

(1994) 07 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No's. 37 and 38 of 1994

Agencia E. Sequeira

APPELLANT

Vs

Labour Commissioner and Others

RESPONDENT

Date of Decision : 18-07-1994

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 58
Industrial Disputes Act, 1947 — Section 2, 33C(1)
Payment of Wages Act, 1936 — Section 23

Citation : (1995) 2 BomCR 95 : (1996) 1 LLJ 574

Hon'ble Judges : E.S. Da'Silva, J

Bench : Single Bench

Advocate : G. Sardesai, J, for the Appellant; P.B. Devari, J., for the Respondent

Final Decision : Dismissed

Judgement

E.S. Da'Silva, J.—These two writ petitions which raise similar questions of fact and law can be conveniently disposed of by a common judgment. Upon hearing learned Counsel I make rule and by consent the matter is taken for final hearing.

2. Both the petitions challenge the Notices of the Labour Commission (Respondent No. 1) dated July 26, 1991, September 13/16, 1991, December 27, 1991, August 4, 1993 and of the Respondent No. 2 dated, November 25, 1991, May 13, 1993 and November 10, 1993 and the warrants of attachment issued consequent upon the aforesaid notices, whereby it was sought to be recovered from the petitioner the amounts of Rs. 5,29,720 in furtherance of the notices dated, November 25, 1991 and May 13, 1993 and Rs. 2,80,355.95 under notice dated November 10, 1993, in. Writ Petition No. 37/94 and an amount of Rs. 3,95,670 in furtherance of the notices, dated November 25, 1991 and May 13, 1993 and Rs. 2,14,990 under notice, dated November 10, 1993 in Writ Petition No. 38/94 respectively.

3. The petitioner in Writ Petition No. 37/94 is a partnership firm engaged in the distribution of local brands of soft drink and soda, small scale motor vehicle

repairs and fabrication and Mr. Erasmo de Sequeira is its partner. The petitioner in Writ Petition No. 38/94 is also a small scale business concern engaged in bottling its own brands of soft drinks and soda and the said Mr. Sequeira is also its partner.

4. The workmen of the petitioner were always in the past represented by a Union called, the Goa Trade and Commercial Workers" Union and various settlements were arrived at between the petitioner and their workers represented by the same Union in respect of several benefits to be dispensed to the workmen, the latest one which is the subject-matter of the petitions is dated December 9, 1986. It was stated in the petitions that the wages of the employees were linked to the variable dearness index in virtue of an earlier settlement and the rate was maintained by the aforesaid last settlement of 1986. Subsequent to this settlement there was a gradual decline in the demand for its products and the petitioner's essential source of income was coming from the bottling units. Because of the heavy competition of other similar units like Parle, Pepsi, the situation went on deteriorating which resulted in a surplusage of workmen and an increasing difficulty for the petitioner to meet the escalating wage-bill. The petitioner brought to the attention of the Union and all the workmen their inability to meet the increasing wage cost and to continue with the existing work force. The settlement dated December 9, 1986 expired on June 30, 1988 and by letter dated July 1, 1988 the Goa Trade and Commercial Workers Union terminated the same. Thereupon in view of the bad situation which had not shown any improvement the petitioner/employer by their Circular, dated August 4, 1988 informed their workmen that with the expiry of the agreement with the Union their salary should be paid at levels prevailing in June, 1988 and that any change in the levels should be only according to the agreement reached following discussions on the fresh demand that has been received from the Union. Thereafter discussions with the Union commenced on August 26, 1988 on the new charter of demands which was presented to the petitioner on July 17, 1988. During the course of these discussions it was consistently explained by the petitioner to their workmen that due to the fact that there was no demand for its products it was not possible for the petitioner to make any increase in the wage structure in respect whereof a total freeze had been imposed and therefore the petitioner proposed to reduce the surplus manpower. However both the parties reached to an oral understanding to the effect that the Variable Dearness Allowance (V.D.A) should be continued frozen but the policy of the reduction of manpower and other steps should not be implemented. During the same discussion it was also agreed that the total wage freeze imposed would be partially relaxed to the extent that there should be an unfreeze of the yearly incremental levels in the scale of pay of the workmen till the new settlement was arrived at while the V.D.A would continue being frozen. In return for this understanding the petitioner decided to defer the retrenchment of the surplus labour, to raise the quantum of outdoor reimbursement, to resume payment of annual increment and besides each workman was given an advance of Rs. 500 as

some sort of interim relief to be adjusted at the time of the new settlement. It was stated that the fact of all these payments is reflected in the vouchers, salary statements which are at Exh. D Colly. Suggesting that the workmen accepted all these benefits thus acknowledging the very existence of the sort of understanding reached between them with the petitioner whereby they received something more than the salary sought to be paid by the petitioner to the workmen immediately after the termination of the settlement at the level of July, 1988. Thereupon the last meeting of the Goa Trade and Commercial Workers Union was held on December 31, 1990 and from July 1, 1988 till January, 1991 the workmen accepted the benefits which were granted to them without making a single demand or claim in respect of V.D.A. for all this period. However, somewhere on January, 21, 1991 the petitioner received a letter from the Respondent No. 3, the new Union to which the workmen joined by changing loyalties from the previous Union, informing the petitioner about its formation and simultaneously on the same day a separate letter was addressed to the petitioner by the same Union claiming V.D.A. from the earlier period of July, 1988. In that letter the petitioner was informed that an application had been made to the Respondent No. 1 the Labour Commissioner who is also the Authority under the Payment of Wages, Act, complaining about the non-payment of V.D.A. for the back period. The Respondent No. 1 after entertaining the said application under the Payment of Wages Act issued to the petitioner a notice which was replied by the petitioner. Thereupon the Respondent No. 1 without proceeding with that application which was kept pending decided to act upon the provisions of the Industrial Disputes Act, 1947 (hereinafter called the Act) and without causing the dispute to be referred to the Labour Court or suggesting to the Government to make a reference to the Industrial Tribunal, he himself resorted to summary proceedings u/s 33(C)(1) by illegally adjudicating the dispute when he had no authority to do so. Thus the Respondent No. 1 issued a certificate to the Collector for recovery of the alleged dues from the petitioner towards V.D.A. by depriving them from placing its case "before the adjudicating authorities under the Act. It is the case of the petitioner that since it was a disputed claim which was not arising out of any settlement which had been already terminated and the V.D.A. sought to be recovered was for a period subsequent to the termination of the settlement the benefit, if any, could not have been enforced u/s 33(C)(1) and that at the most only Section 33(C)(2) would be available as a prescribed mode of its recovery. It was further stated that while seeking to exercise jurisdiction u/s 33(C)(1) the Respondent No. 1 has not given to the petitioner any hearing before the adjudication of the dispute and issuing of the certificate sent to the Collector. The petitioner also stated that pursuant to their reply to the show-cause notice, the Respondent No. 1 deferred action u/s 33(C)(1) and initiated conciliation proceedings u/s 10(1) by making the claim of V.D.A. arrears its subject-matter and invited the petitioner to participate in the same. During these conciliation proceedings several proposals were floated clearly implying therefore that he was satisfied about the existence of an industrial dispute which required to be settled, in which case only the

Labour Commissioner had powers to call the parties for conciliation proceedings. It was however stated that the position in law as far as the powers u/s 33(C) is concerned is that Section 33(C)(1) can be exercised only when there is a settlement or award and there is no dispute in regard to the dues claimed by the workmen. When there is a dispute then Sub-section (2) is attracted and the parties are required to approach the Labour Court or a reference is to be made to the Industrial Tribunal. In this particular case the workmen approached the Labour Court by their application dated December 4, 1991 filed by Respondent No. 3. This means that the Respondent No. 3 acknowledged that there was a dispute to be adjudicated by the Court with regard to the wages of the workmen. Respondent thus tried to play safe. On one side they moved the Labour Commissioner while on the other side approached the Labour Court wherein they claimed V.D.A. calculated on the basis of the index of cost of living with regard to the month of October, 1991 which would mean practically to claim V.D.A. from 1988 onwards inspite of the same having been frozen by mutual agreement. In this proceeding before the Labour Court the issues were framed, amongst them issue No. 2 involving the liability of the petitioner with regard to V.D.A. This issue was the only relevant one which the Labour Court had to adjudicate and therefore the Labour Commissioner had no authority to adjudicate the said issue. However the proceedings before the Labour Court came to a halt because there was no Presiding Officer available and in the meantime the Respondent No. 1 (Labour Commissioner) issued the certificate u/s 33 by exercising powers u/s 33(C)(1) on the basis whereof a certificate of demand dated November 25, 1991 was issued by the Collector. No sooner the petitioner received the order of the Collector, he approached the Civil Court praying for stay of the recovery sought to be made on the strength of demand notice. The suit was filed on the ground that the order of the Commissioner was a nullity and should therefore be set aside. An ex-parte stay given by the Court was subsequently vacated by Order, dated December 18, 1992. In this order the Civil Court while declining to exercise jurisdiction gave a clear finding that the controversy was involving an industrial dispute which was to be adjudicated under the Industrial Disputes Act. Hence the vacation of the stay was merely on the ground or want of jurisdiction of the Civil Court to deal with the matter. In appeal the High Court upheld the stand taken by the Civil Court to the effect that it had no jurisdiction to entertain the suit. This was followed by the Order of the Supreme Court which has rejected SLP moved by the petitioner against the judgment and order of the high Court. In the meanwhile the Respondent No. 1 issued notices, dated July 26, 1991, September 13/16, 1991, December 27, 1991 and August 4, 1993 for claims arising out of the impugned settlement, dated December 9, 1986. The petitioner replied by its letters, dated August 9, 1991, September 25, 1991, January 11, 1992, August 14, 1993 and August 23, 1993 raising objections to the jurisdiction of respondent Nos. 1 and 2 to entertain any claim under such settlement. This was followed by a fresh demand notice dated November 25, 1991 and May 13, 1993 for Rs. 5,29,720 and the demand notice, dated November 10, 1993 for payment of Rs. 2,80,355.95 of Respondent No. 2 in Writ Petition No. 37/94 as

well as another demand notice, dated November 25, 1991 and May 13, 1993 for Rs. 3,95,670 and the demand notice, dated November 10, 1993 for payment of Rs. 2,14,990, dated November 10, 1993 also from respondent No. 2 in Writ Petition No. 38/94. The petitioner filed two more suits before the Civil Judge, S.D. being one registered under No. 256/93/A and the other under No. 257/93/A for declaration that the impugned notices were null and void. In the said suits applications for interim relief were moved with a prayer for ex-parte injunction. However the Civil Judge declined to grant ex-parte injunction and posted the same for reply of the respondents. On September 18, 1994 warrants were issued for attachment of movable and immovable property of the petitioner at their factory at Borim. The warrants were issued in execution of the demand notices which are impugned in these petitions. On January 20, 1994 vehicles belonging to the petitioner were attached in execution of the warrants. The petitioner moved applications for temporary injunction in the aforesaid suits, but the learned Judge of the trial Courts declined to grant ex-parte injunction in view of its earlier judgment to the effect that the trial Court had no jurisdiction to entertain the subject-matter of the suit. The petitioner states that being aggrieved by the notices, dated July 26, 1991, September 13/16, 1991, December 27, 1991, August 4, 1993 of the Respondent No. 1 and notices, dated November 25, 1991, May 13/1993 and November 10, 1993 of Respondent No. 2 has filed the present petitions challenging its validity and legal standing.

5. On behalf of the petitioner Shri G. Sardes-sai, learned Counsel, has submitted that a settlement arrived at in accordance with the Industrial Disputes Act ceases to be a settlement as defined under the Act on the termination of the settlement and turns itself into a mere contract between the parties. Thus, on such termination the rights recognised by this settlement cannot be enforced in the manner prescribed by the Act, namely, in its Section 33(C)(1), although the rights emerging from the settlement continue to flow until superseded by another agreement. In the instant case, the learned Counsel stated, these rights were superseded by an oral agreement or understanding and the issue as to whether this oral understanding has superseded the rights still flowing from the terminated settlement could not have been summarily adjudicated by the Labour Commissioner. This type of dispute had to be decided by the Labour Court or by the Industrial Tribunal. The position in law is that the powers u/s 33(C)(1) can be exercised only when there is a valid and operative settlement or award and there is no dispute regarding the claimed dues. If such dispute arises then Sub-section (2) is attracted and the parties have to approach either the Labour Court or the Commissioner has to cause a reference to be made by the Government to the Industrial Tribunal. Thus, the learned Counsel urged, Section 33(C)(1) is a provision of the nature of execution which cannot be availed of by the workmen in respect of any right under dispute once the settlement is terminated and only Sub-section (2) can be pressed into service for the adjudication of a dispute arising out of a terminated settlement. The learned Counsel placed reliance in this respect on the case of Mangaldas Narandas Vs. Payment of Wages Authority

and Others, . In this case, under the Industrial Disputes Act, a Division Bench of this Court while dealing with the question of the effect of termination of an award by the employer u/s 19(6) of the Act, has held that after the statutory contract is terminated by notice the employer by failing to abide by the terms of the award does not incur penalties provided by the Act, nor can the award be enforced in the manner prescribed by Section 20 of Industrial Disputes (Appellate Tribunal) Act, 1950. But the termination of the award has not the effect of extinguishing the rights flowing therefrom and as such by the termination of the award the contract of employment is not terminated.

6. It is thus seen that on the termination of a settlement or award a contract subsists between the parties with all the benefits recognized by the same settlement and award till such time this contract is also terminated or superseded by any other contract, settlement or award. In the instant cases and according to the learned Counsel the contracts emerging from the terminated settlement were purportedly superseded by an oral understanding which fact by itself would amount to a dispute to be adjudicated either by the Labour Court or by the Industrial Tribunal once the workmen are not accepting the existence of the understanding. Such a dispute could not be decided by the Labour Commissioner u/s 33(C)(1) of the Act. A reference was also made by the learned Counsel to the case of Life Insurance Corporation of India v. D. J. Bahadur and Ors., 1981 I LLJ 19 , as well as to the case of South Indian Bank Ltd. Vs. A.R. Chacko, , which also lay down the principle that a terminated settlement turns into a contract and the rights of the workmen secured by the settlement continue to be available to them as before. The learned Counsel next contended that the conclusion which can be drawn from the above rulings is that u/s 33(C)(1) what can be enforced by the workmen or on its behalf is only a subsisting settlement wherein there is no dispute with regard to a claim for dues arising out of the same and that after the settlement is terminated any dispute with respect to that settlement involving either the very entitlement or the extent of any right claimed by the workmen cannot be adjudicated or decided in the manner prescribed in Section 33(C)(1) of the Act.

7. Shri Devari, learned Counsel for the respondent has joined issue to this line of thinking of the petitioner's learned Counsel. It has been urged that the whole argument of the petitioner is that there was an agreement/understanding to freeze the wages to which the respondent were entitled on account of the terminated settlement which, according to the petitioner, has superseded the contract which emerged after its termination. Learned Counsel invited my attention to the new charter of demands submitted by the respondent on July 17, 1986 and contended that the negotiations were started immediately about these demands. The learned Counsel stated that usually the charter of demands is prepared after the workmen hold their general body meeting for that purpose. He made also a reference to the various demands contained in the said charter as well as in the caveat and submitted that all the old terms and conditions of the workmen service were to be deemed as unchanged including the V.D.A.

unless the same were specifically agreed for a change. According to the learned counsel there was no scope in the Act for any oral agreement to replace either a settlement or a contract arising out of a terminated settlement. The charter of demands, specially its caveat, the learned Counsel insisted, was indicating that there could be no intention on the part of the workmen to allow the freezing of V.D.A. or to renounce the benefits flowing from the terminated settlement dated December 9, 1986. Learned Counsel further submitted that Section 2(p) of the Act which defines what is a settlement should be read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 (hereinafter called the Rules) and both imply the concept of a written agreement signed by the parties. The rights of a terminated settlement thus would continue until they were replaced by another settlement and this was some sort of security guaranteed to the labour. Thus no intention could be attributed to the legislator to discard any protection due to the workmen under the Act with regard to their rights which continue to flow and are always available to them from a terminated settlement. The preamble of the Act itself points out that all its provisions are aimed at maintaining harmonious relations between the employer and the workmen.

8. It was further submitted that even assuming that the new Charter of demands was fully accepted by the petitioner this could not by itself mean that the workmen were not entitled to the V.D.A. and/or other benefits which they were enjoying previously under the terminated settlement. At the most the fresh demands were to be treated as additional demands in relation to the other benefits already available and not included in the new Charter. It was also contended by the learned counsel that in case the petitioner wanted to change the service conditions of their workmen there was also a machinery provided for the purpose in Section 9(A) of the Act and its proviso expressly prescribes that a change can never be unilateral and has to be done by a settlement or award in which case a notice is always required. My attention was drawn to Schedule IV (1) which refers to the clause of service conditions including wages for which notice is required, and a Form E is prescribed which enjoins the sending of a copy to the Labour Commissioner. According to the learned Counsel such a notice was never issued either to the respondent nor a copy of the notice was addressed to the Labour Commissioner. The learned Counsel disputed the alleged financial constraints of the petitioner at the time of termination of the settlement and which according to them have caused the petitioner to arrange for a freezing of the respondent's wages including the V.D.A. It was contended in this respect that at the time of settlement of December 9, 1986 the petitioners were the agents of Leyland vehicles and they were also availing of sales tax benefits in this connection. This fact, learned Counsel submitted, was concealed by the petitioners in their pleadings. It was urged that there is no evidence to show that in 1986 the business of the petitioner had gone down and the petitioner failed to produce its Profit and Loss balance sheets in support of this contention. It was further submitted that there was also no bargaining about the retrenchment of the workmen and the freezing of the V.D.A. The learned Counsel invited my

attention to the settlement dated December 9, 1986, namely, to the items regarding Transfers and security, at pages 53 and 54 respectively of the Paper Book, which clause by itself rules out the possibility of any retrenchment of the workmen to be effected by the petitioner. According to the learned Counsel all these facts would show the real intention of the parties in respect of the so-called oral understanding. The further submission of the respondents is that the circular dated August 4, 1988 does not fit in Form H and appears to be an after thought without any evidentiary value because it simply says that with the expiry of the agreement with the union the salaries of the workmen shall be paid at the levels prevailing in June 1988 and any change in the level would be made only according to the agreement to be reached following discussions on fresh demands received from the respondents. The learned Counsel has also made a mention to the cash vouchers at page 63 of the Paper Book, with reference to the Memorandum of settlement and with regard to the item or clause of outdoor reimbursement and submitted that this shows that the payment of Rs. 7 to the concerned workmen was not done as an additional benefit but instead in terms of the terminated settlement. Further the document at page 69 would show that the employees of the petitioner who had worked for more than 25 years were still being paid wages not exceeding Rs. 1,100 and odd. Document at page 73 would show that the payment of the so-called interim relief of Rs. 500 was only towards an advance to be adjusted later on, far from being an extra benefit as contended by the petitioner. This could be inferred from document at page 75 itself where in it is shown that a deduction of the said sum of Rs. 500 was made by the petitioner at the time of the payment of the leave pay of the workmen. It was also contended by the learned Counsel that when the respondent moved an application u/s 33(C)(1) of the Act before the Labour Commissioner all the papers and documents were placed before him, the Commissioner did give a say to the petitioners on this application and the petitioners filed their reply after which it took six months for the Commissioner to issue the certificates and this also after the petitioner was fully heard in detail on the respondent's claim. The learned Counsel then assailed the whole conduct of the petitioners in this affair by making a grievance that when the demand notices were issued to the petitioners they chose to file a suit before the Civil Court and the relief sought for was a declaration that the V.D.A. was not due to the workmen. In that suit a temporary injunction was prayed and the ex-parte stay secured was subsequently vacated only on December 18, 1992 i.e., after more than one year. Against that order of the trial Court an appeal filed to the High Court was dismissed by order dated April 5, 1993. Both in the High Court and trial Court the argument was that the Labour Commissioner has gone beyond his Jurisdiction when he proceeded u/s 33(c)(1) of the Act. The learned Counsel has also strongly objected to the petitioners' contention that the Labour Commissioner had initiated conciliation proceedings on the matter of an industrial dispute raised by the respondent in connection with the payment of V.D.A. The submission was that not a single notice was produced by the petitioner to show that either the respondents or the petitioner were called by the Commissioner to

attend any conciliation proceedings. It was contended that Section 33(c)(1) provides for a cheap efficacious and quick remedy for the workmen to obtain payment of the dues without prejudice to any other mode of its recovery. Further the judgment of the High Court was challenged by the petitioner in review which was dismissed by a Division Bench of this Court by order dated June 14, 1993. Subsequently a SLP against the judgment of the High Court was rejected by the Supreme Court by Order dated August 20, 1993. In spite of that the petitioner applied again for another injunction in the same Suit No. 299/91/A which is still pending and in addition instituted fresh suits bearing Nos. 256 and 257/93 wherein temporary injunctions were prayed and which applications after the respondent's reply are still pending. The last round of this litigation is the tiling of these writ petitions. The learned Counsel tries to explain the delay in making the application for payment of V. D. A. and the fact of their acceptance of the wages from 1988 without pressing for V. D. A. payment along with same. It was contended that it was due to the fact that discussions were going on the Charter of demands presented in 1988. These negotiations lasted till December, 1990 and this was the reason why no protest was made earlier and it was only in 1991 that the workmen already disgusted with the delay tactics of the petitioner decided to join the Respondent No. 3's Union after which they moved their application only in January, 1991. With regard to the notice dated December 5, 1991 the learned Counsel submitted that this was a notice issued to the petitioner in respect of the respondent's application dated December 4, 1991 complaining that wages related to two months, being October and November, had not been paid to them. At that time a prayer was made that these wages should be cleared along with the V.D.A. This happened because the petitioner was annoyed when they came to know that the Commissioner was going to issue the Recovery Certificates and send them to the Collector u/s 33(c)(1). However that application is still pending in spite of the petitioner having filed their reply and has not been disposed of so far because since then the Labour Court is not sitting. When the issues were drafted by the Labour Court in that application the Civil Court's injunction was still in operation and therefore issue No. 2 was framed in the negative form because at that time the Recovery Certificate had been issued by the Commissioner and thus the respondents' right to claim V.D.A. was already ascertained. However, the petitioner approached the Civil Court and obtained a stay of the Recovery Certificates as a result whereof the Collector could not execute the same and only on November 25, 1991 Demand Notice were issued after which the stay came to be vacated on December 18, 1992.

9. Several authorities were cited by the learned counsel on the matter of the scope of Articles 226 and 227 of the Constitution as well as on the question of interpretation of statutes, namely, on the cases of Bhagwan Das Vs. Smt. Jiley Kaur and another, , All India Reporter Karamchari Sangh and Others Vs. All India Reporter Limited and Others, , The Collector of Customs, Baroda Vs. Digvijaysinhji Spinning and Weaving Mills Ltd., ; British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, ; Pappu and Another Vs. Raja Tile

and Match Works, .

The learned counsel also relied on the Law of Industrial Disputes by Malhotra, 4th Edition, page 1528, which digresses on the scope of Section 33(c). In this book the learned author, among other aspects, deals with the argument of the petitioner that the employer had no capacity to pay the V. D. A. and it was observed in this regard that this type of submissions cannot be considered as relevant by the Courts.

10. Summing up his arguments the learned Counsel urged that the right of the workmen to receive V.D.A. is nowhere stopped or changed nor there was any intention on the part of the parties to relinquish its right. The learned Counsel further submitted that the ruling in Mangaldas Narandas Vs. Payment of Wages Authority and Others, , was long back superseded by the decisions of the Supreme Court in Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others, .

11. I have considered in detail all the submissions of the learned Counsel. In my view the point in issue is very restricted and practically narrows down to the question as to what is the effect of the termination of a settlement by a competent notice u/s 19(2) of the Act and whether the settlement of December 9, 1986 has been replaced by any other settlement/agreement or understanding between the workmen and the petitioner for the purpose of freezing their wages within the meaning of any of the provisions of the Act.

12. The law on this controversial issue has been lucidly summarised in the case of Life Insurance Corporation of India v. D. J. Bahadur and Ors., (Supra). In this decision the Supreme Court has referred to the various precedents not only from our own High Court in the case of Shree Yamuna Mills Co. Ltd. Vs. Majoor Mahajan Mandal and Others, , but also from the earlier pronouncements of the Supreme Court itself in the case of The Management of Indian Oil Corporation Ltd. Vs. Its Workmen, and Mohd. Quasim Lorry, 1964 II LLJ 1430.

13. The petitioner's contention is that notwithstanding the fact that the rights emerging from the earlier settlement were deemed to have continued to flow for the workmen even after its termination, namely, with regard to the V.D.A. neither the Respondent No. 3 (hereinafter called the respondent) could have sought to enforce these rights in the manner prescribed in the Act nor was it open to the Labour Commissioner to use powers of adjudication of the disputed claim with regard to dues which could not be said as arising out of a settlement any more, once there was no valid settlement after its termination and as such he had no authority to exercise jurisdiction in terms of Section 33(c)(1). Thus the remedy available for the respondents was to approach the Labour Court for adjudication of the disputed claim u/s 33(c)(2) or instead to move the appropriate Government for a Reference of the industrial dispute in terms of Section 10(1) of the Act. According to the petitioner's own case, consequent upon the termination of the settlement of 1986 the "contract" which was deemed to subsist on the

same terms and conditions of the earlier settlement stood modified so far as the freezing of the V.D.A. is concerned by virtue of a new concluded agreement which although remained oral and was never reduced to writing has been since then acted upon by the parties throughout from the year 1988 to 1991. This concluded agreement, the petitioner says, is reflected in various other benefits worked out and released in the course of the oral understanding and which inspite of not making part of the old settlement the workmen availed of from the time of its termination in lieu of the claim for V.D.A. which they did not press for about more than two years till the workmen changed loyalties from the previous Goa Trade and Commercial Workers Union to which they were affiliated and joined the respondent's union in the year 1991.

14. The respondent in turn strongly deny that the settlement dated December 9, 1986 was ever replaced by any other settlement and that there is no understanding or agreement between the workmen and the petitioner to freeze their; wages. The Act, the respondent maintains, does not recognise oral agreements or settlements nor the petitioner could unilaterally freeze or reduce the wages of the workmen without following the procedure laid down in the Act.

15. In the instant case it is seen that the respondent, by application dated December 4, 1991, addressed to the Labour Court sought for the payment of their workmen's earned wages, for the month of October, 1991 in accordance with the terms of settlement dated December 9, 1986 which includes also the V.D.A. available to them. Upon this application a notice was sent to the petitioner and even issues were framed by the Court after which the proceedings appear to have come to a halt for reasons not disclosed in the file. Therefore in normal circumstances all these facts would suggest that the respondent having approached the Labour Court which is already seized of the matter the relevant issue should have been left to that Court to be adjudicated in accordance with law. However, internal evidence on record indicates that the Labour Commissioner while entertaining the respondent's claim with regard to V.D.A. issue has acted in terms of Section 33(c)(1) by giving to the petitioner sufficient opportunity to place its case on the matter thus substantially complying with the rules of natural justice.

16. Being so, the question as to the real scope or of the summary nature of the inquiry which was required to be held by the Commissioner or whether the said Commissioner had or not the power to adjudicate the claim of the respondent in respect of V.D.A. due for the purpose of issuing the Recovery Certificate u/s 33(c)(1) seems to become an irrelevant issue once in the facts and circumstances of the case I am inclined to hold that the so-called oral understanding whereby the workmen are purported to have given up or deferred their right to be paid V. D. A. in exchange for some extra benefits till the finalisation of another settlement in place of the terminated one is ex-facie bad and apparently without any authority of law which nowhere provides for this type of oral agreements as valid and legally sufficient to modify the terms and conditions of a contract which is

deemed to operate and subsist consequent upon the termination of the old settlement.

17. Indeed Section 2(p) of the Act which gives the definition of "settlement" read together with Rule 58 of the rules show that there could not be any oral understanding to supersede any earlier contract and if there was one inspite of the law not providing for such type of understanding the same should have been necessarily communicated to the Labour Commissioner besides the same being required to be recorded in Form H which admittedly has not been done by the petitioner.

18. I have already held that no oral understanding was admissible in terms of the law. However even assuming that such an oral understanding had been arrived at by the petitioner with their workmen the same would be null and void in terms of Section 23 of the Payment of Wages Act which puts a restraint for the workmen to relinquish any right which has been conferred under the Act. Thus the only conclusion which can be drawn in the circumstances is that the freezing of workmen's V.D.A. by the petitioner on the strength of a purported oral understanding which thus amounts to a change of their service conditions was sought to be made without the authority of law and therefore no intention can be attributed to the respondent that they have willingly agreed to this attempt of their employer.

19. Therefore if the terms and conditions of the settlement of 1986 are to be held as subsisting inspite of its valid termination, obviously the right of the workmen to claim the overdue V.D.A. could not have been disputed by the petitioner, bearing in mind that this was one of the items agreed and inserted in the earlier settlement which could not have been thus disturbed even after it ceased to operate unless replaced by any other one or by a contract with the same force and authority of a fresh settlement. Similarly the fact of the workmen having abstained from demanding its payment for all this period of more than two years following the cessation of the settlement ostensibly during the period of negotiations of a new agreement need not be also construed as a waiver of their right to press for its demand or as an indication of the existence of a fresh concluded agreement whereby the terminated settlement stood modified with regard to the terms and conditions of the pre-existing contract deemed to operate after the termination of the settlement of 1986.

20. Thus the Labour Commissioner appears to be justified in coming to the conclusion that if the terms of the old settlement were deemed to continue as a contract even after its termination the actual position was pointing out to the fact that well- defined and already computed rights of the workmen arising out of the terminated settlement were shown to have been grossly overlooked by the employer/petitioner under the guise of an alleged oral understanding according to which any claim regarding V.D.A. was supposed to have been given up. Being so it is impossible to hold that in such a situation the exercise indulged by the Commissioner purportedly u/s 33(c)(1) is required to be faulted with on this

count since admittedly the benefits claimed were due to the workmen as flowing from the earlier settlement of 1986 which even after its termination was deemed to continue operative as far as its clauses and conditions are concerned although conceptually as a mere contract.

21. In the circumstances I am unable to appreciate the submission of the learned petitioner's counsel that since the very admissibility of the V.D.A. was in dispute, the same dispute could have been adjudicated only either by the Labour Court u/s 33(c)(2) or by the Industrial Tribunal in a Reference u/s 10(1) of the Act. With due regard I am afraid that this does not appear to be the correct view because there seems to be a typical case wherein the benefits are deemed to be statutorily due to the workmen and its exact computation cannot also be said as giving rise to any dispute once the mechanism of its determination was already specifically stipulated in the settlement of 1986. As such and strictly speaking one cannot even visualize the existence of a dispute to be adjudicated either by the Labour Court or by the Industrial Tribunal.

22. Lastly it seems also that it is not open for the petitioner to make a grievance against the Commissioner that he has decided the workmen's claim for V.D.A. in a summary manner. Indeed the record shows that its adjudication has substantially followed the principles of natural justice and after the petitioner was given sufficient notice and opportunity to place before him all the material on which its contention that no consideration was due to the workmen towards V.D.A. was sought to be based. Hence any question of wrong jurisdiction or of illegal exercise of powers by the Commissioner u/s 33(c)(1) of the Act does not seem to arise at all. Besides the respondent expressly pleaded in this regard that the Labour Commissioner had the authority u/s 33(c)(1) in view of the Notification No. 1/333/73- LAB/157, dated January 31, 1974 authorising the Commissioner to exercise jurisdiction u/s 33(c)(1) of the Act. There was no denial on this point by the petitioner in any affidavit in rejoinder. Thus the petitioner's contention that there being a dispute within the meaning of Section (2) (k) the same could have been adjudicated only by the Labour Court or by the Industrial Tribunal appears to be in the facts and circumstances of the case totally impermissible and under serving acceptance.

23. On the other hand the petitioner's submission that by approaching the Labour Court for clearance of their wages the workmen impliedly admitted the existence of an industrial dispute regarding the freeze of their wages and conceded that the Respondent No. 1 had no jurisdiction to settle the matter appears to be neither sound nor well-conceived. Indeed in para 5 of its affidavit the respondent has stated that the mere reading of the workmen's application registered under Case No. LCC/65/91 shows that what was sought to be recovered was the earned wages for the month of October, 1991 which had not been paid by the petitioner. In my view the real question in issue is not whether by approaching the Labour Court the respondent acknowledged that there was an industrial dispute which was required to be adjudicated but whether it could

be said that in terms of law there was or not an industrial dispute with regard to the freezing of wages which has to be adjudicated in the manner prescribed in Section 33(c) (2) of the Act. My answer to this question is that, for the reasons mentioned above, when the law does not contemplate any other type of concluded contract, namely, an oral agreement except a new agreement by way of settlement or a statutory contract by the force of an award to replace the earlier terminated settlement, any such understanding purported to have been willingly arrived at by the petitioner with their workmen is to be held as invalid, ineffective and without any sanctity in law.

24. In my judgment no case appears to have been made out by the petitioner for interference under Articles 226 and 227 of the Constitution. The result is that nothing survives in these petitions which are thus bound to be dismissed. Accordingly Rule made is hereby discharged with, however, no order as to costs.