

**(2010) 12 GUJ CK 0072**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 12678 of 2009 and Special Civil Application No's. 7897 to 7899 of 2010

DGP Windsor India Limited Since Renamed as Windsor

APPELLANT

Vs

Kwil Kamdar Association and Another

RESPONDENT

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**Date of Decision :** 07-12-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes (Central) Rules, 1957 — Rule 62  
Industrial Disputes Act, 1947 — Section 10A, 12, 15, 17, 18  
Trade Unions Act, 1926 — Section 14A

**Citation :** (2011) 2 GLH 62 : (2011) 1 GLR 769 : (2011) 3 LLJ 752

**Hon'ble Judges :** K.A. Puj, J

**Bench :** Single Bench

**Advocate :** K.M. Patel and Varun K. Patel, for the Appellant; Mukul Sinha and R.P. Mankad, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K.A. Puj

1. Since common issue is involved in all these four petitions and since they are heard together, the same are being disposed of by this common judgment and order.

2. Special Civil Application No. 12678 of 2009 is filed by the Petitioner Company praying for quashing and setting aside the impugned order dated 20.05.2009 at Annexure A to the petition passed by the Industrial Tribunal, Ahmedabad in so far as it relates to applications Exh.20 in Reference (IT) No. 286 of 2002, Exh.18 in Reference (IT) No. 73 of 2004 and Exh.13 in Reference (IT) No. 29 of 2005 and further requesting to allow those applications filed by the Petitioner before the Industrial Tribunal for withdrawal of references as requested in those applications.

3. This Court has heard the main petition i.e. Special Civil Application No. 12678

of 2009 for admission hearing on 01.04.2010 and after hearing the parties and recording the statement made by Mr. R. P. Mankad, learned advocate who appears on caveat on behalf of the Respondent Union that the Respondent Union would not proceed with the other Reference Nos. 73 of 2004, 29 of 2005 and 286 of 2002 pending before the Industrial Tribunal, Ahmedabad, adjourned the matter on 22.06.2010.

4. On 22.06.2010, a request was made by the learned advocate appearing for the Petitioner to permit the Petitioner to file separate petitions challenging the order passed by the Industrial Tribunal rejecting the Petitioner's application for withdrawal of each of the three references. Subsequently, three separate petitions being Special Civil Application No. 7897 to 7899 of 2010 were filed before this Court. On 04.08.2010, all the four petitions were admitted by this Court and interim relief in terms of paragraph 5 (b) was granted whereby further proceedings of Reference (IT) No. 286 of 2004, 73 of 2004 and 29 of 2005 pending before the Industrial Tribunal, Ahmedabad were stayed.

5. It is the case of the Petitioner Company that the Petitioner is engaged in engineering industry. One of its factory is situated at GIDC, Chhatral. The present petitions pertain to the workmen employed in the said factory.

6. Four references were made to the Industrial Tribunal as under:

i. Reference(IT) No. 125 of 2001 pertaining to charter of demand for revision of wages, allowances and other conditions of service.

ii. Reference (IT) No. 73 of 2004 pertain to demand for full wages for the period of lay off between 20.09.2001 to 01.11.2001 with 18% interest thereon in respect of 47 workmen who were laid off.

iii. Reference(IT) No. 29 of 2005 pertaining to dispute against suspension of 10 workmen and wages of alleged lock out between 03.06.2004 to 09.06.2004 and

iv. Reference (IT) No. 286 of 2002 in respect of demand that workmen should not be transferred without their written consent.

7. It is also the case of the Petitioner that pending the disposal of the above references before the Tribunal, the management and workmen were trying to arrive at overall settlement of all pending disputes / issues. Accordingly, a negotiated 2 (p) settlement came to be arrived at on 10.01.2009 and a supplementary settlement came to be arrived at on 16.01.2009. The said settlement provided for withdrawal of all Court references.

8. It is also the case of the Petitioner that a trade union called Kwill Kamdar Association is representing the workmen in aforesaid four references made to the Tribunal and one Shri A. N. Patel, Advocate was engaged to represent the Union. One Shri Naran A. Patel was the President of the Union previously. It, however, appears that there were grievances by the workmen against the way in which the affairs of the Union were conducted by Shri Naran A. Patel and other office

bearers previously elected. It further appears that the Annual General meeting of the Union was not being called for holding the election of office bearers. The majority workmen, therefore, by requisition notice dated 11.02.2009 convened the Annual General meeting on 07.03.2009 in which majority of the workmen remained present and elected new body of Executive Committee in which one Shri Sureshbhai Laljibhai Patel was elected as President. The new office bearers then filed applications for reliving Shri A. N. Patel, Advocate to represent the workmen and separate application for withdrawal of references in view of the settlement and supported by resolution passed in the Annual General meeting on 07.03.2009. The applications for relieving Shri A. N. Patel as Advocate of the Union were filed at Exh.137 in Reference (IT) No. 125 of 2001, at Exh.10 in Reference (IT) No. 29 of 2005, at Exh.17 in Reference (IT) No. 286 of 2002 and at Exh.18 in Reference (IT) No. 73 of 2004. Similarly, applications for withdrawal of references were filed at Exh.140 in Reference (IT) No. 125 of 2001, at Exh.13 in Reference (IT) No. 29 of 2005, at Exh.20 in Reference (IT) No. 286 of 2002 and at Exh.18 in Reference (IT) No. 73 of 2004.

9. The Industrial Tribunal did not pass any order on the applications of relieving Shri A. N. Patel as Advocate of the Union. It has, however, passed a common order dated 20.05.2009 by which, while allowing the permission to withdraw Reference (IT) No. 125 of 2001 subject to certain observations, the Tribunal has declined the permission to withdraw the remaining three references on an erroneous premises that they pertain to individual workmen and cannot be permitted to be withdrawn.

10. It is this order of the Industrial Tribunal which is under challenge in these four petitions.

11. Mr. K. M. Patel, learned Senior Advocate appearing with Mr. Varun K. Patel for the Petitioner has submitted that the Tribunal fell in error in holding that References No. 286 of 2002, 73 of 2004 and 29 of 2005 pertain to individual workman and the same cannot be permitted to be withdrawn. He further submitted that the individual dispute treated as individual dispute is the one which is covered by Section 2A of the Industrial Disputes Act, 1947. As against that, the definition of the term "Industrial Dispute" in Section 2(k) envisages collective dispute between management and the body of workmen. The definition of the term "Industrial Dispute" is interpreted to mean that a dispute concerning the individual has to be espoused by body of workmen or substantial number of workmen. In the present case, the three references were espoused by the workmen through the Union though they were in respect of particular workmen. But for the body of the workmen espousing their cause through the Union, the concerned workman on their own could not have raised dispute and sought reference u/s 10 of the Act. The text of the order of reference shows that it is an industrial dispute between the management and the workmen. The disputes referred do not pertain to dismissal, discharge or termination of service of any of the individual workmen so as to be covered by individual dispute treated as

industrial dispute u/s 2A of the Act. The workmen thus having espoused the demand and the references having been made at their instance, it is always open for the body of workmen so espousing the dispute to arrive at a settlement with the management and withdraw the references. Overlooking these fundamental principles of industrial law, the Tribunal has erroneously held that the three references in question pertain to individual workmen and cannot be permitted to be withdrawn.

12. Mr. Patel has further submitted that the Tribunal fell in error in refusing permission to withdraw the references inspite of the fact that there is an overall settlement of industrial dispute and the settlement is accepted individually by all the workmen by signing the settlement. Almost all workmen concerned in these references were also present in the meeting of the Union held on 07.03.2009 in which it was resolved to withdraw the references. He has, therefore, submitted that refusal to withdraw the references is erroneous in law. It is not conducive to harmonious industrial relation. Mr. Patel further submitted that the Tribunal has not appreciated the fact that only one singular workman who has not signed the settlement is Shri Naranbhai A. Patel who was dismissed from service but the dismissal order has not been given effect in view of the pendency of permission application filed by the management u/s 33 of the Act. He has, therefore, submitted that it is but natural that a person who is dismissed from service and in respect of whom permission application is pending would not be the workman interested in resolution of overall disputes. The attempt of the Respondent No. 1 Union to prolong the dispute so as to keep the permission application pending is obviously for extraneous reasons. The Tribunal could not have, therefore, considered the case of Shri Naranbhai A. Patel as a ground to refuse permission to withdraw the references.

13. Mr. Patel has further submitted that the Tribunal also fell in error in holding that even after withdrawal of the references, the permission application qua Shri Naranbhai A. Patel will survive for decision on merits. In respect of permission cases, the order of dismissal does not come into effect until the permission is granted. It is not a case of post-facto approval to the action of dismissal already taken as per Section 33(2)(b) of the Act. Consequently, permission for dismissal will be necessary to give effect to the order of dismissal only till and so long as the proceedings are pending before the Tribunal or the Labour Court.

14. Once the proceedings before the Tribunal or Labour Court are terminated or come to an end, there is no question of permission application to survive because in that case, dismissal will be effective only when no proceedings are pending. He has, therefore, submitted that the view taken by the Tribunal as aforesaid is erroneous and bad in law. He further submitted that the Industrial Tribunal having noted the object and purpose of Labour Laws, namely, maintenance of healthy industrial relations and peace has failed to give effect to the same by not permitting withdrawal of references in view of and in terms of settlement between the parties. He further submitted that the Tribunal has also

committed an error in holding that even if one workman is left out and does not settle the matter, industrial dispute survives and the same is required to be adjudicated. The said observation and conclusion of the Tribunal is inconsistent with the concept of collective bargaining and resolution of industrial disputes in terms of settlement by majority workmen.

15. The observation made and finding arrived at by the Tribunal is contrary to the law laid down by the Apex Court in the case of State of Punjab Vs. The Gandhara Transport Company (P) Ltd. and Others, where out of sixty workmen employed in the Company, only 18 workmen sponsored the cause of the dismissed and retrenched workmen and these 18 included thirteen dismissed workers of the Company. In this connection, the Apex Court held that the espousing of the cause of the workmen was only by five workmen who were, at the relevant time actually in the employment of the Company i.e. the proportion was five to sixty. Such an espousal could not be considered to be by an appreciable or substantial body of workmen so as to constitute the dispute an industrial dispute. Hence, there being no industrial dispute the reference made by the State Government was incompetent.

16. Mr. Patel has further submitted that the objection against withdrawal of references at the instance of Shri Naranbhai A. Patel was not bonafide and for extraneous reasons. The said Shri Naranbhai A. Patel is guilty of a misconduct proved in the inquiry for which management has decided to dismiss him from service. However, he being protected workman and in view of the pendency of the proceedings before the Tribunal, the Petitioner has made an application for permission to dismiss said Shri Naranbhai for proved misconduct. If the reference gets disposed of, the permission proceedings will come to an end automatically and he would not be entitled to subsistence allowance which is being paid during the pendency of the permission proceedings. It is only with a view to prolong the permission proceedings that Shri Naranbhai A. Patel who has been removed / ceased to be the President of the Union is objecting to the disposal of the reference as withdrawn inspite of the settlement having been accepted practically by all and everyone in service.

17. Mr. Patel has further submitted that the dispute as regards who are lawfully office bearers of the Trade Union was wholly irrelevant for the decision on the application for withdrawal of reference. The settlement is accepted individually by all workmen. The Union only represents the case of the workmen. When the workmen as a body has collectively settled the dispute and decided to withdraw the reference, the dispute as to who are lawful office bearers of the Union is absolutely irrelevant. In any case, no such dispute is raised by Shri Naranbhai Patel, nor is any dispute pending before the Industrial Court u/s 14A of the Trade Union Act. He has, therefore, submitted that the Industrial Tribunal exceeded its jurisdiction in casting doubt about the authority of the group of office bearers of Shri Sureshbhai Patel on the ground that no election appears to have been conducted through ballot papers. When the office bearers are elected

unanimously and unopposed, it was not for the Tribunal in a reference u/s 10 of the Act to go into the question of election of new body of office bearers. He has, therefore, submitted that the impugned judgment and order passed by the Tribunal is erroneous, illegal and bad in law.

18. Dr. Mukul Sinha, learned advocate appearing with Mr. R. P. Mankad for the Respondent Union has submitted at the outset that the Industrial Tribunal has not decided any conclusive rights of the parties and in fact, the Tribunal has refused the permission to dispose of the three references without hearing the same on merits considering the controversy involved and the Tribunal has fixed the matter for hearing on merits. He has, therefore, submitted that the present petitions are not maintainable in law and are, therefore, required to be dismissed. He further submitted that in similar circumstances and in identical fact situation, this Court has considered the law on the point in the case of GE Lighting India Limited now known as GE (India) Private Limited v. Gujarat Mazdoor Panchayat, Special Civil Application No. 11618 of 2004 decided on 03.08.2005 wherein it is held that the order of the Court below not permitting the request of withdrawal of reference by the Petitioner employer is just and proper. This order of the learned Single Judge was challenged in Letters Patent Appeal No. 199 of 2006 before the Division Bench of this Court and while disposing of the said Letters Patent Appeal on 14.06.2006 / 22.06.2006, this Court has issued certain directions while remanding the matter for considering the same on merits. He has, therefore, submitted that all these petitions are, therefore, required to be dismissed with specific direction to the Industrial Tribunal to hear and decide the disputes on merits. He further submitted that the petitions are not maintainable even on the ground that the impugned order passed by the Industrial Tribunal does not suffer from any error of law or fact which are apparent on the face of record nor it suffers from any infirmity, much less, any error which is apparent on the face of the record. He further submitted that there is no perversity of finding nor it shows as to how the findings of fact suffer from any infirmity, much less, being perverse. He further submitted that even if two views are possible either on law or on facts, the Court ought not to interfere or entertain the petition in exercise of powers under Articles 226 & 227 of the Constitution of India against any award or order of the Labour Court or Industrial Tribunal and/or of any authority under the Act. He further submitted that the Petitioner by way of these petitions wants reappreciation of entire facts and evidence on record which were before the learned Tribunal and after considering the same, the Tribunal has passed the impugned common order. He has, therefore, submitted that this Court should not exercise its jurisdiction to reappreciate the facts and evidence already appreciated by the Industrial Tribunal.

19. Dr. Sinha has further submitted that the Petitioner has not produced all the relevant materials before this Court which were available with the Industrial Tribunal. He has pointed out that during hearing of application Exh.140 which was for withdrawal of the reference, around five workmen have submitted one

application to the Industrial Tribunal on 05.05.2009 in which it was stated that they have not given any consent for withdrawal of the references nor they have accepted any benefits of the so-called settlement. He further submitted that the Respondent No. 2 and other concerned workmen are not the beneficiaries of the settlement, not only that the benefits offered under the settlement are in fact amounting to the mockery of process of amicable settlement between the parties. In fact, the settlement is for the period of 10 years which is never heard in industrial jurisprudence. There is a complete ban on raising any demand during the period of settlement. The reference of the dispute is pending for the demand for the period 2001 onwards and the benefit offered under the settlement is 2007 onwards. The settlement is binding on those who signed it and undisputedly, the Respondent No. 1 and around 11 workmen have objected to the settlement and, therefore, by no stretch of imagination, it can be said that they cannot pursue the reference which is pending for adjudication. He has, therefore, submitted that the alleged settlement could not be implemented after the award by the Company qua certain workmen who are opposing the settlement and, therefore, the Petitioner Company has no right to challenge the order of the Tribunal when they have not implemented the same. He further submitted that the Petitioner Company has created an impression that the so-called settlement is accepted by all the workmen and they are happy with the terms of settlement. As a matter of fact, all workmen have not accepted the settlement and those whose signatures were obtained, were coerced and forced by the management for accepting such settlement. He further submitted that the so-called Sureshbhai Group of the Union is the creation of management by way of extraneous consideration with a view to come out from the liability of the adjudication of the reference of the Industrial Tribunal. He further submitted that the Petitioner Company has shown the discriminatory treatment to the workmen of the present Union. The Petitioner Company owns its unit situated at Vatva and it has given similar benefits to their workmen from 01.04.2005 whereas by the present settlement, the benefits are given from 01.04.2007.

20. Dr. Sinha further submitted that even if 99% workmen have accepted the settlement, in that event also, other workmen have a right to continue their right of adjudication and when Union has not authorized and/or workmen have elected five representatives for making settlement and/or condition precedent provided u/s 2(p), 18 and Rule 62 framed there under are not followed, in that case, there is no settlement in the eye of law.

21. In support of this submission, Dr. Sinha relied on the judgment of the Apex Court in the case of Binny Ltd. Vs. Their Workmen, wherein it is held that the dispute which had already been referred by Government should not cease to be one in respect of a portion of it merely because the Union did not choose to represent the case of a particular dismissed employee. If there was an industrial dispute at the time of reference, it would not be ceased to be one merely because the claim of some of the dismissed employees was settled by the mutual agreement.

22. Dr. Sinha further relied on the decision of the Apex Court in the case of *The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others*, wherein it is held that it is clear from a perusal of Section 18 that a settlement arrived at in the course of conciliation proceedings is binding not only on the actual parties to the industrial dispute but also on the heirs, successors or assigns of the employer on the one hand, and all the workmen in the establishment, present or future, on the other. In extending the operation of such a settlement beyond the parties thereto, Sub-section (3) of the Section departs from the ordinary law of contract and gives effect to the principle of collective bargaining.

23. Dr. Sinha further relied on the decision of this Court in the case of *Mafatlal Apparels Manufacturing Company Limited v. Mafatlal Apparels Workers' Union and Anr.* 1992 (2) GLH 557 wherein the settlement by management with one of the Unions during lockout when reference in respect of wages and service conditions was pending before the Tribunal between the management and workmen represented by another Union. Terms of settlement, inter alia, provides that the signatories thereto would give up their demands in all pending proceedings and only such signatory workmen would be permitted to join duties. In this connection, it is held that this amounts to unfair labour practice. In the peculiar fact situation, such settlement was held to scuttle the pending industrial dispute.

24. Dr. Sinha has further submitted that granting of permission to withdraw the references which are filed before the Industrial Tribunal or Labour Court is contrary to the very scheme of the I.D. Act. He has submitted that as per Section 2A of the Act, dismissal of an individual workman is considered to be an industrial dispute. If a single workman is not agreeable to the settlement and once the dispute is already referred to, the Labour Court or the Industrial Tribunal, the same cannot be withdrawn subsequently. He further submitted that as per Section 10 of the Act, the reference of dispute is required to be made either to the Boards, Courts or Tribunals depending upon the nature of the dispute. u/s 10 of the Act, the workman can raise a dispute before the Conciliation Officer and once having satisfied with the said dispute, the Conciliation Officer shall file the reference before the Labour Court or the Industrial Tribunal. The Conciliation Officer shall make the reference u/s 12 of the Act to the concerned Court, Tribunal or Board. u/s 17, the award passed by the Labour Court or Industrial Tribunal is required to be published and it shall be effective after the expiry of the period of 30 days from the date of such publication. Section 18 deals with persons on whom settlements and awards are binding. Under Sub-section (3) of Section 18, a settlement arrived at in the course of conciliation proceedings, or in case where a notification has been issued under Sub-Section 3(A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on all. Based on these provisions, Dr. Sinha has submitted that the parties to the settlement are not empowered to withdraw the references as the references are

admittedly made by the State Government. Pursuant to that, if references are made, the same has to be adjudicated upon by the Labour Court or the Industrial Tribunal and the award passed by them is required to be forwarded to the Central Government. He has, therefore, submitted that the Tribunal has no jurisdiction to grant permission to withdraw the references once it is filed. Considering all these submissions, he has submitted that Industrial Tribunal has rightly passed an order rejecting the applications filed by the Petitioner for withdrawing the references. There is no infirmity in the order passed by the Tribunal which requires an interference by this Court while exercising its power under Article 227 of the Constitution of India. He has, therefore, submitted that all the four petitions are required to be dismissed.

25. Having heard learned Counsels appearing for the parties and having considered their rival submissions in light of the statutory provisions and decided case law on the subject and having gone through the impugned order passed by the Industrial Tribunal on 20.05.2009 refusing to grant permission for withdrawal of the three references, namely, Reference (IT) No. 286 of 2002, Reference (IT) No. 73 of 2004 and Reference (IT) No. 29 of 2005, the Court is of the view that the Tribunal is not justified in rejecting all these three applications for withdrawal of the aforesaid references. The reasons given by the Tribunal are neither convincing nor supported by any statutory provision nor any judicial pronouncement on the subject. The Tribunal has referred to the provisions contained in Section 2A of the Industrial Disputes Act. However, the said Section deals with the dismissal etc. of an individual workman to be deemed to be an industrial dispute. It says that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and its employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any Union of workman is a party to the dispute. The very definition of an industrial dispute under this Sub-section narrows down the scope of its operation. This Sub-section can be invoked only in the case of dismissal, discharge, retrenchment or termination. None of the references in question are dealing with dismissal, discharge, retrenchment or termination. The Tribunal has, therefore, committed an error in treating the dispute as an industrial dispute pertaining to an individual workman by referring to this definition. As a matter of fact, in the present case, the applicable section is Section 2(k) of the Industrial Disputes Act, which envisages collective dispute between the management and the body of workmen. The term "industrial dispute" in this Sub-section is interpreted to mean that a dispute concerning the individual has to be espoused by body of workmen or substantial number of workmen. The very nature of dispute contained in all the three references makes it clear that they were espoused by the workmen through the Union though they were in respect of a particular workman. It can certainly be presumed that if the Union would not have espoused their cause, the concerned workmen on their own would not have

raised any dispute nor they would have sought reference u/s 10 of the Act. The workmen, thus having espoused the demand and the references having been made at their instance by the Union, it is always open for the body of workmen so espousing the dispute to arrive at a settlement with the management and withdraw the references.

26. It is also an admitted fact that almost all workmen have accepted the settlement and they have also made an affidavit giving their consent for withdrawal of the references. The decision of the Apex Court in the case of *State of Punjab v. The Gondhara Transport Co. (P) Limited and Ors.* (supra) squarely applies to the facts of this case. The Court took the view in this decision that the espousing of the cause of the workmen only by five workmen, as against 60 workmen could not be considered to be by an appreciable or substantial body of workmen so as to constitute the dispute an industrial dispute. Applying this ratio to the facts of the present case, if almost all workmen have expressed their desire to withdraw the reference and have filed necessary applications before the Tribunal and simply because one person who is already dismissed from service and an approval application is pending in the Tribunal objects to such withdrawal, it cannot be said that such withdrawal is not supported by all the workmen. Support sought to be derived by Mr. Sinha on the decision of *Binny Limited v. Their Workmen and Anr.* (supra) is wholly irrelevant and unjustified as it was a case of dismissal of workman and industrial dispute was raised by the workmen themselves and Union did not choose to represent the case of a particular dismissed employee. The Court in that case held that if there was an industrial dispute at the time of reference, it would not cease to be one merely because the claim of some of the dismissed employees was settled by the mutual agreement. Even the decision of this Court in the case of *Mafatlal Apparels Manufacturing Company Limited v. Mafatlal Apparels Workers' Union and Anr.* (supra) would not render much assistance to the Respondents as admittedly, in that case, there was a settlement by the management with one of the Unions during lockout when reference in respect of wages and service conditions was pending before the Tribunal between the management and workmen represented by another Union. The Court held, in this connection, that this would amount to unfair labour practice. It is not the case here. There is only one Union. However, the dispute is with regard to the office bearers of the Union. Almost all workmen have agreed for withdrawal of the references pursuant to the settlement arrived at between the management and the workmen. The Tribunal is, therefore, not justified in rejecting the applications moved by the Petitioner for withdrawal of the three references.

27. It appears that the objections raised by Shri Naranbhai A. Patel, the outgoing President of the Union is based on his own personal interest in keeping the references alive before the Tribunal. He might not have signed the settlement possibly for this reason. It is an admitted position that he was dismissed from service. However, he being a protected workman, an approval application is filed by the Petitioner before the Tribunal which is pending. If the references are

allowed to be withdrawn and no proceedings remain pending, in that case, the approval application might have become infructuous. The other persons who have subsequently raised an objection against withdrawal application might have been persuaded by him to raise such objection as initially they have signed the affidavits. Be that as it may, still the number of persons objecting to the withdrawal application are very small as compared to the workmen who are in favour of withdrawing the references. The Court is, therefore, of the view that the Tribunal should not have merely permitted the withdrawal of only one reference i.e. Reference (IT) No. 125 of 2001, but the remaining three references should have also been permitted to be withdrawn in view of the settlement arrived at between the management and the workmen and in view of the fact the applications for withdrawal of these references were signed by almost all workman.

28. The other objections raised by Mr. Sinha are not tenable and there is no violation of any of the statutory provisions if the references are allowed to be withdrawn. The reference u/s 10 of the Act is made at the instance of the body of workmen. The award can be passed in terms of the settlement. Even while granting permission to withdraw the reference, the Labour Court or Industrial Tribunal shall refer to the settlement and in view of the settlement, the reference may be allowed to be withdrawn. Such an order allowing the withdrawal of reference can be forwarded to the appropriate Government u/s 15 of the Act and the same can be published u/s 17 of the Act. Since the reference is allowed to be withdrawn in view of the settlement, such settlement becomes enforceable on the expiry of 30 days from the date of publication of an order passed pursuant to the settlement. Such a settlement arrived at by agreement between the employer and the workmen, though not in the course of conciliation proceedings, shall certainly be binding on the parties to the agreement.

29. In view of the foregoing discussion and observation, the impugned order passed by the Industrial Tribunal on 20.05.2009 in so far as it relates to the rejection of applications Exh.20 in Reference (IT) No. 286 of 2002, Exh.18 in Reference (IT) No. 73 of 2004 and Exh.13 in Reference (IT) No. 29 of 2005 is hereby quashed and set aside and the aforesaid applications seeking permission for withdrawal of references are hereby allowed.

30. These petitions are accordingly allowed. Rule is made absolute without any order as to costs.