DELHI HIGH COURT

Hindustan Housing Factory Ltd.

Vs.

Hindustan Housing Factory Employees' Union (Delhi)

Civil Writ No. 579 of 1968.
(T. V. R. Tatachari, J.)

7.1.1969

ORDER

T. V. R. Tatachari, J.

1. This writ petition has been filed by the Hindustan Housing Factory Limited, Jangpura, New Delhi, praying for the issuance of an appropriate writ quashing an Order, dated 19.9.1967, an interim award, dated 5.2.1968, and an Order, dated 17.7.1968, passed by the Industrial Tribunal, Delhi, in Industrial Dispute No. 4 of 1967. Four respondents have been imp leaded in the writ petition. They are : (1) The Hindustan Housing Factory Employees' Union. Jangpura, New Delhi, (2) Sri R. D. Jain, (3) The Presiding Officer, Industrial Tribunal, Delhi and (4) the Under Secretary, Department of Labor and Industries, *Alipur.* Road, Delhi.

2. The petitioner is a public limited company. By a notification No. F. 26 (22)/67- Lab (i), dated 24.1.1967, the Lieutenant Governor, Delhi, referred an industrial dispute which in his opinion existed between the Management of the petitioner-company and their workmen represented by respondent No. 1, to the Industrial Tribunal, Delhi, under S. 10 (1) (d) of the Industrial Disputes Act, 1947, for adjudication. The terms of reference set out in the Notification were as under:

> "Whether the workmen are entitled to be paid the same rates of D. A. as payable to the Central Government Employees for the respective pay-ranges and what directions, including date from which the same should be paid, are necessary in this respect ?" Before the Industrial Tribunal, the petitioner-company contended in its written statement that the workmen of the Company were not government employees and were not governed by the Government

Fundamental Rules or the Central Government Civil Services Rules, that the Company had its own standing orders which constituted the conditions of service as far as the workmen of the Company were concerned, and that the enhancement or declaration of dearness allowance by the Central Government did not entitle the employees of the petitioner to claim corresponding dearness allowance.

3. The petitioner also submitted that there was a subsisting settlement between the petitioner and the Employees' Union, respondent No. 1, dated 29.1.1963. A copy of the said settlement has been filed as Annexure B. That was a settlement entered into between the General Manager representing the Management of the petitioner-company and certain office-bearers of the Employees' Union (respondent No. 1) representing the workmen, in an industrial dispute referred by the Delhi Administration to the Industrial Tribunal regarding the dearness allowance that should be admissible to the workmen. The terms of the settlement were as follows:

"(1) The Management agrees to pay with effect from lot April, 1962, an additional dear ness allowance of ₹ 5/- per month to such workmen whose basic pay is below ₹ 150/- per month and ₹ 10/- per month to those whose basic pay is ₹ 150/- and above but below ₹ 300/-.

In regard to the workmen drawing ₹ 300/- and above the revised rate of D. A. will be as under :

Basis pay Rs. 300 and upto Rs. 320	amount by which pay falls short of Rs. 3800/-
Basic pay Rs. 321 and upto Rs. 390/-	Rs. 10/-
Basic pay Rs. 391 and above.	Amount by which pay falls short of Rs. 400/-.

It is also agreed that the enhanced rates will be paid along with the pay for the month of January, 1963 and the arrears due to workmen will be paid before the end of February, 1963.

(2) It is further agreed that this enhancement on D. A. shall not confer any right

to the workmen to claim automatic increase in the dearness allowances on the basis of any increase that may be allowed by the Central Government to their employees from time to time and that such claim will be determined on the basis of the Company's rules and all other relevant factors having a bearing in this respect.

(3) The Union, on its part, agrees to accept the above offer in full and final settlement of their claim in this respect." The said settlement was subsequently incorporated as a consent award by the Industrial Tribunal.

4. During the pendency of the present dispute No. 4 of 1967, out of which this writ petition has arisen, the Employees' Union made an application before the Industrial Tribunal praying for some interim relief. The petitioner. company opposed the said application contending, inter alia, that since there was a subsisting settlement between the parties, the whole claim of the Union became incompetent and could not be adjudicated upon, that the interim relief asked for by the Union could be granted only if the workmen made out a clear case for .the grant of the same, and that the application for interim relief should be dismissed. On the other band, it was contended by the General Secretary of the Union, Respondent No. 2, that the consent award relied noon by the petitioner was terminated by the Union. The Tribunal passed an order on 19.9.1967 in which he took the view that the consent award had not been terminated by the Union as alleged by the General Secretary of the Union. The Tribunal, however, held that the Management of the petitioner-company had itself been granting dearness allowance to the employees subsequent to the convent award at the same rate as was granted by the Central Government to its employees, that none of the parties had thus adhered to Term No. 1 of the settlement, and that the aforesaid consent award had, therefore, ceased to remain operative and did no longer subsist.

5. On 5.2.1968, the Tribunal, by a separate interim award, granted interim relief to the employees of the petitioner. Company at a flat rate of ₹ 6/- per mensem with effect from 7.2.1968, and also ordered that the said interim relief was to be kept as a separate item and was to be adjusted against any increase that may be granted by an award or by a settlement. It was published on 14-3-1961.

6. Subsequently to the making of the aforesaid interim award, the Management of the petitioner. Company entered into a fresh settlement on 25.4.1968 with certain office-bearers of the Union. A copy of the said settlement has been filed as Annexure C. The said settlement was signed by the Managing Director on behalf of the Management of the petitioner. Company and by the President, vice-President and two Joint Secretaries

of Respondent No. Union. In view of the terms of the settlement arrived at, it was agreed by both the parties that the Industrial Tribunal should be moved to give a "no dispute award" or in the alter. native an award in terms of the new settlement. It was also agreed that the petitioner. company would be absolved from its liability under the interim award. dated 5.2.1968. Copies of the said settlement were rent to the Tribunal and to the various other authorities prescribed under the law. Thereupon, R. D. Jain, Respondent No. 2, purporting to act as General Secretary of the Employees' Union, Respondent No. 1, submitted certain objections to the aforesaid settlement, dated 25.4.1968. He submitted that the persona who signed the settlement on behalf of the Union were not competent and authorized to sign the same, that they had done so acting in collusion with the Management of the petitioner. company, and that the settlement was a result of misrepresentation, fraud. undue influence, coercion, threat, etc. The petitioner-company, on the other band, submitted that the settlement was arrived at in the interest of industrial peace, that it was in the prescribed form and was binding on the employees and the Union, that the terms of the settlement were fair and just, that the settlement was arrived at with the senior most officers of the Union which is a recognized Union and with whom the Management bad been entering into settlements in the past also, that the persons who signed the settlement on behalf of the Union were fully authorized and competent to sign the same, that their authority to enter into settlement flowed from the provisions contained in the Constitution of the Union, and that there was no fraud or misrepresentation etc. After hearing the parties, the Industrial Tribunal, by. its Order, dated 17-7-1968, held that the persons who signed the settlement on behalf of the Union were not competent to sign the settlement as they were not authorized to do so by the Union.

7. The petitioner has, thereupon, filed, the present writ petition challenging the order, dated 19.9.l967, the interim award, dated 5.2.1968. and the Order, dated 17.7.1968, as being bad in law and without or in excess of the jurisdiction of the Tribunal.

8. In the impugned order, dated 19.9.1967, the Industrial Tribunal took the view that the notice of termination of the consent award issued by respondent No. 2, R. D. Jain during the period of operation of the raid award, could not have the effect of a valid termination of the award. It was contended on behalf of the management of the petitioner. company that respondent No. 2 had no power to issue the notice since his status as General Secretary was in dispute. But, the Tribunal did not decide the said ,contention in the view taken by it that no notice of termination could be given within the period of operation of the award. As I am agreeing with the view taken by the

Tribunal, it is not necessary for the purposes of this writ petition to decide the question as to whether respondent No. 2 was the General Secretary at the relevant time. As regards the question as to whether a notice of termination of an award can be given during the period of operation of the award, it is necessary to refer to some of the provisions in the Industrial Die. pulse Act. election 19 (8) provides that "an award stall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under Section 17.A." Under Section. 17A(1), "an award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under S. 17." According to S. 17, the publication of an award may be in such manner as the appropriate Government thinks fit. Thus, a reading of the provisions in Section 17, 17-A (1) and 19 (3) shows that an award normally remains in operation for a period of one year after the expiry of one month from the date of publication of the award under Section 17 of the Act.

Section 19 (6) provides that:-

"Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."

Sri S. L. Sethi, the learned counsel for respondent No. 1, contended that the Tribunal erred in holding that a notice of termination could not be given under Section 19 during the period of operation of an award. The learned counsel pointed out that Section 19 does not contain any such provision. But, a reading of sub-section (3) and (6) of Section. 19 clearly shows, in my opinion, that the notice of termination contemplated by sub-section. (6) can be given only after the expiry of the period of operation under sub-section(8). Sub-section (3) clearly provides that an award shall remain in operation for a period of one year from the date on which the award becomes enforceable under Section. 17A. The mandatory form in which the language of the said sub-section. (8) is worded suggests that the Legislature intended that an award shall, subject of course to the other provisions of the section, normally remain in operation for a period of one year, and sub-section (6) refers to a point of time subsequent to the expiry of the said period of operation under sub-section (8). Sub-section (6) also provides that the award shall continue to be binding on the parties even after the expiry of the period of operation under sub-section (3). Reading sub-section. (8)

and (6) together, it has to be bald that no notice of termination can be given within the period of operation of the award.

In the present case, the consent award was published in the Gazette, dated 14.3 1968. Sri Sethi submitted that the date of publication in the Gazette was 7.2.1968 and not 14.3.1963. He, however, could not produce a copy of the Gazette, and as the Gazette is not available, the date mentioned by the Tribunal in its Order, viz., 14.8.1963, has to be taken as the correct date of the publication of the award in the Gazette. The award, therefore, became enforceable on 14.3.1963 as provided in S. 17A (1) of the Act. Admittedly, the notice of termination said to have been given by respondent No. 2, though dated 2.3.1964 was actually issued on 9.3.1964 by registered post. The notice of termination was thus given within the period of operation of the award, and the Tribunal therefore, rightly held that it could not have the effect of terminating the consent award.

9. The Tribunal, however, held that from time to time the Management of the petitioner- company was introducing revised rates of dearness allowance even after the normal period of operation of the award was over, that the said revised rates of dearness allowance were accepted by the workmen and salaries continued to be drawn on the basis of the revised rates from time to time, that there. fore for all practical purposes term No. (1) of the consent award which related to the rates of dearness allowance payable from 1.4.1962 had ceased to be in operation and that since none of the parties stuck to the term No. (1) of the settlement or award. the revision of the rates of dearness allowance from time to time and their acceptance by the employees, for all practical purposes, leads to the conclusion that at least that part of the settlement no longer subsisted. Having held in that manner, the Tribunal went on to say as follows:

"It is true that term No. (2) of the settlement said, that the enhancement of dearness allowance shall not confer any right to the workmen to claim automatic increase in the dearness allowance on the basis of any increase that may be allowed by the Central Government to their employees from time to time and that such claims will be determined on the basis of the Management's rules and all other relevant factors, having a bearing in this respect. It may be arguable that the Management can raise a contention on the basis of this admission by the workmen but that cannot in my view detract from the position that the settlement in regard to the rates of dearness allowance brought into force with effect from lst April, 1962, no longer subsists, although it is the

worker's case that even this part of the settlement does not subsist by virtue of certain correspondence that has ensued between the parties. This disposes of the preliminary issues."

One of the preliminary issues referred to by the Tribunal was the one raised by the petitioner company, viz. that term No. (2) of the earlier consent award had continued to subsist, and that the workmen were not entitled to be raid the same rates of dearness allowance as payable to the Central Government employees for the respective pay ranges. It was on the basis of the said preliminary objection that the Tribunal formulated a preliminary point for determination in the earlier portion of its Order, dated 19.9.1967, and the said point runs as under:

"(2) (a) Whether the fact that the Management has been, from time to time, revising its rates of dearness allowance t) correspond with those in case of Government employees and the acceptance of such rates by the workmen amount, in fact, to the termination of the settlement by both parties and;

(b) whether it can be inferred from the above facts that the agreement is not subsisting."

As pointed out above, the Tribunal, while holding that term No. (1) of the consent award did no longer subsist, did not specifically give a finding as to whether term No. (2) in the consent award also ceased to subsist. I have already extracted above the two relevant terms of the consent award. Term No. (2) provides that the

"enhancement in term No. (1) on D. A. shall not confer any right to the workmen to claim automatic increase in the dearness allowances on the basis of any increase that may be allowed by the Central Government to their employees from time to time and that such claim will be determined on the basis of the Company's rules and all other relevant factors having a bearing in this respect."

This provision in term No. (2) was obviously intended to provide against any claim by the workmen to an automatic increase in the dearness allowance on the basis of an increase that may be allowed by the Central Government to their employees from time to time. It was thus in the nature of a safeguard in favor of the management of the petitioner-company. Therefore, the mere fact that subsequently the petitioner-company gave certain rates of dear. ness allowance during the years 1961 and 1965 to the employees which happened to correspond with the rates of dearness allowance given by the Central Government to its employees does not show that the Management of the petitioner company had

thereby given up its right to regulate the dearness allowances as provided in term No. (2) of the settlement. In fact, it was stated in the writ petition that the petitioner company gave dearness allowance to its employees at the same rats as was given to the Central Government employees but not from the same date, and that it was in most of the oases, much later than the dates from which the Central Government employees were granted dearness allowance. This averment was not controverter in the counter-affidavit filed on behalf of the respondents. The said circumstances, therefore, clearly show that the petitioner. Company was, not adopting a consistent conduct of paying dearness allowance at the same rates at which it was paid by the Central Government to its employees from time to time. If the Management had decided to give more dearness allowance to the workmen on certain occasions, it cannot be implied there from either that the agreement in term No. (2) of the settlement award was itself terminated or that the petitioner-company had abandoned its right reserved in term No. (2). I. therefore, hold that term No. (2) in the consent award has continued to subsist.

10. As regards term No. (1), admittedly, the petitioner-company revised the rates of dearness allowance set out in the said term from time to time. From the said circumstances, the Tribunal came to the conclusion that for all practical purposes term No. (1), of the consent award which related to the rates of dearness allowance payable from 1.4.1962 had ceased to be in operation, and that the said term No. (1) no longer subsisted. The learned counsel for the petitioner-company contended that this view of the Tribunal was erroneous. He argued that the award or a term therein could be terminated only by following the procedure mentioned in Section 19 (6) of the Act, that for the termination of an award under Section 19 (6) a notice in writing was necessary, and the conduct of the parties could not legally terminate the award or a term thereof. He relied upon the decision in *M. S. U. Mills v. The Textile Labour Union* [1] In that case, Wanchoo, C. J. and Dave, J. held that a notice for terminating an award must be in writing as otherwise it would be difficult to compute the period of two months from the particular date, that the fact that no particular form of notice has been prescribed by law does not mean that it may be oral and need not be in writing, that the contention that since the words "in writing" do not appear in sub-section (6) as they appear in sub-section (2) of Section 19, the intention of the Legislature was that the notice for terminating the award could be oral is not acceptable because there cannot be any principle whereby a notice to terminate the settlement should have been considered necessary to be in writing, while for terminating an award such a notice in

writing was not considered necessary, that the Legislature did not consider it necessary to repeat the words "in writing" in sub-section (6) because it had already indicated its mind and inserted those words in sub-section (2) by way of abundant caution, and that therefore, an award cannot be terminated by the conduct of the parties.

> I respectfully agree with the view of the learned Judges. It follows, therefore. that term No. (L) cannot be regarded to have ceased to subsist by reason of the payment of dearness allowance by the Management of the petitioner-company at rates different from those set out in term No. (1), and the acceptance there of by the workmen. Sri R. L. Sethi, the learned counsel for the respondents, argued that the requirement in sub-section (6) of Section 19 applies only to a case where one of the parties desires to terminate the award, and does not apply to a case where both the parties agree to the termination of the award or on term thereof. I am unable to accept the said argument. In the view taken by the Division Bench of the High Court of Rajasthan, with which I have agreed above, it was clearly the intention of the Legislature that an award should be terminated only by a notice in writing. If that view is correct, it would not make any difference whether the termination is at the instance of one of the parties or both the parties. I, therefore, hold that the Tribunal erred in holding that term No. (1) in the consent award ceased to subsist.

11. For the above reasons, the Order of the Tribunal dated 19.9.1967, is liable to be quashed, and I quash the same accordingly.

12. As regards the interim award of the Tribunal, dated 5-2.1968, the learned counsel for the petitioner-company contended that the question referred to the Tribunal was only as to whether the workmen were entitled to be paid the same rates of dearness allowance as payable to the Central Government employees for their respective pay ranges, that the reference was not made for the fixation of dearness allowance, that the question referred to permitted of only an answer in the affirmative or in the negative and did not permit the fixation of dearness allowance, that consequently no interim relief could be granted by the Tribunal, that the grant of interim relief was not incidental within the meaning of Section 10 (4) of the Act, and that therefore, the award of the Tribunal should be quashed. On the other hand, Sri Sethi contended that the second part of the question referred to the Tribunal is to be answered both when the answer to the first part is in the affirmative or in the negative, that the said second part of the question envisages both the situations and requires the Tribunal to determine what directions are necessary, including the date from which the rates of

dearness allowance- should be paid, and that in any case the reasons given by the Tribunal for awarding interim relief were reasonable and justify the award of interim relief. He also submitted that the words of the reference should not be interpreted in a rigid manner, and that it is not necessary that the dispute should be particularized or specified in the reference.

> It is true that the words of the reference under the Industrial Disputes Act should not be interpreted in rigid manner. But, at the same time. it is not open to the Tribunal to enlarge the scope of the reference. A reading of the question referred to the Tribunal, in the present case, shows that all that the Tribunal was called upon to consider was as to whether the workmen were entitled to be paid the same rates of dearness allowance as payable to the Central Government Employees for the respective pay-ranges. It does not envisage any fixation of dearness allowance. The language of the second part of the reference, viz., "and what directions. including the date from which the same should be paid, are necessary in this respect", suggests that it has to be answered only when the answer to the first part is in the affirmative. Even in such a case, the answer under the second part is to be only as to what directions are necessary regarding the payment of dearness allowance at the same rates as those payable to the Central Government employees and the date from which the same should be Laid. Thus, whether the answer to the first part of the reference is in the affirmative or in the negative, in either case, the fixation of the quantum of any dearness does not arise.

13. As regards the reasons given by the Tribunal for granting interim relief, the only reasons that can be gathered from the award of the Tribunal are those given in paragraphs 4, 6 and 7 of the award. In paragraph 4, after referring to the argument of the learned counsel for the petitioner. Company regarding the interpretation of the terms of reference, the Tribunal observed as follows :

> "In so far as the affirmative part of the interpretation is concerned one can of course, agree with Sri Bhasin that if it is found that the workmen are entitled to be paid at Government rates, further directions will, of course, be necessary. But it does not stand to reason that in case the Management's stand is accepted that in the light of the settlement already entered into or of general principles of industrial wage fixation it cannot be held that the workmen are entitled to the same dearness allowance rates as are being paid to Government employees then the Tribunal is powerless to provide an alternative remedy and to suggest what

should be the rates of dearness allowance. Such could not have been the intention of the reference because such an interpretation would, to my mind, not make any sense. It is well settled that terms of reference should be so interpreted that they should make sense."

In paragraph 6, the Tribunal observed as under:

"To my mind, it is quite clear that in case the Tribunal does not accept the stand of the workmen that they are entitled to the same rates of dearness allowance and on the same dates as Central Government employees, then it is open to the Tribunal either to accept any scheme of dearness allowance which is applicable to an engineering industry as is indicated in the Director's report or to suggest some alternative scheme either based on the group of industries to which the Hindustan Housing Factory may be considered to belong or on some other principles. But there cannot be a purely negative reply to the term of reference when there could be no doubt that the cost of living has been rapidly rising. Although on the date of reference as shown by the chart filed by Sri Bhasin, the total wage packet inclusive of fringe benefits may have corresponded to the Government level, yet since then the Government has been giving dearness allowance increases from time to time and as already shown by me, the total increase given to the lowest categories is ₹ 28/-. In these circumstances, an interim relief in the form of an ad hoc increase of dearness allowance can safely be given without committing the Tribunal to the acceptance of the stand of either party."

I have already discussed the scope of the terms of reference and pointed out that the said terms of reference did not envisage the fixation of dearness allowance payable to the workmen. The Tribunal was merely called upon to decide whether the workmen were entitled to be paid the same rates of dearness allowance as payable to the Central Government employees. The Tribunal could grant interim relief only if it had the power or competence to give a final relief as to dearness allowance. Where the terms of reference do not envisage the fixation of dearness allowance, the Tribunal would not have the power to grant any interim relief. The Tribunal was, therefore, in error in taking the view that in case the Tribunal did not accept the stand of the workmen that they are entitled to the same rates of dearness allowance and on the same dates as Central Government employees, then it was

"open to the Tribunal either to accept any scheme of dearness allowance which is applicable to an engineering industry as is indicated in the Director's report or

to suggest some alternative scheme either based on the group of industries to which the Hindustan Housing Factory may be considered to belong or on some other principles."

In my opinion, the said view of the Tribunal amounts to an enlargement of the scope of the terms of reference. In paragraph 7 of the order, the Tribunal observed that :

"It will be seen that even in the proposed interim relief in Exhibit W/X the in3reaee proposed was ₹ 5 to ₹ 7.50 per mensem and the cost of this was estimated at ₹ 1,56,000 for which a provision has been made in the balance sheet."

After making the said observation, the Tribunal proceeded to award the interim relief by stating that in the circumstances, the Tribunal considered the figure of ₹ 6 per mensem as a reasonable figure for the grant of an ad hoc dearness allowance at a flat rate to all employees. In other words, the reason that weighed with the Tribunal, so far as the said observation goes, was that the Management of the petitioner-company itself made a provision in the balance-sheet for interim relief. This again cannot be a sufficient ground for granting interim relief. The mere fact that a provision for interim relief was made by the petitioner-company in the balance-sheet cannot and does not mean that the petitioner. Company conceded that the workmen are entitled to interim relief. In any case, in the view taken by me above that the terms of the reference did not empower the Tribunal to grant any interim relief the aforesaid reason given by the Tribunal is immaterial.

14. For the above reasons, the interim award of the Tribunal, dated 5.2.1968, is liable to be quashed, and I quash the same accordingly.

15. As regards the impugned order of the Tribunal. dated 17.7.1968, the contention on behalf of the petitioner-company was that the Tribunal erred in not passing a "no dispute award" as prayed for by the Management ; on the ground that the President and the other three office-bearer who signed the settlement alleged to have been entered into between the petitioner company and the Union on 25.4.1968 were not competent to enter into the said settlement as they were not authorized by the executive committee and the majority of the members of the Union were opposed to it. As already stated above. after the interim award, dated 5.2.1964, was passed by the Tribunal, the petitioner. Company sent an application on 27-4-1968 by registered poet

to the Tribunal stating that a settlement bad been arrived at between the parties, that there was no dispute left between them, and that therefore, a "no dispute award" may be passed in the present reference, or in the alternative, an award in terms of the settlement may be passed. Along with the said application was sent a Memorandum of Settlement signed by the Managing Director of the petitioner-company and four office-bearer of respondent No. 1 Union. The said Memorandum contains certain terms whereby the Management of the petitioner company agreed to give certain relief in emoluments to the workmen. When notice of the raid application was given to the respondent?, respondent No. 2 filed a reply, dated 3 6.1968, opposing the passing of a "no dispute award" on the basis of the alleged settlement. Respondent No. 2 contended that the four persons who purported to have signed the settlement on behalf of the Union (respond dent No. 1) bad no authority to sign it on behalf of about 2,000 workmen, that the Management of the petitioner. Company had fraudulently induced the four signatories to enter into a settlement, that according to the Constitution of the Union, the said persons had no locus stand to enter into the settlement, and that the settlement was not, there- fore, binding on the workmen. A copy of the Memorandum of settlement has been filed as Annexure C. It shows that the original Memorandum was signed by the President, the Vice- President, and the Joint Secretaries of the Union (respondent No. 1) and by the Managing Director of the petitioner-company. The question for determination is as to whether the four persona who signed the settlement were competent to enter into the said settlement and whether the terms of settlement contained in the Memorandum of settlement were binding on the Union and its members.

16. Section 18 (1) of the Industrial Disputes Act provides that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of the conciliation proceedings shall be binding on the parties to the agreement. Rule 58 of the Industrial Disputes (Central) Rules, 1957, provides that a settlement arrived at in the course employer himself, or by his authorized spent, or when the employer is an incorporated body other body Corporate, by The agent, manager, or other principal officer of the corporation, and in the case of the workmen, by any officer of a trade union of the workmen or by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose. There is an explanation to the said Rule according to which, "officer" in the Rule means any of the following officers, viz., the President, the Vice-President, the Secretary (including the General Secretary), a Joint Secretary, and any other officer of the trade union authorized in this behalf by the President and Secretary of the Union. The contention of the learned

counsel for the petitioner-company was that the provision in S. 18 (1) should he read with the provision in Rule. 58, that the .Memorandum of settlement (Annexure C) was in the prescribed form 'H', that it was signed by the Managing Director on behalf of the Management of the Petitioner-company and by four office-bearers of the Union respondent No. 1, that according to Rule 58, if the Memorandum of settlement is signed even by only one office-bearer of the Union it would be binding on all the workmen, and that in the case of the Memorandum of settlement in question it was signed by four office. bearers, and should, therefore, be hold to be binding on the Union and its members. On the other band, the argument of Sri Sethi on behalf of the Union and the workmen was that the signatories to the Memorandum of settlement were not authorized by the workmen to effect the particular type of settlement, that it was not acceptable to the majority of the workmen, and that therefore the said settlement was not binding on the workmen other than those who signed it.

17. In my opinion, the contention on behalf of the petitioner-company that the fact that the Memorandum of settlement was in the prescribed form and was signed by one or more of the office-bearers of the Union is by itself sufficient to make the settlement arrived at between the Management of the petitioner- company and the signatories binding on the Union and all its members, is untenable. The main purpose of the provisions of the Industrial Disputes Act is to maintain peace between the parties in an industrial concern. That is why if a settlement is arrived at by agreement between e employer and the workmen even otherwise than in the course of a conciliation proceeding, it is made binding on the parties to the agreement.

> The language of S. 18 (1) clearly shows that and the settlement shall the settlement will be binding only "on the articles to the agreement." The definition of "settlement" in S. 2 (p) of the Act also states that "settlement" means a settlement arrived at "between the employer and the workmen."
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> So, normally in order that a settlement between the employer and the workmen may be binding on them, it has to be arrived at by agreement between the employer and the workmen. Where the workmen are represented by a recognized Union, the settlement may be arrived at between the employer and the Union. if there is a recognized Union of the workmen and the Constitution of the Union provides that any of its office. bearers can enter into a settlement with the Management on behalf of the Union and its members, a settlement may be arrived at between the employer and such office bearer or bearers. But, where the Constitution does not so provide specifically, the office-bearer or

bearers who wish to enter into a settlement with the employer should have the necessary authorization by the executive committee of the Union or by the workmen. A reading of Rule 53 clearly above that it presupposes the existence of a settlement already arrived at between the employer and the workmen, and it only prescribes the form in which the Memorandum of settlement should be, and by whom it should be signed. It does not deal with the entering into or arriving at a settlement. Therefore, whereas settlement is alleged to have been arrived at between an employer and one or more office-bearers of the Union, and the authority of the office-bearer who signed the Memorandum of settlement to enter into the settlement is challenged or disputed, the said authority or authorization of the office-bearer who signed the Memorandum of settlement has to be established as a fact, and it is not enough if the employer merely points out and relies upon the fact that the Memorandum of settlement was signed by one or more of the office-bearers of the Union.

18. The learned counsel for the petitioner-company relied upon an observation of the Supreme Court in *Sirsilk Ltd. v Government of Andhra Pradesh,* [2] and the said observation is at pages 163 and 164, and it runs as under :-

"Therefore as soon as an agreement is signed in the prescribed manner and a copy of it is sent to the Government and the Conciliation officer it becomes binding at once on the parties to it and comes into operation on the date it is signed or on the date which might be mentioned in it for its coming into operation. In such a case there is no scope for any inquiry by Government as to the bona fide character of the settlement which becomes binding and comes into operation once it is signed in the manner provided in the rules and a copy is sent to the Government and the conciliation officer. The settlement having thus become binding and in many cases having already come into operation, there is no scope for any inquiry by the Government as to the bona fides of the settlement." In that case, the settlement was arrived at. between the parties after the Tribunal had sent its award to the Government. The question arose as to whether in view of the mandatory provisions of Sections 17 (1) and 18 (1) of the Act, it was open to the Government in the special circumstances not to publish the award tinder Section 17(1). The Supreme Court held that in such a situation, the Government ought not to publish the award under Section 17(1). The observation quote] above was made by the Supreme Court in that context. The observation proceeded on the basis that there was a settlement arrived at between the employer and the workmen, and the observation meant that once a

settlement is arrived at between the parties and is. Signed in the prescribed manner, it becomes binding on the parties to it, and thereafter there is no scope for any inquiry by the Government as to the bona fide character of the settlement. The observation was not meant to lay down that the fact that an alleged settlement was reduced to writing in the prescribed form, and is signed by some of the office. bracers of the Union establishes conclusively that there was a valid settlement binding on the Union and its members, even if the office-bearers who signed the settlement had no authority or authorization from the executive committee of the Union or the workmen to enter into the settlement with the employer. The observation of the Supreme Court relied upon by the learned counsel for the petitioner-company does not, therefore, support his contention.

19. In the present case, the Union, respondent No. 1, is admittedly a recognised, Union, and it has about 2,000 workmen as its members. A copy of the Constitution of the Union has been filed as Annexure D to the writ petition. Clause 8 of the Constitution sets out the objects of the Union. One of the objects (No. v) is:

"to secure the redress of grievances of the members to promote harmonious relations between the employers and their employees, and to secure, as far as possible, a settlement of disputes between them by peaceful negotiation and pacific bargaining, so as to avoid needless dislocation of work." Another object No. (x) is :

"to take such other steps for promoting the welfare and safeguarding the interest of the members as are net inconsistent with the time and objects of the Union." Clause 34 provides that there shall be an Executive Committee for the Management of the Union, the control of its funds and the execution of its policies, and that the Committee may make rules and regulations subject to confirmation by the General Body, for carrying out the objects of the Union. Clause 35 provides for the election of the Executive Committee by the General Body of the Union in its Annual General Meeting. It has been stated by the counsel that the Executive Committee of the Union consists of thirty-six members. Thus, the management of the Union was entrusted to the Executive Committee, and it is the Committee that is placed in charge of the execution of the policies of the Union and the carrying out of the objects of the Union. As already pointed out, ore of the objects of the Union was to secure, as far as possible, a settlement of disputes between the employer and the employees. Though there is on specific clause which provides as to which person or persons

should enter into a settlement of any dispute between the employer and the employees, clause 34 of the Constitution, in my opinion, authorizes or empowers the Executive Committee to secure a settlement of any dispute between the employer and the employees.

The learned counsel for the petitioner-company referred to clause 41 of the Constitution of the Union which provides that

"the President shall supervise and control all activities of the Union. He shall preside over and conduct the business of the Executive Committee and the General Meetings of the Union,"

and clause 42 which provides that "the Vice-President shall help the President in the die. charge of his duties and in the absence of the President shall deputies for him", and con- tended that since the President is empowered to "supervise and control all activities of the Union" he by himself, could secure a settlement of a dispute between the employer and the employees, and in the absence of the President, the Vice-President could do so. I do not think so. When under clause 31 the management of the Union as well as the responsibility of carrying out the objects of the Union is given to the Executive Committee, the words "supervise and control" used in clause 41 cannot be construed as giving to the President or the Vice. President the power to or the responsibility of carrying out the objects of the Union one of them being the securing of a settlement of a dispute between the employer and the employees. Clauses 41 and 42 merely give the President and the Vice-President the general power of supervision and control of the activities of the Union, and do not empower the President or the Vice-President to secure or enter into, by himself, a settlement of a dispute between the employer and the employees. The said power is given to the Executive Committee as a whole by clause 31 of the Constitution.

A contention was urged by respondent No. 2 that under clause 43 of the Constitution of the Union, the Secretary of the Union is empowered to do all the executive work of the Union, and therefore, it is the Secretary who can enter into or secure a settlement of a dispute between the employer and the employees. This contention also is not tenable. The Secretary also is only a member of the Executive Committee. The constitution does not vest the power to enter into or secure a settlement of a dispute in any particular member of the Executive Committee. It is vested in the Executive Committee as a whole. Clause 30 of the Constitution of the Union provides that one-third of the total number of the members of the Executive Committee shall constitute the quorum

for their meeting, and clause 31 provides that every member present at the meeting shall have one vote, and the Chairman shall also have a casting vote in case votes are equal. It is in accordance with these clauses that the Executive Committee has to consider and decide about the entering into or securing a settlement of a dispute between the employer and the employees. It is open to the Executive Committee to empower one or more of its members office bearers to enter into or secure a settlement, but it is only when such a member or members is thus authorized by the Executive Committee that he can enter into or secure a settlement of a dispute. After the settlement is thus secured and becomes a fair accomplish, it has, of course, to be reduced to writing and signed by one or more of the office. bearers as provided in Rule 58 of the Rules framed under the Act.

20. Now, in the present case, there is nothing on the record to show that the four persons, who signed the alleged settlement Annexure C, dated 25.4.1968, were authorized or empowered by the Executive Committee to enter into the said settlement with the Management of the petitioner-company. On the other band, as pointed out by the Tribunal in its Order, dated 17.7.1968, after the present Industrial Dispute was referred to the Tribunal on 24.1.1967, a split appears to have occurred amongst the members of the Executive Committee of the Union. In a meeting of the Executive Committee of the Union held on 4.4.1968, it was decided to remove respondent No. 2 from the post of General Secretary of the Union. In a subsequent meeting of the Executive Committee held on 15.4.1968, a resolution was passed that the members of the Committee had no confidence in Sri Sukhdev Singh, the President of the Union, who was one of the signatories to the settlement. It was after this event that the President, the Vice-President and two Joint Secretaries entered into the impugned settlement on 25.4.1968, and signed the same. It is clear from the said circumstances that the four signatories were not authorized by the Executive Committee to enter into the settlement or sign the same.

21. The Tribunal also referred to a contention on behalf of the Union and the workmen that about 550 workmen were brought by respondent No. 2 to the office of the Tribunal on 5.6.1968 in order to indicate that they were not agreeable to the terms of the settlement. dated 25-4-1968, and the Tribunal accepting the said contention came to the con- elusion that the majority of the workmen had not accepted the settlement as they coneider3d that the Management in collusion with the four office-bearers had deprived them of their legitimate dues to which they would be entitled if the case is decided on merits by the Tribunal. The learned counsel for the petitioner company

pointed out to an averment in the writ petition that the Tribunal did not hold its Court at all on 5 6-1968, and that even if it was correct that 550 persons were brought to the office of the Tribunal, there is no knowing as to whether all of them were employees of the petitioner-company or outsiders. In the view taken by me above that the four signatories bail no authority or power from the Executive Committee to enter into or sign the settlement, the question as to whether a majority of workmen was agree. able to the settlement or not does not arise, and it is therefore not necessary to go into the correctness of the above versions of the parties about the taking of 550 persons to the Court of the Tribunal on 5.6.1963.

22. For the above reasons. I hold that the Tribunal rightly held that the four signatories to the alleged settlement, dated 25-4-1968, were not competent to enter into the settlement with the Management of the petitioner. company, and that the said settlement was not binding on the Union and its members. The prayer of the petitioner company that the order of the Tribunal, dated 17-7-1968, be quashed is rejected.

23. In the result, the writ petition is allow. ed partly, and the Order of the Industrial Tribunal, Delhi, dated 19.9.1967, and the interim award of the Tribunal, dated 5.2.1938, are quashed, and the writ petition is dismissed so far as the prayer therein for quashing the Order of the Tribunal, dated 17-7-1968, is concerned. In the circumstances, I direct the parties to bear their own coats in this writ petition.

Petition partly allowed

Cases Referred.

1. AIR 1958 Raj 84.

2. AIR 1961 SC 160