
(1996) 10 KL CK 0015

In the High Court Of Kerala

Case No : O.P. No's. 14172 and 14176 of 1994 and 6993, 13347, 14362, etc., of 1996

Coats Viyella India Ltd.

APPELLANT

Vs

Jumna Thread Mills Labour Union and Others

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Constitution of India, 1950 — Article 226, 39, 41
Industrial Disputes Act, 1947 — Section 10, 11, 12, 12(2), 12(3)
Kerala Industrial Disputes Rules, 1957 — Rule 10, 10A, 58(4)

Citation : (1996) 10 KL CK 0015

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : P.K. Kurian, C.N. Ramachandran Nair and Antony Dominic, in O.P. No. 14172/94K, for the Appellant; P. Balagangadharan Nair, for Respondents 1 and 3, M. Ramachandran, for Respondents 4 and 5, George Varghese, for Respondent 6 and K. Jayakumar, Government Pleader for Respondents 7 and 8, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—All the above matters relate to the Memorandum of Settlement entered into between the management and its workmen of Coats Viyella India Limited (for short "CVIL") and Vaigai Thread Processors Limited (for short "VTPL").

2. The brief facts leading to the filing of the Original Petitions are as follows: M/s CVIL is a public limited company. They have established a thread mill at Koratty, Kerala State. CVIL declared a lockout on 14th February 1993. The undertaking of the Company was sold and taken over by VTPL on 28th January 1994. CVIL terminated the service of the employees consequent on the sale of the undertaking after paying compensation u/s 25FF of the Industrial Disputes Act. An industrial dispute was raised and the Government by G.O. (Rt.) No.

284/94/94/LBR, dated 4th February 1994 and G.O. (Rt.) No. 669/94/LBR, dated 17th March 1994 referred the following matter for adjudication:

- (i) The charter of demands dated 12th May 1992 numbering 67 demands submitted by the three approved unions of M/s Madura Coats Ltd., Koratty.
- (ii) Counter demands of the management dated 12th March 1993 numbering 15 as specified in their statement.
- (iii) Whether the lockout declared on 14th February 1993 was legal or not, if not, what is the relief to be given to the workers?
- (iv) Whether the termination of the services of the workers was legal or not, if not what is the relief to be given to the workers?

VTPL was also made a party to the order of reference. The Industrial Tribunal, Alappuzha in I.D. No. 15/94 proceeded to adjudicate only two issues out of four referred for adjudication viz. (i) On the legality of the lockout and (ii) On the legality of the termination of services. The Tribunal did not consider the charter of demands and the counter demands as subsisting in view of the termination of services of all the workmen and the transfer of undertaking to a new Company. The Tribunal passed an award dated 1st August 1994 holding that the lockout and the termination of services of number of workmen as illegal. The Tribunal also gave independent directions in the light of its finding.

3. Challenging the award, the management filed Original Petitions 14172 and 14176 of 1994. The writ petitions were admitted and after hearing the Respondents, the operation of the award as stayed in C.M.Ps. 24863/94 in O.P. 14172/94 and 24870/94 in O.P. 14176/94, dated 12th October 1994. The conditions fixed by the learned Single Judge are in the following manner:

The operation of the award, shall be stayed subject to the condition that each of the 2,241 employees is paid Rs. 30,000 as adhoc payment, except those who have received the compensation earlier. The employees who have received compensation earlier shall be paid an amount of Rs. 30,000 less the amount compensation already paid. This payment shall be made without prejudice to the final orders in the Original Petitions. The payment as said above, shall be made within 4 weeks from today failing which the order of stay shall stand vacated.

While the matter stood thus, the management and the unions held several rounds of joint conferences in the presence of the Minister for Labour to discuss the feasibility of reopening the factory. The parties were invited at the instance of Labour Commissioner on 12th October 1995, 13th October 1995, 18th October 1995 and on 15th February 1996. Ultimately, an understanding was reached between all the parties concerned and a Memorandum of Settlement was signed by all of them on 15th February 1996. As per the terms of this settlement, the award of the Tribunal will stand substituted and the Original Petitions pending before the High Court have to be disposed of in terms of the settlement.

4. Challenging this settlement, Writ Petitions, O.P. No. 6993/96 by two workers and later on joined by 52 workers and 186 workers in O.P. Nos. 13347/96 and 14362/96 respectively were filed praying to quash the settlement. The Management filed C.M.P. Nos. 24831 and 25452 of 1996 praying to dispose of the Original Petitions in terms of settlement. All the above matters were taken up together. M/s M. Rajasekharan Nair and A.X. Varghese appeared on behalf of the Petitioners in O.P. 6993/96, and O.Ps. 14362/94 and 13347/96 respectively representing 240 workers who will be referred as Petitioners for the purpose of convenience. Senior Counsel M/s Pai, Kurian and R. Rama Subramaniam appeared on behalf of the management and Mr. Balagangadhara Menon appeared on behalf of Respondents 5 to 7 Unions and Mr. M. Ramachandran on behalf of 10th Respondent Union who will be referred as representing the Unions for the purpose of convenience.

CONTENTIONS:

5. The case of the Petitioners is that the award cannot be reopened by a subsequent settlement whereas the case of the Union as well as the management is that there is no bar for such a settlement. It is contended on behalf of the Petitioners that the settlement has been brought out by the dominant presence of the Hon^{ble} Minister for Labour and under duress and undue influence. It is their further contention that there was no proper conciliation and the settlement is most unfair. Learned Counsel for the Petitioners contended that the Union gave away the benefits granted to them under the award and that they have no authority to enter into such an agreement. It is their further case that all the workers have repudiated the settlement and therefore it cannot be operated or acted upon.

6. The case of the Union is that the total number of workers in the factory is 2240 of which the management has agreed to take 850 workmen into services. They also agreed to pay benefits under Voluntary Retirement Scheme to about 820 workers. The remaining workers have to be retrenched and will be paid compensation. The Union took into consideration, the fact that large number of workers have been unemployed resulting in starvation and the imperative necessity is to put an end to the long-standing industrial disputes in the establishment. Their action was motivated on bona fide consideration and in the best interest of their majority of the workers for an industrial peace under the circumstances.

7. The management contended that the term of settlement went beyond what was tentatively agreed to earlier and it was only on account of the pressure to bring upon the Company and with a view to end the dispute the Company agreed to those terms, and that they were fair, too generous, and liberal by any standards. All the six registered trade unions representing the workmen in the establishment apart from the number of workmen, were present in the conciliation meeting. Even though initially there are only 5 unions representing the employees before the Tribunal that culminated in the award, one more Union

has also joined in the conciliation conference. The settlement was arrived at after a protracted discussion and negotiations. The management took into consideration the continuance of the factory with a compliment of 850 workmen including the clerical staff. They also provided the benefits to the remaining workmen and majority of the workmen are satisfied. It is only at the instance of two workmen initially O.P. 6993/96 was filed followed by O.P. 13347/96 by 52 workers and O.P. 14362/96 by 186 workers. The Union representing the workers having participated in the subsequent conciliation proceedings and agreed for the settlement, the individual workmen have no locus standi to file the Original Petition challenging the settlement. According to the Award of the Tribunal in I.D. 15/94 is patently illegal and its findings are perverse and inconsistent. The Tribunal has exceeded its jurisdiction and the terms of reference and will not stand a moment's scrutiny of this Court and is liable to be quashed. Hence the only course to reopen the factory was through a settlement and all the parties have accepted its terms. In the light of these contentions, the following questions arise for consideration:

- (i) Whether the settlement can be entered into after an award in an industrial dispute?
- (ii) Whether the formalities required for a settlement u/s 18(3) had complied with?
- (iii) Whether the settlement is brought about by undue influence and dominance?
- (iv) Whether the settlement is fair and proper?

8. Is there a bar for a settlement? An award after publication u/s 17(1) becomes final and shall not be called in question by any Court in any manner whatsoever as per Section 17(2). The question is after passing and publication of the award in I.D. 15/94 on 23rd August 1994, can there be a settlement on 15th February 1996? There is no legal bar and at any rate no provision under the Industrial Disputes Act has been drawn to my attention prohibiting the parties to come to a settlement in spite of an award. The settlement under challenge was arrived at u/s 18(3) of the Act. As per this provision, a settlement arrived at in the course of conciliation proceedings shall be binding on all parties to the industrial dispute. It is not disputed that all the 6 registered Unions representing the workmen actively participated, agreed and signed the Memorandum of Settlement on behalf of all the workers of the Company. An award shall remain in operation u/s 19(3) for a period of one year and therefore the contention is that once an award becomes enforceable, no settlement contrary to the said award can be entered into. Two distinct circumstances have to be borne in mind before considering this question. Firstly, the operation of the award has been stayed by this Court on 12th October 1994. Secondly, all the parties to the earlier adjudication have subsequently agreed to a settlement. Therefore, even assuming that there is a bar by implication by virtue of Section 19(3), in effect the award was not in force consequent on the stay and the settlement was arrived at by all the parties

concerned. In other words, the award was not in operation. Thus when the award was in suspended animation, it was sought to be substituted by a settlement. Such a situation was brought about by the consensus of all the parties concerned. In effect, the Court is called upon to declare the award as per the settlement. No party can unilaterally raise a dispute during the pendency of the period of one year of the award as it has become final. As we have seen in this case the parties themselves have voluntarily arrived at a settlement and agreed to substitute the award, there is no legal bar for arriving at the settlement even after the award. The award will stand substituted.

9. In *Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd.*, the Supreme Court held that when a settlement is arrived at in the course of conciliation proceedings with a recognised majority union, it will be binding on all workmen and the object obviously is to uphold the sanctity of settlement reached with the active assistance of the conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. It was further held that a settlement arrived at in the course of conciliation proceedings is to be on par with an award made by an adjudicatory authority. Thus, while making the settlement equally binding, valid and enforceable as that of an award with an equal weightage the Supreme Court observed that any attempt to derail a settlement at the instance of its one of the individual employer should be discouraged.

(emphasis supplied)

10. In a similar circumstance, a settlement arrived at after an award, but pending the challenge to the said award, came up for consideration before the Supreme Court in *Herbertsons Ltd. v. Workmen* AIR 1977 S.C. 322 : 1977 L.I.C. 162 the Supreme Court held as follows:

The justness and fairness of a settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was pending appeal before the Supreme Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a Court proceedings. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of general peace and well-being, there is always give and take. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust.

The underlying principle as laid down by the Supreme Court governing a settlement is that where parties come to a negotiation keeping in mind the uncertainty of a protracted litigation and in the interest of majority of workers in the industry, a settlement has to be encouraged.

11. Learned Counsel for the Petitioner in this context referred to the decision in

Burmah Shell Workers Union, Ernakulam Vs. State of Kerala and Others, . A Division Bench of the Kerala High Court held that when all the issues in the order of reference are covered by the agreement, there was no industrial dispute to be referred by the Government and a writ of prohibition should be issued to the Labour Court. In view of the said finding to the effect that there was a valid settlement in force, the Division Bench held that there could be no industrial dispute to be referred u/s 10 of the Act. Relying on this, it is contended that the award covered the issue raised by the management and hence there is no scope for a settlement. The facts of the case are different here. After the award was passed, the management challenged the award and there is a stalemate. The factory remained closed and all the parties to the award participated in the conciliation proceedings necessitating the settlement. It is not a case of reference. Hence this decision will not apply to the facts of the case. In the circumstances I hold that there can be a settlement after passing of an award in an industrial dispute and there is no bar in law for coming to a settlement.

12. Whether the formalities were complied with? The Industrial Dispute Act is made for investigation and settlement of industrial disputes. A Conciliation officer is defined u/s 2(d) as a Conciliation officer appointed under the Act. Conciliation proceedings is defined as proceedings held by a Conciliation officer. Chapter 2 of the Act provides for the appointment of authorities charged with a duty of mediating and promoting the settlement of industrial disputes like works Committee, Conciliation officer, Board of Conciliation, Courts of Enquiry, Labour Court and Tribunals. Section 4(2) provides for the appointment of a Conciliation Officer for a specified area or for specified industries in a specified area. Section 11 sets out the procedure and power of Conciliation Officer. Section 12 lays down the duties of a Conciliation Officer to hold conciliation proceedings. For that purpose, Sub-clause (2) of Section 12 enjoins a duty on a Conciliation Officer for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and make do such things for the purpose of inducing the parties to come to the fair and amicable settlement of the dispute. After the award 15/94 dated 1st August 1995 was stayed by the High Court on 12th October 1994 conciliation proceedings were initiated by labour department of the Government of Kerala in order to bring about a settlement of the matter. The management contended that these were initiated at the instance of the Unions which had approached the Government in this behalf. According to them, conciliation conference was convened by the Labour Commissioner in the presence of the Honourable Minister for labour wherein certain terms were tentatively agreed between the parties and the representatives of the Union requested for time to ascertain the views of the workers. Thereafter, at a subsequent meeting held on 18th October 1995, the Union's representative demanded for additional benefits and the Company has not agreed to the demand and the meeting stood terminated. Again at the instance of the Union, steps were taken by the Honourable Minister for Labour for a settlement. The

labour Commissioner issued notice dated 25th January 1996 and 3rd February 1996 convening the meeting of the parties on 15th February 1996 for discussion. After protracted discussion and negotiations, the settlement was arrived at which was signed by all the parties.

13. It is the case of the Respondents 1 and 2 viz., the State of Kerala and the Additional Labour Commissioner that with a view to reopen the factory, the representatives of the workmen approached the Minister for Labour to arrive for a discussion of the various factors involved in the case. Thereupon, the parties have been invited for discussion in order to explore the possibility of amicable settlement. The last meeting in the attempt for settling the whole issue was held on 15th February 1996 in the presence of the Honourable Minister for Labour. The Memorandum of Settlement was drafted by the Additional Labour Commissioner himself in the presence of the Minister for Labour and was read over to the participants of the meeting and after their agreement, it was signed by the representatives of the employer and trade union.

14. Learned Counsel for the Union submitted that during the tendency of the proceedings of this Court challenging the award negotiation between the parties were made with a view to settle the dispute out of Court and a Memorandum of Settlement was signed on 15th February 1996.

15. It is the duty of a Conciliation Officer where there is an industrial dispute to hold a conciliation proceeding for the purpose of bringing about a settlement without delay. He shall do all such things as he deemed fit for the purpose of inducing the parties to come to a fair and amicable settlement of dispute.

16. A Division Bench of the Madras High Court in *Workers of B and C Company v. Commissioner of Labour 1964 (I) LL.J. 253* held that if a settlement arrived is to be regarded as void, there could be no objection to the maintainability of the writ petition under Article 226 of the Constitution of India. In the course of the said judgment, the Division Bench held the scope of conciliation. The relevant passage which sets out clearly the role played by a conciliation and the binding nature of it is as follows:

A conciliation is more or less a matter of negotiation between the parties. The function of a conciliator is to bring the management and the workers together with a view to enter into discussions on the points in dispute and to discover means of settlement acceptable to both. Under the Industrial Disputes Act the conciliation officer is an independent agency created with a view to promote industrial peace by making available governmental facilities in the process of collective bargaining. His presence and participation at the discussions does often facilitate an objectivity of approach in the matter of the bargain between the management and the labour. In the words of Sinha, J., In *Royal Calcutta Golf Club Mazudur Union Vs. State of West Bengal and Others*, :

The main task of the conciliation officer is to go from one camp to the other and find out the greatest common measure of agreement. He has to investigate the

dispute and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair and amicable settlement of the disputes.

Therefore, when there is an industrial dispute brought up for conciliation at the instance of one union, that union is no doubt the bargaining party. But the bargain being made with the assistance of the conciliation officer can be expected to be fair to all the workers including those who are not members of the union. It is this principle that distinguishes a mere settlement between one union and the management by direct approach, and a settlement reached after conciliation.

The Division Bench further held that a settlement which reached in the course of conciliation proceeding has been placed by the statute on a higher footing than a mere agreement between the parties. The fact that one union did not join in such a settlement with identical subject matter of the dispute cannot obviously affect its binding character on all the employees irrespective of their participation or non-participation, the binding nature of settlement depends on the statute. As it could be seen, the management is aggrieved with the award of the Tribunal to the effect that it has gone beyond the terms of reference and the findings are inconsistent, perverse and cannot be given effect to. According to them, the award is liable to be quashed. They also are of the firm view that it would be practicably not possible to give effect to the findings and the directions given by the award. After an order passed by this Court staying operation of the award, there was remote possibility of an immediate disposal of the matter and getting a final judgment in the matter. When 2240 workers are out of employment and their families living in three villages of Trichur District are in the grip of poverty and suffering, it has become the duty of all concerned including the Conciliation Officer without delay to bring about a settlement of the dispute. In that right direction, conciliation proceedings were initiated by the Conciliation Officer. Admittedly, the Labour Commissioner in his telegraphic communication invited all the parties concerned for a conference in the presence of Minister for Labour on various dates viz., on 12th October 1995, 13th October 1995 and 18th October 1995. The Conciliation Officer admittedly issued notices to the parties concerned on 21st January 1996 and 3rd February 1996 convening the meeting of the parties. There were detailed discussions on several meetings between the parties and a settlement itself has been admittedly drafted by the Joint Labour Commissioner and all the recognised trade unions who were parties to the earlier reference and award besides one more recognised Union signed the settlement. Rule 10 of the Kerala Industrial Disputes Rules is as follows:

10. Conciliation proceedings in non-public utility service.-Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

As per this Rule, after receiving of an information of a dispute, a Conciliation Officer if he thinks it necessary to intervene in the dispute he shall give a formal intimation to the parties concerned declaring his intention to commence the conciliation proceedings. Rule 10A lays down the procedure of conducting the proceedings by receiving statements and counter statements. In this context, learned Counsel for Petitioner referred to a decision in *Workmen, D.C.G.M. v. D.C.G.M. Ltd.* 1970 L.I.C. 1407 wherein the Supreme Court held that a settlement arrived at during the tendency of conciliation proceeding without compliance with rules is illegal. In that case, it was argued that management and the Union were free to arrive at a settlement of their dispute during the tendency of conciliation proceeding. In that context, the Supreme Court held that when a dispute is referred to the Conciliation Officer, there is no absolute freedom of contract to arrive at a settlement in all respects binding on all workmen to which no objection whatsoever can ever be raised by the workmen feeling aggrieved. According to the Supreme Court, Section 18(1) does not vest in the management and the union unfettered freedom to settle the dispute as they please and clothe it with a binding effect on all workmen or even on all member workmen of the Union. The settlement must be in compliance with the statutory provision. In this context, it has to be noted that the Supreme Court found that the settlement relied upon have not been filed before the Conciliation Officer prior to sending office failure report and that two persons entering into settlement had no authority either from the Union or from the members thereof to enter into a binding settlement. It was also conceded by the counsel that there was no compliance with Rule 58(4). Rule 58(4) of the Central Rules provides that where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding, the parties to the settlement shall jointly send a copy thereof to the Central Government and the Regional Labour Commissioner. Therefore, the Supreme Court held that the settlement was illegal. The facts of the case are different and the decision will not apply to the case on hand. Firstly, the settlement referred to by the Supreme Court related to settlement u/s 18(1) and secondly, Rule 58(4) was not admittedly followed. Thirdly, the parties have no authority to enter into the settlement, whereas I do not find any infirmity in the settlement arrived in this case. It is nobody's case before the Conciliation Officer that he did not follow the procedure laid down nor it is the case that the formalities required has not been complied with. I find that notices were issued by the Conciliation Officer and the parties negotiated the dispute and after several grounds of discussion in the presence of the Conciliation Officer came to a settlement. Learned Government Pleader brought to my notice a notification by the Government in G.O. (Rt.) 1214/71/L.S.W.D., dated 11th June 1971 authorising the Labour Commissioner as the officer to receive report and Memorandum of settlement from the Additional Labour Commissioner who was the Conciliation Officer in this case u/s 12(3) of the Act. Hence I am of the view that the formalities required for a settlement u/s 18(3) has been complied with.

17. Whether the settlement is brought about by undue influence? The case of the workers is that the settlement has been imposed on the Union in view of the dominant presence of the Minister and the Unions were coerced to sign the settlement. Learned Government Pleader submitted on behalf of Respondents 1 and 2 that there was no coercion on the part of the Respondents 2, 3 and 4 upon the persons who signed the settlement. He also submitted that the parties were fully aware of the terms and conditions of the settlement at the time of signing it and that they were convinced that the terms of the settlement are fair and reasonable. It is submitted that the settlement was prepared by the Joint Labour Commissioner himself in his own handwriting in the presence of the Honourable Minister for Labour. After it was typed, the same was read over to all the parties to the settlement before they signed it. As negotiation was going on for a considerable time, nearly a year, parties were fully aware of the terms of the negotiation and there was no question of coercion in this behalf. The management contended that as a matter of fact, the settlement went beyond what was tentatively agreed to earlier and it was on account of the pressure upon the Company, they have agreed to the terms only with a view to end the dispute. According to them, the settlement was too generous and liberal by any standard. The signatories to the settlement are eminent labour and political leaders. They represent the major trade unions of the State and also the registered unions of the Company. The negotiation and the conciliation were going for a considerable time and the settlement was agreed upon only after a protracted discussion and consultation with the members of the union. Therefore, the contention of the workers that the settlement was brought about by undue influence and dominance is far fetched.

18. Mere presence of the Minister for settlement of a dispute would not mean that his presence was over-awing the Union. It is rather the use of his good office that ultimately brought about a settlement. Therefore, there is no substance in the argument that the union members were subjugated by the mere presence of the Minister. In *Calcutta Electric Supply Corporation Limited Vs. P. C. Sen and Others*, a Division Bench of the Calcutta High Court has taken the view that the presence of the Minister for settlement of industrial disputes in conciliation proceedings is only to be expected in public interest and it will be an untenable situation in law or otherwise if the good offices of the Minister for settlement of disputes, instead of helping the negotiations, will nullify, impede or frustrate such settlement. For the above reasons, I find that the settlement was made voluntarily by the Union and the Management. The Petitioners contend that the Union representatives have no authority to negotiate and sign the settlement. They referred to the decision in *Brooke Bond India Ltd. Vs. The Workmen*, the Supreme Court held that a Memorandum of settlement signed by office bearers of the Union without being authorised will not amount to settlement within the meaning of Section 2(d) and not binding and therefore the settlement could be withdrawn by the Union. The signatories in the settlement herein are the representatives of the Union. Section 36 of the Act provides for the

representation of the parties. As per this section any member of executive committee or office bearer of a registered trade union is entitled to be represented. As it has been made out on behalf of the Union that throughout the negotiation the six representatives of the registered and recognised trade union were representing on behalf of the members and workers including the Petitioners herein. At no point of time, their authority to represent was in doubt or questioned. Even now the Petitioners do not seriously dispute about the authority to represent the Union. Their only grievance is that the Union had given up a right and that the settlement taken by them is unfair.

19. Whether the settlement is fair and proper? The case of the workers is that the union has given up the case of the workers and they were deprived of the benefits granted by the award. According to them, the settlement was unfair for the following reasons:

- (a) Not all the 2240 workers were taken back into service with the management.
- (b) No preference was given to the retrenched workmen for future absorption.
- (c) The workmen were not given minimum wages for 45 days during the period of closure.
- (d) Gratuity is not paid by taking into account service up to 15th February 1996.
- (e) For payments under clauses 3 to 6 of the settlement, the last drawn wages as on 15th February 1996 should have been taken into account. This would have resulted the inclusion of Rs. 500 increase given in the award and after calculating the D.A. and other allowances the last drawn wages would be much more.

20. It is submitted on behalf of the Respondents that considering the viability of the unit only two departments viz. the Wet Processes and Finishing Department will have to commence their operation. Therefore, all the 2240 workers could not be taken in and only 850 workmen could be put into service and about 920 workers have got the benefits of voluntary retirement scheme and the remaining would be granted the service benefits as provided under the settlement. The payment of compensation under V.R.S. at the rate of 35 days per year of service cannot be termed as unjust. This is in addition to the benefit of retrenchment compensation provided u/s 25FF. For payment of gratuity, service up to 28th January 1994 could alone be reckoned and not beyond.

21. The negotiation and the settlement was made taking into account the history of the institution and it has relevance to the facts and circumstances of the case then existing. The workers cannot claim the best of both the award and the settlement. The settlement is arrived at because the award was found to be unworkable and the representatives of the parties have agreed. It is not open to the Petitioners at this stage to find differences between the award and the settlement to contend that it is unfair. In cases of negotiated settlement, there could only be one meeting point between the demands of the workers and stand of the management. In this case, the management was not prepared to accept

the terms of the award. They have agreed to a settlement, because it is lesser than the award. The Union was also fully conscious of this fact and they cannot claim more than the award. Therefore, the contention that the settlement is minus certain benefits provided in the award does not stand to reason.

22. While considering the fairness of a settlement the Supreme Court held in *Herbertsons Ltd. v. Workmen* 1977 L.I.C. 162 that a settlement cannot be agitated on the touchstone of the principle applicable in adjudicating the disputes by the Tribunal. It was further held that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and Ors. bad and that unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust, and the settlement has to be accepted or rejected as a whole.

23. In *Tata Engineering and Locomotive Company Limited Vs. Their Workmen*, the Supreme Court held that a settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which came into play where an industrial dispute is under adjudication. If the representatives of the Union after a considered negotiation came to the settlement, the said agreement cannot be termed as improper or unfair. In this context, the Supreme Court held as follows:

A settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which came into play where an industrial dispute is under adjudication. If the settlement has been arrived at by a vast majority of workmen with their eyes open and was also accepted by them in its totality. It must be presumed to be fair and just and not liable to be ignored merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal thought that the workers deserved marginally higher emoluments than they themselves thought they did.

24. Learned Counsel for the workers referred to the decision of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, for a proposition that a settlement opposed to public policy cannot be followed. In my view, the said decision will not apply to the facts of the case. The Supreme Court was dealing with service contract. On interpretation of the relevant service rules, the Supreme Court held that the rule empowering the Government Corporation to terminate the services of its permanent employees by giving notice or pay in lieu of notice period is opposed to public policy and violative of Article 14 and directive principles contained in Articles 39(a) and 41. We are concerned with a settlement arrived at u/s 18(3) by all the representative Union. A settlement thus arrived at cannot be termed as opposed to public policy.

25. Yet Anr. contention of the learned Counsel appearing on behalf of the

Petitioners is that the workers are entitled to full wages pending the proceedings u/s 17B of the Act. The settlement deprives this benefit. I am unable to appreciate this contention. The stay of the award was made subject to certain conditions, viz. on payment of certain amount, after hearing the parties. The petitions filed u/s 17B filed by the Union and the workers were pending. In the meantime, if the Union and representatives and management came up for a settlement out of Court, that has to be welcomed and the petitions filed u/s 17B shall not detain the disposal of the Original Petitions. Learned Counsel for the Petitioners then referred to the decision in *Godrej and Boyce Manufacturing Co. Ltd., Madras Vs. Principal Labour Court, Madras and Another*, to support the case that the power of the Court under Article 226 of the Constitution cannot be used to destroy the statutory right granted to the workmen u/s 17B of the Act. A Full Bench of the Madras High Court held that this beneficial legislation that operates within a limited sphere is subject to the conditions laid down by the section itself and the section nowhere lays down that in extreme cases where it is demonstrated that the award passed is either without jurisdiction or it is otherwise a nullity, the High Court is debarred from exercising its powers under Article 226 of the Constitution.

26. Applications filed u/s 17B did not come up for consideration. In O.P. 6993/96 notice was ordered on 23rd April 1996. O.P. 13347/96 was directed to be posted along with O.P. 6993/96 on 21st August 1996. O.P. 14362/96 came up for admission on 13th September 1996 and admitted on 19th September 1996. C.M.Ps. 24831/96 and 25452/96 were filed on 5th September 1996 and 9th September 1996. The main Original Petitions came to be posted for final hearing. The Petitioners have not moved the applications u/s 17B when the Original Petitions are pending. Therefore, there is no substance in the contention that the Original Petitions filed by the Management were sought to be disposed of without giving the benefit u/s 17B.

27. Learned Counsel for the Petitioners referred to a decision in *The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another*, In that case an order referring certain disputes between the Appellant and his workmen was referred to the Industrial Tribunal. The Tribunal sent its award to the Government. Before the award was published u/s 17, the parties settled the dispute and requested the Government not to publish the award. The Government expressed its inability to withhold the publication of the award. The Supreme Court held that in such a case in view of the possibility of conflict between the settlement u/s 18(1) and the award which might become final and binding, the proper course for the Government is to withhold the award from publication to avoid the conflict. If any dispute as to the bona fide character of the settlement arises, that would be Anr. dispute which the Government may refer for adjudication and, if on such an adjudication the settlement is found not to be binding u/s 18(1) of the Act, it will always be open to the Government then to publish the award which it had withheld. Ultimately, the Supreme Court directed the State Government not to publish the award. Now that a settlement

has been arrived at and signed by the parties. A petition has been filed to dispose of the writ petition in terms of the settlement. The parties as per Clause 17 of the agreement have agreed that the settlement is in full and final settlement of all the disputes and the award in I.D. 15/94 will stand substituted by the settlement. Order 23 Rule 3 of the CPC provides for compromise of a suit. This provision enables a Court where a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties or where the Defendant satisfies the Plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith. On principle, I find that there is a lawful written agreement wherein the parties have agreed themselves to settle the dispute and the same has to be recorded. Even though the provisions of the CPC cannot be made applicable, the principle of compromise has found expression under the various provisions of the I.D. Act including Section 18. In the light of this valid settlement made u/s 18(3) which has become enforceable and binding, it has to be substituted to the award and the Original Petition has to be disposed of in terms of the settlement dated 15th February 1996.

28. Yet Anr. contention remains to be considered is that it is admitted by the Union that even though they have entered into an agreement bona fide and to the best interest of the workers, they could not sign the joint memorandum for the purpose of filing it before the Court. In the light of this stand, learned Counsel for the Petitioners contended that the settlement cannot be recorded and the O.P. cannot be disposed of in terms of the settlement. The agreement was in full and final settlement of all the issues. The filing of joint memorandum before this Court is only a formality to be complied with. Their failure to file a joint memo would not make the settlement invalid and therefore the settlement has to be accepted in the place of the award.

29. The signatories to the settlement do not dispute the validity of the settlement and they want the settlement to be implemented in full. The management also wants settlement to be enforced in letter and spirit. The parties stand by every clauses of the settlement arrived at. While so, there is no scope for the Petitioners who were fully aware of the negotiation that was going on, to disagree with the terms of the settlement at this stage. It is unexplained as to how the negotiation that was going on nearly one year could become unauthorised and the Union becomes incompetent. The Union has not taken up the stand that since the workers are not now willing to accept the settlement, it has become invalid. They do not dispute any of the terms of settlement even now. In the circumstances, in order to bring about an amicable settlement in the interest of the workers and the management, the only course open is to give effect to the settlement, and therefore in the interest of justice and in the light of my conclusion the Original Petitions have to be disposed of in terms of Ext. P-22 settlement dated 15th February 1996.

30. In the above circumstances, O.P. Nos. 6993 and 13347 of 1996 and O.P. No. 14362 of 1994 are dismissed. O.P. Nos. 14172 of 1994 and 14176 of 1994 are disposed of in terms of settlement Ext. P-22 dated 15th February 1996.