory character of the binding nature of the settlement arrived at between the parties as provided under Section 18(1) of the Act. Then the Court went to hold as under:

> "Difficulty however arises when the matter has gone beyond the purview of the tribunal as in the present case. That difficulty in our opinion has to be resolved in order to avoid possible conflict between Section 18(1) which makes the settlement arrived at between the parties otherwise than in the course of conciliation proceeding binding on the parties and the terms of an award which are binding under Section 18(3) on publication and which may not be the same as the terms of the settlement binding under Section 18(1). The only way in our view to resolve the possible conflict which would arise between a settlement which is binding under Section 18(1) and an award which may become binding under Section 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 Section 18(1) has been arrived at. It is true that Section 17(1) is mandatory and ordinarily the Government has to publish an award sent to it by the tribunal; but where a situation like the one in the present cases arises which may lead to a conflict between a settlement under Section 18(1) and an award binding under Section (18(3) on publication, the only solution is to withhold the award from publication. This would not in our opinion in any way affect the mandatory nature of the provision in Section 17(1), for the Government would ordinarily have to publish the award but for the special situation arising in such cases."

The Court also examined the issue from another angle and said:

> "the reference to the tribunal is for the purpose of resolving the dispute that may have arisen between employers and their workmen. Where a settlement is arrived at between the parties to a dispute before the tribunal after the award has been submitted to Government but before it s publication, there is in fact no dispute left to be resolved by the publication of the award. In such a case, the award sent to Government may very well be considered to have become anfractuous and so the Government should refrain from publishing such an award because no dispute remains to be resolved by it."

This Court also said that in case there of a dispute regarding the bona fide nature of the settlement that would be yet another industrial dispute which the Government may refer to for adjudication.

16. In Baruni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corpn. Ltd.[10] the appellant was a trade union representing a faction of workmen in Indian Oil Corporation Ltd. (IOCL). There were two divisions in IOCL, namely (1) the Marketing Division, and (2) the Refinery and pipelines Division. The age of superannuating of the staff in the Marketing Division. The age of supernnuation of the staff in the marketing Division was 60 years whereas the age of supernnuation for the Refinery and Pipelines Division was fixed at 58 years. Clause (20) of the Standing orders framed under the Industrial Employment (Standing Orders) Act, 1964 concerning Barauni Refinery provided that every employee shall retire form service on completing the age of 58 years. Extension of service could be granted for a maximum period of five years subject to the employee being certified to be fit by the Company’s Medical Officer. Fourteen recognized unions representing the

Company's Medical officer. Fourteen recognized unions representing the employees of IOCL working in different refineries by their letter dated 15-12-1981 submitted the charter of demands and one of such demands was that the superannuating age be enhanced to 60 years, Barauni Telshodhak Mazdoor Union also raised a similar demand in its charter of demands addressed to the General Manager, IOCL, Barauni Refinery. Meetings were held between the management and the recognised union and in the result a settlement was arrived at on 24-5-1983. A separate settlement on similar lines was signed between IOCL and its workmen represented by Barauni Telshodhak Mazdoor Union under Sections 12(3) and 18(3) of the Act in the conciliation proceedings. In spite of the specify demand made in the charter of demands for the upward revision of the age of superannuating, no specific provision was made in that behalf in the settlement. Rather under a clause in the settlement, it was provided that the terms and conditions of service which are not changed under the settlement shall remain unchanged and operative during the period of settlement. Subsequent to the settlement, another union served a notice on the Regional Labour Commissioner (Central) under Section 10(2) of the Industrial Employment (Standings Orders) Act, 1946 for modification of clause (20) of the Standing Orders of Barauni Refinery for 58 years to 60 years. The Regional Labour Commissioner after hearing both the parties by his order dated 11-10-1984 directed modification of clause (20) of the Standing Orders now fixing the retirement age of the workmen at 60 years, IOCL filed an appeal against that order before the appellate authority. Its appeal was though dismissed but it was ordered that every workman shall generally retire on attaining the age of 58 years and if the workman is found medically fit, he shall be retained in service up to the age of 60 years. Both IOCL, as well as the Union filed two different writ petitions in the Delhi High Court IOCL challenging the modification of clause (20) of the Standing Order and the Union challenging the condition of medical fitness. One of the questions raised was thus: (SCC p. 8, para 6)

> "Whether the settlement arrived at under Section 18(3) and Section 19(2) of the Industrial Disputes Act, 1947, between the petitioner and the workmen represented by their recognized majority union and which settlement was in force when impugned orders were made, had put nay bar on the rights of the workmen to approach the authorities under the Industrial Employment (Standing Orders) Act, 1946 for seeking modication of the Standing Orders with regard to the fixation of the age of superannuating of the workmen."

17. The High Court came to the conclusion that the settlement arrived at in conciliation proceedings was binding on the workmen and one of the clauses of the settlement kept the service conditions intact and another clause did not permit raising of any demand throwing an additional financial burden on IOCL, it was not permissible to modify the certified Standing Order by an amendment as that would alter the service conditions and increase the financial burden on the Management. The High Court, therefore, quashed the orders amending the Standing Orders. Aggrieved, the Union approached this Court. This Court analyzed the provisions of Section 2(p), 18(1) and 18(3) of the Industrial Disputes Act, 1947 and it also refers to the provisions of the Industrial Employment (Standing Orders) Act, 1964 and held as under (SCC pp. 11-12, para 8)

> "It may be seen on a plain reading of sub-sections (1) and (3) of Section 18 that settlements are divided into two categories, namely, (I) those arrived at outside the conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category ahs limited application in that it merely binds the parities to the agreement but the settlement belonging to the second category ahs extended application since it is binding on all parties to the

> industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in he 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. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognised 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. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employees or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union singing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority."

This Court upheld the judgment of the High Court.

18. In K.C.P. Ltd. v. Presiding Officer11 a labour dispute had erupted at the engineering unit of the appellant employing about 500 workmen. The workmen were demanding higher amount of bonus. There were strike and lockout. The appellant dismissed 29 workmen on the charges of misconduct after holding inquiries. An agreement was reached between the appellant and the Union representing all the workmen on the quantum of increase in wages etc. it was further agreed that the issue of non-employment of 29 dismissed workmen would be discussed separately. On that basis all the workmen except the 29 dismissed workmen agreed to resume work. Subsequently a settlement was arrived at between the appellant and the respondent Union under Section 12(3) of the Act that the issue of non-employment of 29 dismissed workmen would be discussed in proceeding to be initiated by the Joint Labour Commissioner. Meetings were held by the Joint Labour Commissioner but no settlement could be reached. Report of the failure of conciliation proceeding was submitted to the State Government which referred the issue of non-employment of 29 workmen for adjudication to the Labour Court. This Court noticed that the industrial dispute was referred for adjudication pursuant to the demand espoused by all the workmen and raised by the second respondent Union under Section 2(k) of the Act and that of the said 29 workmen who were members of the respondent Union had authorised the second respondent to represent them before the Conciliation Officer where after reference as made to the Labour Court. This Court noticed that none of the said 29 workmen raised industrial dispute in their individual capacity under Section 2-A[12] of the Act. During the pendency of the dispute before the Labour Court, the appellant and the respondent Union held discussion regarding non-employment of 29 workmen and ultimately an workmen either to accept reinstatement without back wages or a lump sun amount of Rs. 75,000 with other monetary benefits. Some of the workmen out of these 29 workmen did not accept the proposed settlement. Nevertheless, the respondent Union entered into a settlement with the appellant under Section 18(1) of the Act on behalf of the 29 workmen. A joint memorandum whom the industrial dispute was pending. It was requested that award in terms of the settlement may be passed. The first respondent who was presiding over the Labour Court declined to do so on the ground that some of the workmen had not approved settlement and, therefore, industrial dispute in respect qua them would continue. The order of the Labour Court not to make the award in terms of the settlement was challenged by the appellant in a writ petition before the Madras High Court. The High Court did not agree with the contention raised by the appellant and dismissed the writ petition. Aggrieved, the appellant come to this Court. This Court held that the terms of the settlement could not be considered to be in any way

ex facie, unjust or unfair and the settlement consequently must be held to be binding on the workmen who did not accept the settlement. This Court referred in great detail to the provisions of Section 2(k), 2(p) and 18(1) of the Act and noticed the decision of this Court in Herbertsons Ltd. v. Workmen13 where this Court has said that When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary

> *12 "2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute- Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is party to the dispute."*

that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of the labour enters into a settlement in the best interests of the labour. This would be the normal rule. There may be exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. But in the absence of such allegations a settlement in the course of collective bargaining is entitled to due weight and consideration. This Court then observed as under: (SCC p. 453, para 25)

> "25. It has to be kept in view that under the scheme of labour legislations like the Act in the present case, collective bargaining and the principle of industrial democracy permeate the relations between the management on the one hand and the Union which resorts to collective bargaining on behalf of its members-workmen with the management on the other. Such a collective bargaining which may result in just and fair settlement would always be beneficial to the management as well as to the body of workmen and society at large as there would be industrial peace and tranquillity pursuant to such settlement and which would avoid unnecessary social strife and tribulation on the one hand and promote industrial and commercial development on the other hand. Keeping in view the aforesaid salient features of the Act the settlement which is sought to be impugned has to be scanned and scrutinised. Settlement of labour disputes by direct negotiation and collective bargaining is always to be preferred for it is the best guarantee of industrial peace which is the aim of all legislation’s for settlement of labour disputes. In order to being about such a settlement more easily and to make it more workable and effective it may not be always possible to necessary that such a settlement is arrived at in the course of conciliation proceedings which may be the first step towards resolving the industrial dispute which may be lingering between the employers and their workmen represented by their unions but even if at that stage such settlement does not take place and the industrial dispute gets referred for adjudication, even pending such disputes, the parties can arrive at amicable settlement which may be binding to the parties to the settlement unlike settlement arrived at during conciliation proceedings which may be binding not only to the parties to the settlement but even to the entire labour force working in the organisation concerned even though they may not be members of the Union which might have entered into settlement during conciliation proceedings."

This Court then referred to the difference between the settlement arrived at under the Act during

conciliation proceedings by the parties and the settlement arrived at otherwise than during conciliation proceedings as pointed out in Barauni Refinery Pragatisheel Shramik Parishad case[10].

19. In P. *Virudhachalam v. Lotus Mills*[14] the point for consideration was:

Whether an individual workman governed by the Industrial Disputes Act, 1947 can claim lay-off compensation under Section 25-C of the Act despite a settlement arrived at during conciliation proceedings under Section 12(3) of the Act by a union of which he is not a member, though the union of which he is a member had taken part in the conciliation proceedings but had refused to sign the settlement and when such settlement seeks to restrict the right of lay-off compensation payable to such workman as per the first proviso to Section 25-C of the Act.

20.The Labour Court had held in favour of the workmen. It was challenged by the respondent in a writ petition in the Madras High Court. The High Court by its impugned judgment held that the settlement arrived at during the conciliation proceedings under Section 12(3) was binding on all the workmen being parties to the industrial dispute as per Section 18(3) of the Act and consequently the said settlement could be treated as an agreement arrived at between all the workmen as per the first proviso to Section 25(C) and, therefore, the appellants could not claim anything more than what was permissible and payable to them as per the binding terms of therefore, allowed and the claim petition under Section 33-(C)(2) as moved by the appellants was dismissed.

21. To answer the question so raised, this Court had a look at the statutory scheme of the Act in depth and observed: (SCC p. 658, para 8)

> "8. The aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen, Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or tribunal or national tribunal or an arbitration award. They all stand on a par."

It then held:

> "On the aforesaid scheme of the Act, thereofr5e, it must be held that the settlement arrived at during conciliation proceedings on 5-5-1980 between Respondent 1 Management on the one hand and the four out of five unions of workmen on the other, hand a binding effect under Section 18(3) of the Act not only on the members of the signatory unions but also on the remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding on even future workmen as laid down by Section 18(3) (d), 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 Court stressed the principle of collective bargaining in these words: (SCC p. 659, para 9)

> "9.it has to be kept in view that the Act is based on the principle of collective

> bargaining for resolving industrial disputes and for maintaining industrial peace. Thus principle of industrial democracy is the bedrock of the Act. The employer or a class of employers on the one hand and the accredited representatives of the workmen on the other are expected to resolve the industrial dispute amicable as far as possible by entering into the settlement outside the conciliation proceedings or if no settlement is reached and the dispute reaches the conciliator even during conciliation proceedings. In al these negotiations based on collective bargaining the individual workman necessarily recedes to the background. The reins of bargaining on his behalf are handed over to the union representing such workman. The unions espouse the common cause on behalf of all their members. Consequently, settlement arrived at by them with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members. Thus, settlements are the live wires under the Act for ensuring industrial peace and prosperity."

22. In *Ram Pukar Singh v. Heavy Engineering Corpn*[15] this Court said that a settlement arrived at between the Management and the sole recognised union of workmen under Section 12(3) read with Section 18 of the Act would be binding on all the workmen whether members of the Union or not. This is how this Court considered this question: (SCC p. 148, para 5)

> "A settlement was however, arrived at between the Management and the Union thereafter, whereunder it was, among other things, agreed that the employees who were holding the post of Office Superintendent (Non-Supervisory) would be deemed to have been appointed to the post of Assistant Personnel Officer would together be taken into consideration as qualifying period for promotion to the post of the Junior Executive Officer. It was further agreed that the employees concerned would not, however, claim any arrears of pay. This was done because the respondent Corporation was in a bad financial shape. This contention that the settlement of 13-9-1990 is not binding on the appellants because they were in a Supervisory category and were not workmen and hence the Union had no right to represent them, has no substance in it for two reasons. Fi9rstly, in the settlement of 14-5-1987 arrived at with the Union they had not only received the benefit of the arrears of salary of Rs 1600 but also of the revised pay scale since then. They could not have had this benefit if they were not workmen and, therefore, considered themselves as belonging to the Non-Supervisory category. They had continued to be workmen, i.e., in Non-Supervisory category till the next settlement of 13-9-1990. Admittedly, the re was only one Union representing all workers during all the relevant period. The settlement dated 13-9-1990 was admittedly under Section 12(3) read with Section 18 and other provisions of the Industrial Disputes Act. The settlement was therefore, binding on all the workmen whether they were members of the Union or not."

23. *In workmen* v. *Hindustan Lever Ltd.*[16] this Court said as under: (SCC p. 395, para 4)

> "4. Section 10(1) conferes power on the appropriate Government to refer an existing o apprehended industrial dispute, amongst others, the Industrial Tribunal of adjudication. The dispute therefore, which can be referred for adjudication, of necessity, has to be an industrial dispute which would clothe the appropriate Government with power to make the reference, and the Industrial Tribunal to adjudicate it."

24. 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 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 of even corruption and other inducements in 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 is sought to be impugned has to be scanned and scrutinised. 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 conciliation proceedings. A settlement which belongs to the first category has a limited application in that it merely binds the parties to the agreement but he settlement belonging to the second category ahs an extended application since it is binding on all the parties to the industrial disputes, to all there who were summoned to appear in the conciliation 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 conciliation proceedings with a recognised 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 recognised union having the majority of members 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 employee or a minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Worker's 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[14]. 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.

25. There can be many splinter groups, each forming a separate trade union. Under Section 4 of the Trade Unions Act, 1926 any seven or more members of a trade union can get the trade union registered under that Act. If every trade union having a few members is to go on raising a dispute and the settlement is defeated. Once there is a representative union, which in the present case, is the Labour Union, it is difficult to see the role of the Workers' Union. If these are number of trade unions registered under the and they raised disputes, industrial peace would be a far cry. Under Section 2(0000)[17] ('Representative Union' means a Union for the time being registered as a representative Union under this Act.") of the Rajasthan Act "representative union" means a union for the time being registered as a representative union under the Rajasthan Act (Rajasthan Act 34 of

1958). Under Section 9-D[18] (Application for registration. – Any union with has for the whole of the period of at least three months during the period of six months immediately preceding the calendar month in which it so applies under this section a membership of not less than fifteen per cent of he total number of workmen employed in unit of an industry may apply in the prescribed from to the Registrar for registration as a Representative Union) of the aforesaid Rajasthan Act any union which ahs for the whole of the period of at least three months during the period of six months immediately preceding the calendar month in which it so applies under this section a membership of not less than fifteen per cent of the total number of workmen employed in the unit of an industry may apply in the prescribed form to the Registrar for registration as a representative union. Then under Section 9-F[19] (Cancellation for registration – The Registrar shall cancel the registration of Union (a) if, after holding such an inquiry, if any, as he deems fit he is satisfied (i) – (ii) (iii) that the registered Union is being conducted not bonafide in the interests of workmen but in the interest of employers to he prejudice of the interests of workmen; or (iv) (b) If its registration under the India Trade Union Act, 1926 (Central Act XVI of 1926) is cancelled.")registration of a representative union can be cancelled on various grounds mentioned therein and one of such grounds is if, after holding such an inquiry, if any, as the Registrar deems fit he is satisfied that the registered union is being conducted not bona fide in the interest of the workmen but in the interest of the employers to the prejudice of the interest of the workmen. We have already quoted Section 9-E as to how a representative union is to be registered. The proviso to that section makes it clear that if there are two or more unions fulfilling the criterial laid down in Section 9-D and apply for registration then the union having the largest membership of the employees has to be registered. As to what is a representative union is not defined in the Act but in common parlance it would mean that it represents all the workers. It is not the case of the Workers' Union that registration of the Labour Union is liable to be cancelled on any ground whatsoever. Notice given by the Workers' Union under sub-section (2) of Section 19 of the Act is obviously invalid as it did not represent the majority of the persons bound by the settlement nor is it a representative union. In this view of the matter it is not necessary for us to consider what were the demands raised by the Worker's Union in its charter which were not covered by the tripartite settlement.

26. It has not been shown to us as to how a settlement arrived at on a holiday would be invalid. We do not think there is any bar in having conciliation proceedings on a holiday and to arrive at a settlement. A holiday atmosphere is rather more relaxed. Learned Single Judge in his judgment did not examine with reference to each of the demands raised by the Workers' Union as to why it was not covered under the tripartite settlement and even the earlier settlement of 1983.

27. The Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. The question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the Management, the Labour Union and the Staff Union. When such a settlement is arrived at is a package deal. In such a deal come demands may be left out. It is not that demands, which are left out, should be specifically mentioned in the settlement. It is not her contention of the Worker's Union that the tripartite settlement is in any way mala fide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings under Section 12 of the Act and as such was not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement clearly show that the settlement was arrived at during the conciliation proceedings.

28. The State Government failed to give due consideration to the direction of the High Court in its judgment dated 23-3-1989. The State Government also failed in its duty to bring to the notice of the

High Curt its notification dated 17-3-1989 making the impugned reference. It appears to us that reference had occasioned while the judgment had been reserved by to the notice of the High Court before making a reference its decision to make the reference. After the Judgment had been reserved by the High Court. In any case it was expected of the State Government to bring to the notice of the High Court before making a reference its decision to make the reference. After the judgment had been announced and directions issued by the High Court to hear the appellant it was incumbent on the State Government, in the circumstances of the case, to recall the reference. It could not direct the appellant to raise its objection to reference before the Industrial Tribunal for which the Industrial Tribunal certainly lacked jurisdiction. The State Government, in the circumstances of the case, to recall the reference. It could not direct the appellant to raise is objection to reference before the Industrial Tribunal for which the Industrial Tribunal certainly lacked jurisdiction. The State Government before e making the reference did not consider all the relevant considerations which would clothe it with the power to make the reference under Section 10 of the Act. We find substance in the submissions of Mr. Pai. Wholesale reference of all the disputes in the charter of demands of the Workers' Union for adjudication was also bad inasmuch as many of such disputes were already the subject-matter of the tripartite settlement. This also show non-application of mind by the State Government in making the reference.

29. When notice was issued on the special leave petition proceedings on the reference were stayed. Earlier also during the pendency of the writ petition before the High Court, which led to the impugned judgment, proceedings had been stayed. There has not been any progress before the Industrial Tribunal and all these years have passed. During the course of hearing we have been told that there have been even two more settlements and also that the president of the Worker's Union is now himself the President of the Labour Union. Even otherwise it would be futile to allow the reference to continue after the lapse of all these years. This is apart from the fact that in our view reference in itself was bad as the tripartite settlement did bind the members of the Worker's Union as well.

30. This appeal is accordingly allowed. The impugned judgment of the High Court is set aside and the notification dated 17-3-1989, issued by the State Government under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, is quashed. In the circumstances there will be no order as costs.