
(1974) 06 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 1156 of 1973

Dunlop (India) Ltd.

APPELLANT

Vs

B.D. Gupta and Others

RESPONDENT

Date of Decision : 07-06-1974

Acts Referred:

Citation : (1974) ILR Delhi 596 : (1975) LabIC 702

Hon'ble Judges : Rajinder Sachar, J

Bench : Single Bench

Advocate : P.P. Ginwala, Anand Prakash, J.K. Mehra, N.C. Sikri and P.N. Gupta, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) The question that arises in this writ petition is whether it is open to the union to agree and settle Industrial Dispute pending before a Labour Court regarding termination, of the services of an individual employee even when he is not agreeable to such settlement and is in fact opposed to it.

(2) This writ petitioner under Article 226 of the Constitution challenges the order of the Presiding Officer, Additional Labour Court respondent No. 1 by which it rejected the application of the petitioner management and held that the settlement dated 23-10-1971 made between the petitioner company and respondent No. 3, the Dunlop Rubber Company (India) Ltd. Delhi Branch Employees Union through the Secretary is not binding on respondent No. 2, Khushi Ram Aggarwal, employee and accordingly a "No dispute Award" cannot be passed.

(3) By its letter dated 30-6-1970 the petitioner company informed respondent No. 2 that his services are terminated with immediate effect and that he would receive one month's salary in lieu of the notice. A great deal of correspondence ensued between the parties of which a reference will be made later on in the judgment. The matter was even taken up by the Conciliation Officer. But as the

Conciliation proceedings did not succeed the Lt. Governor, Delhi by means, of notification dated 24-12-70 referred u/s 10(l)(c), 12(5) of Industrial Dispute Act the existing dispute between the management and its workman Khushi Ram Aggarwal, as represented by the union for adjudication to respondent No. 1. The terms of reference are as follows:

" WHETHER the termination of services of Shri Khushi Ram Aggarwal is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect".

(4) Earlier on 2-1-1971 the petitioner had filed a writ petition being Cw 147/71 in this Court contending that conciliation officer had no jurisdiction to proceed in the matter and as there was no dispute between the parties, the reference by the Lt. Governor was illegal and ultra virus and that he did not apply his mind and did not examine the merits of the disputes and also because the principle of natural justice were violated as no hearing was given before making such reference. It was also contended that respondent No. 2 was not a workman within the meaning of the Industrial Dispute Act (hereinafter called the Act). Shanker, J. by his judgment dated 20-5-1971 dismissed the writ petition. The learned judge, however, noted that the counsel for respondent No. 2 had agreed that the point whether respondent was a workman may be decided as a preliminary issue by the labour court, and had directed the labour court to decide that point as a preliminary issue.

(5) The petitioner Company filed the L.P.A. being Lpa 137/71 but the same was dismissed by this court on 20-8-1971. Application for special leave to the Supreme Court was filed on 22-9-1971. The same was however, withdrawn by company on 7-2-1972.

(6) Earlier on 25-10-1971 the petitioner company and respondent no. 3 jointly filed an application before respondent No. 1 stating that the petitioner company and respondent No. 3 union had agreed to settle the matter out of Court and that Therefore the Tribunal may be pleased to dispose of the above reference by making a "no dispute award". Objection was taken by respondent No. 2 to the authority of the Union to settle the dispute on various grounds including that the Union had no authority to settle it on its behalf and that there had been in fact no agreement. By the impugned order respondent No. 1 held that the settlement was in fact reached between the Union and the management on 23-10-1971 at 5.30 p.m. It has also held that the said agreement complied with rule 58 of the Industrial Dispute (Central) Rules, 1957 (hereinafter called the Rules) and cannot be held to be invalid for any want of compliance of Rule 58. But it rejected the agreement because in its view it was open to respondent No. 2 to object the agreement said to have been agreed by the Union with the management because the present was an industrial dispute between the management and respondent No. 2 and the concerned workman, by name who was represented by the Union and the capacity of the union is only that of representative of concerned workman and not of a party to the dispute as such. It Therefore, held that the

said agreement cannot be binding on respondent No. 2 more so because he had withdrawn the authority of the union prior to the date of the agreement. The petitioner management feeling aggrieved has come by way of writ petition to this court. Mr. Ginwala, the learned counsel appearing for the petitioner has raised the following points.-

1. Was there ever a collective dispute in fact ? 600
2. Was there ever an individual dispute in fact?
3. If there was a collective dispute in fact could there at the same time be in law an individual dispute on the same subject matter ?
- 4(A) If a collective dispute and individual dispute on the same subject matter could and did in fact, co-exist which dispute was referred ?
- (B) Is this question res judicata ?
5. If the collective dispute was referred does the co-existence of the individual dispute in the light of Section 2A make any difference to the previously established legal proposition that the union can settle the collective dispute.
6. If the individual dispute was referred can the Union nevertheless settle the dispute without consent of the individual concerned ?
- 7(A) If the individual dispute was referred did the Union have authority to settle the dispute on behalf of respondent No. 2 ?
- (B) Was such authority, if any, effectively revoked ?
- (C) Even if it was revoked is the respondent No. 2 nevertheless bound by the settlement as he was still a member of the union ?

8.1 Section 2A valid?

- (7) As points I to 6 are interconnected it will be proper to consider them together.
- (8) Section 2(k) of the Act defines the industrial dispute to mean any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment of the terms of employment or with the conditions of labour, of any person.
- (9) The law had been well settled that a dispute about the termination of a service of an individual workman would not by itself be raised to the status of an industrial dispute unless it was espoused by a trade union or appreciable number of workmen. This however underwent a change when the Parliament enacted Act 35 of 1965 with effect from 1-12-1965 and inserted Section 2A which provides that "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman any dispute or difference between that workman and his employer connected with, or arising out of, such

discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute. By incorporating Section 2A a right has been given to the individual workman to himself raise an industrial dispute with regard to termination of his services even though no other workman nor any union of workmen raised it or is a party to the dispute. Immediately the notice of termination was served and on 30-6-1970 a meeting of the union, respondent No. 3 took place, Resolution was passed urging the management to withdraw the unjustified and unlawful letter issued to respondent No. 2. The general body also authorised the Union to take up the matter with the management. Respondent No. 2 was signatory to the said resolution. On 1-7-1970 a letter was addressed to the petitioner-company at New Delhi protesting against the termination of the services respondent No. 2 who was Vice President of the union and demanding his reinstatement. The letter expressed the hope that the management would accede to the just request and would not compel the union and the All-India Federation to take unpleasant steps. The said letter was signed by the Secretary of the union as well as by respondent No. 2. On the very next day again i.e. on 2-7-1970 another letter was written by the union. It was also signed by respondent No. 2. It was stated that respondent No. 2 had made a complaint to the union that the efforts were made by the management by various devices to persuade him to submit his resignation and asking the management to withdraw the letter of termination. Further correspondence between the union and the management took place and the latter expressed its inability to entertain any request of reinstatement of respondent No. 2 and informed respondent No. 3 by its letter dated 15-7-1971. Apparently not getting any relief from the management, a statement of claim was put in before the Assistant Labour Commissioner in respect of the reinstatement of respondent No. 2 requesting the said officer to use his good offices to get respondent No. 2 reinstated. This statement of claim was also signed by respondent No. 2. Finding that the management was not agreeable to reinstate respondent No. 3. union filed its rejoinder which was also signed by respondent No. 2 requesting the Assistant Labour Commissioner to have the said matter referred to the Industrial tribunal for appropriate adjudication. The Assistant Commissioner by its letter dated 31-10-1970 sent to the Under Secretary(Labour), Delhi Administration, Delhi his report u/s 12(4) of the Act stating that there being no scope for settlement the conciliation proceedings were closed. It was thereafter that the above said reference was made by the Lt. Governor on 24-12-1970.

(10) Respondent No. 1 has held that the present reference shows that it was an industrial dispute between the management and the concerned workman as represented by the union and that the Union was not a party independently of the concerned workman. Prima facie this is a finding of fact, and normally not open to challenge in these extraordinary proceeding. Mr. Ginwala, however, contended that consideration of the facts preceding the order of reference would show unmistakably that the dispute about the termination of respondent No. 2

was taken up and espoused by the union and Therefore it was an industrial dispute within the meaning of Section 2(k) of the Act. He strongly disputed the finding of respondent No. 1 that it could be taken to be an industrial dispute u/s 2A of the Act because according to him respondent No. 2 never made any grievance or raised a dispute with the management about the termination of his services. I do not agree. There is no doubt that the resolution of the union dated 30-6-70 and the subsequent letters written by it demanding the reinstatement of respondent No. 2 does show that the union had espoused the cause of respondent No. 2. There is also no gainsaying the fact that the union was espousing the cause of respondent No. 2 at the time when the reference was made as is clear from the statement of claim filed before the Assistant Labour Commissioner in conciliation proceedings. Though, Therefore, it is true that the union was espousing the cause of respondent No. 2 the present is not a case where the workman concerned himself did not raise a dispute about the termination of his services. Right from the beginning the entire correspondence demanding re-instatement of respondent No. 2 by the union was also signed by respondent No. 2 himself. Not only that, but when a statement of claim was filed before the Assistant Labour Commissioner the union had gone out of its way in pointing out that the said claim was being countersigned by respondent No. 2. Again when the management was not willing to re-instate respondent No. 2 both the union as well as respondent No. 2 had asked the Assistant Labour Commissioner for referring the matter to the industrial tribunal. Thus a demand for re-instatement was made on the petitioner management on 2-7-1970 by the union as well as respondent No. 2. Record of proceedings before the Assistant Commissioner which have been filed along with the petition show that the proceedings are stated to have been initiated by a statement of claim on behalf of Khusi Ram Aggarwal, the workman, by the union. Even when it came to the filing of statement of claim before respondent No. 1 the same was filed by the union on behalf of respondent No. 2 and was signed by the Secretary on behalf of the union and by respondent No. 2 as workman concerned. It is important to note that the verification was made by respondent No. 2. In spite of all these letters, references and statement of claims being signed by respondent No. 2, Mr. Ginwala, would have it that the respondent No. 2 never raised it as an industrial dispute in his individual capacity. He sought to suggest that as respondent No. 2 was Vice-president of the Union, he might have signed in that capacity. I do not think that is a reasonable way of reading all these various documents. The claim made by the Union was being duly signed on its behalf by the Secretary. Signature of respondent No. 2 was being obtained in his capacity as the workman concerned. The mention of Vice-President was only descriptive. No doubt respondent No. 2 was the Vice-President, but nothing was pointed out from the constitution of the union that the correspondence by the union had to be signed by the Vice-President, especially when Secretary who was competent to do so, was duly signing it. It is amply clear that the dispute and the claim regarding the termination of his service was being taken up both by the union as well as by the employee concerned. It is, Therefore, not correct to say that

respondent No. 2 never raised the dispute himself and Therefore, the matter could not have been referred u/s 2A at all. I must, Therefore, proceed on the basis that the dispute about the termination of service of respondent No. 2 was espoused by the union and was also raised by the employee concerned. Mr. Ginwala had sought to urge that once it was shown that the union had taken up the matter and had espoused the dispute, the dispute became a collective dispute u/s 2(k) and cannot be said to be an industrial dispute u/s 2A. In my view the question posed by Mr. Ginwala proceeds on the mistaken assumption as if there is something like collective dispute or individual dispute which is as such referred. The argument proceeds to assume as if there was a dichotomy between Section 2(k) and Section 2(A). of the Act. It is necessary to remember that Section 2(k) defines an industrial dispute and section 2A is merely an exception to it, and because by deeming provision, it makes what is provided therein an industrial dispute. Therefore, what is referred to u/s 10 of the Act is always an industrial dispute.

(11) The answers to the question posed by Mr. Ginwala are that the dispute would be industrial dispute within" the meaning of Section 2(k) of the Act because it was espoused by the union and would also be a dispute within the meaning of Section "2A of the Act, because respondent No. 2 himself also raised the dispute. I think the position is not as Mr. Ginwala sought to suggest that there are two kinds of distinct disputes, one u/s 2A of the Act and another u/s 2(k) of the Act and as both Therefore are said to co-exist there would be two disputes and the difficulties posed by referring them to separate tribunals, and the danger of there being conflicting decisions. The industrial dispute is defined under the Act, both in Section 2(k) and by deeming provision 2-A. All that has now to be seen is whether any dispute attract the definition of industrial dispute, under the Act, and if it does so by virtue of the circumstances existing either u/s 2(k) or of Section 2A, it will be competent for the appropriate authority to refer the dispute for adjudication. The important point is whether what is referred is an industrial dispute and the question is of no consequence whether it is referred because of the applicability of definition of Section 2(k) or 2A. Mr. Ginwala referred me to British India Corporation Ltd. v. Mohd. Sadiq and other, 1974 Lab. I.C. 420. In that case the services of one Mohd. Sadiq, workman had been terminated by the company and the reference was challenged in the Punjab and Haryana High Court. The labour Commissioner, Punjab under a notification had been given powers to refer for adjudication dispute falling within Section 2A of the Act only. It was first contended that as the Labour Commissioner had referred the dispute u/s 2A of the Act and as Mohd. Sadiq had raised no demand there was no dispute between him and the management. The learned judge, however rejected this contention. Another point raised before the court was that as the Labour Commissioner was only competent to make a reference of disputes u/s 2A, the same was incompetent because the workman had not raised the dispute. The learned judge found that the notice of demand and the claim were raised by the general secretary of union and the workman had at no stage

himself figure in the whole drama in spite of the fact that a reference to the labour court was addressed to him by the Labour Commissioner. On the facts of that case learned single judge found that the dispute had been espoused and sponsored by the union and it could not be considered to be an individual dispute not espoused by the union, and Therefore, Section 2A was not applicable. It is apparent that on the finding that the workman concerned had at no stage taken any interest in either making a claim or asking for reference to the tribunal, it could be held that Section 2A was not applicable. This case is obviously distinguishable because in the present case, as I have mentioned above, respondent No- 2 was very much a party, right from the beginning not only by making claim on the management but also taking part before the conciliation officer and the tribunal. In such a case it cannot be said that the dispute had not been raised by the individual concerned. Mr. Ginwala, however, placed great reliance on the following observation made in that judgment:

"SECTION 2A of the Act does not state "whether espoused by other workmen or any union of workmen or not and it was not enacted to provide for such cases in which reference could be made under the Act. To provide for such cases no amendment was required. Section 2A was enacted to provide for the cases of individual workmen who were not supported by other workmen or any other union. Section 2A thus covers only such cases in which the dispute of an individual workman has not been sponsored or espoused by Other workmen or any union of workmen. The Labour Commissioner, had, Therefore, no jurisdiction to treat this industrial dispute as an individual dispute between the petitioner and respondent No. 1, it could only be treated as an industrial dispute between the petitioner and respondent No. 5 which sponsored it. On this premises, the dispute, not being within the ambit of Section 2A of the Act, could not be referred to the Labour Court for jurisdiction by the Labour Commissioner as said above".

(12) And contended that this case is an authority for the proposition that Section 2A only covers those cases in which an individual workman's case has not been sponsored or espoused by other workmen. It appears to me that these observations were clearly obiter. The learned judge had already found that it was the union which had raised dispute and the concerned workman had never raised it. Section 2A would not apply for the simple reason that the concerned workman himself had never made a demand. I may, however, point "out with respect that the learned judge seems to have assumed as if there was a conflict between S. 2(k) and S. 2(A) and they were dealing with different kinds of dispute rather than the same thing, namely industrial dispute, which I have already said is not the position in law. The learned judge's judgment was apparently influenced mainly by the wording of the notification which he was considering. In that case the question as to the competency of union to settle the dispute against the consent of the workman concerned did not arise. That case is, Therefore, of no assistance to the petitioner. I think the argument on points I to 4 were only preliminary for the real serious argument on points 5 and 6 that the reference

should be deemed to be u/s 2(k) and consequently the authority to withdraw and settle will remain with the union, whereas had it been referred u/s 2A the authority may have been only with the workman. Mr. Ginwala had in order to support his argument to go to the extreme length of arguing that even if it is referred because of Section 2A it is deemed to be industrial dispute as envisaged by Section 2(k) and will thus become collective dispute with the union having the sole authority to settle the dispute. To me it appears that this whole argument confuses the condition precedent for referring a dispute for adjudication and the authority to make a settlement against the consent of individual workman.

(13) Mr. Ginwala contends that the findings of respondent No. 1 that respondent No. 2 was a party to the dispute is not borne out by record and points out that the mere fact that the dispute is referred to as between the management and the workman as represented by respondent No. 3, union does not mean that it was not a dispute between the management and the union as such. I was referred to *Bilash Chandra Mitra Vs. Balmer Lawrie and Co. Ltd.*, wherein the mere fact that it was recited that whereas the industrial dispute had arisen between M/s. Balmer Lawrie, and Co. Ltd. and Bilash Chandra Mitra and other employees as represented by the Balmer Lawrie and Company's Employees Union was not held sufficient by itself to show that it was an individual dispute. It must however be recognised that in that case the learned judge had found as a matter of fact that the said dispute had been taken up by the union and Therefore it was not an individual dispute. This authority cannot be read as an authority for the proposition that in spite of the recital of workmen being represented by a union it cannot be held to be individual dispute, more. especially after the incorporation of Section 2A. On the other hand *Hotel Imperial, New Delhi and Chief Commissioner, Delhi and others (1959-11 LJ 553)* lays down that the addition of the words "represented by a particular union to apply to the tribunal for such representative or even to apply so that the tribunal may know to whom it should give notice when proceeding to deal with the reference. This however does not preclude the workmen if they want to be represented by any other union such to apply to the tribunal for rule representative or even to apply for being made parties individually." Thus prima fade the form of reference will show that the dispute that was referred was between the management and the workman respondent No. 2 who was being represented by respondent No. 3 union. But Mr. Ginwala challenges this aspect and maintains that notwithstanding Section 2A an individual workman can never be a party to the dispute and reliance for this is placed on *Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal*, . In that case which arose prior to 1965 (that is prior to incorporation of Section 2A) [he workman had been discharged by the company and a dispute having been taken up by the union the same was referred to adjudication. During the pendency of the adjudication the management and the union filed joint petition for compromise settling all the points in dispute out of court. The question that arose for determination was whether the workman was entitled to separate representation in spite of the fact

that the union which had espoused his cause was being represented by its Secretary. The Supreme Court in deciding this question held:

" WE have on the one hand to remember the importance of collective bargaining in the settlement of industrial disputes and on the other hand, the principle that the party to a dispute should have a fair hearing".

(14) The Supreme Court noted the preponderance of judicial opinion to the effect that the dispute between the employer and the single employee cannot per se be an industrial dispute but it may become one if it is taken up by the union or a number of workmen and held:

" THE necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the union. The union or those workmen who have by their sponsoring turned the individual dispute into an industrial dispute, can Therefore claim to have a say in the conduct of the proceedings before the Tribunal. If the union had not taken up his cause there would have been no reference".

(15) Reference in this connection was also made to the Eastern Manganese and Mineral Ltd. v. Industrial Tribunal Central. Dhanbad and others 1968 11 LLJ 817 where because of the objection by the workmen the Tribunal refused to record the compromise at the instance of the union and the said order was quashed by the Division Bench of Patna High Court in writ petition following the earlier case of Ram Parsad Vishwakarma on the ground that the industrial dispute concerning the workman having been raised by the union it was competent for the union to settle the dispute. It may be mentioned that that case had arisen prior to the incorporation of Section 2A and also related to the transfer of the workman which is not covered by Section 2A and as such the dispute could only have become an industrial dispute if it was sponsored by the union.

(16) It will be seen that these authorities proceeded on the basis that as the individual dispute could only take the status of industrial dispute if it was sponsored by the union, it stood to reason that the union should have the right to determine the terms on which it thought best to settle the dispute and the matter could not be left to the personal whims of the individual workman-as it might be against the interest of other workmen. This position has undergone a radical change by the incorporation of Section 2A, in so far as section 36(1) of the Act gives right to a workman who is a party to the dispute to be represented by either officer of the registered trade union of which he is a member or by any other workman duly authorised by him in this behalf. After the incorporation of Section 2A the necessary balance between the importance of collective bargaining and the right of a party concerned to have a fair hearing could only be established in a case in which an individual dispute has been raised without it having to be sponsored by the union the right of individual concerned to change his representative any time he likes was accepted. The workman himself can now raise an industrial dispute about the dispute relating to discharge, termination of

service. The workman now is not dependent on the union or a number of workmen for converting his dispute into industrial dispute. Statute gives him the right to raise such a dispute himself. In such circumstances, it would not be appropriate to seek to apply the rule laid down in Ram Parasad Vishwakarma's case and to suggest that even in the case of dispute regarding termination of services of the concerned workman, the union continued to be supreme even to the extent of entering into a settlement with the management concerning the workman against his consent and in opposition to his wishes. To read such untrammelled power to the union would run directly in conflict with the object of Section 2A. It is true that the industrial dispute recognises the importance of collective bargaining. But legislature deliberately made a departure when it introduced Section 2A of the Act, in the matter of discharge, termination of the service of individual workman. This change is a legislative declaration of the fact that in such matters, the union cannot claim to be the sole party and cannot thus arrogate to itself the unfettered right to barter away the individual workman's right. It cannot be disputed that by virtue of Section 2A of the Act a workman whose services are dispensed with could and would be entitled to raise an industrial dispute and to ask for adjudication being made. If that be so, as indeed in law it is, it seems illogical and anomalous to suggest that the union which could not have prevented the dispute from being referred to adjudication because of Section 2A, should be immediately thereafter permitted to step in, and nullify the reference by seeking to settle the dispute with the management on terms which are against the interest of the workman concerned and against his interest. To yield such unfettered power to the unions contended by Mr. Ginwala would be to allow it to do that indirectly which it could not do directly. I have already held that the present dispute was espoused not only by the union but was also raised by the respondent No. 2 himself. The present is not a case where individual never took up the matter and reference could not have been made unless union sponsored it. In such a case where reference was not dependent on the dispute being sponsored by the union, to accept- the extreme argument of Mr. Ginwala would be to act against justice and equity and work injustice to the individual workman concerned. As to what would be the position in a case where an individual workman does not raise the dispute himself and it is only because of the espousal by the union that the matter is referred to adjudication does not arise here and it is not necessary to give any decision on that aspect. Here the respondent No. 2 himself did raise the dispute. "The objection of Section 2A is not to create a right for the first time. On the contrary, its object is to widen the ambit of a pre-existing right. The right concerned is the right to move the Government to make a reference to adjudication of an industrial dispute," vide National Productivity Council v.S. N. Kaul 37 F.J.R. 237. It was also held in that case that "the way I look at section 2A is that it takes note of every dispute arising out of or connected with termination, etc. and confers on such a dispute the status of an industrial dispute". Reference may also be made to Binny Ltd. v. Their workman 1972 I L.L.J. 479. In that case a registered union sponsoring the case of dismissed workman entered into

settlement with the management, and withdrew its support to the case of Kuppusawamy, one of the dismissed workmen. Objection was raised by the management that as the dispute with regard to the dismissal of Kuppuswamy was not being sponsored by the union, the same ceased to be Industrial dispute. Rejecting this contention the Supreme Court observed:

" WE do not, however, see any reason to hold that the dispute had already been referred by the Government should 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 cease to be one merely because the claim of some of the dismissed employees was settled by mutual agreement."

(17) This authority supports the contention of Mr. Sikri that even if the matter was referred to the respondent No. 1 because of it having been espoused by the union and even if the latter withdrew its support the same would not cease to be industrial dispute and the respondent No. 2 could continue the proceedings as he was not willing for a settlement. The only distinction pointed out by Mr. Ginwala was that in that case the union had withdrawn its support, while here it purports to have made a settlement. I do not think this distinction is of any significance. The union by withdrawing the support t .clearly indicates it does not want the proceedings to continue. If this was the only distinction, the union may just settle with management on payments of Rupee one as compensation and thus prevent the workman concerned from continuing the proceedings. An interpretation which would lead to such an anomalous result obviously cannot be accepted.

(18) It is necessary to emphasise that though it may be open to the union to represent the individual workman even in the case of discharge, dismissal or termination of services of individual workman because there is no such bar u/s 36(1) of the Act, the same is subject to the right of the individual workman concerned, because of section 2A, which deems it to be dispute notwithstanding that no union is a party to the dispute. Thus the workman concerned is the final arbiter in such a matter and the union cannot make a settlement without his consent.

(19) Reference in this connection may be made to Section 33A which makes a special provision for adjudication as to whether conditions of service etc., are changed during pendency of proceedings and permits any employee aggrieved by such contravention to make a complaint in writing in the prescribed manner to such Labour Court, Tribunal or National Tribunal and on receipt of such complaint the tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it. Reference may also be made to Rule-4, 8-C, IU-A which provide for attestation of application and arbitration agreement in the case of an individual workman to be signed by a individual workman. The Act thus does recognise individual workman having right on his own and does not treat him as a mere appendage to the union, and the later cannot, Therefore, be held to have

any authority to enter into a settlement regarding his individual grievance without his consent and specific authority. Section 36(1) gives a right to workman concerned to be represented by the union. This provision cannot be used by union as laying a claim to a power and authority to override the wishes of the workman concerned. An agent obviously cannot make a settlement against the consent of the principal. The only authority to the union was to represent respondent No. 2 before respondent No. 1. No specific power to settle the matter on any terms with the management was given to the union. Neither specifically nor by implication can any authority be spelled to have been given to the union to settle the matter on any terms in opposition to the wish of respondent No. 2. Respondent No. 2 had filed an application dated 23-10-1971 before respondent No. 1 expressing apprehension that in pursuance of the ill designed policy of the union at the behest of some office bearers conspiracy might have been hatched out between the management and the union's office bearers to harm the case of the workman. The Labour Court was requested that no action be taken out and that union was no longer authorised to represent it. He also sent a telegram on 24-10-1971 to the union specifically stating that the union cannot represent him in court. It was only on 25th October, 1971 that the management and the union filed an application in the court indicating that they had agreed to settle the matter mutually out of court and that no dispute award may be given by the Labour Court. It is thus clear that before the application for the settlement was filed before the Additional Labour Court, the authority of the union had been revoked by respondent No. 2. Now the only authority which the union has is as representative by virtue of Section 36 of the Act and that having been revoked it could not proceed further. Mr. Ginwala sought to invoke section 203 of the Contract Act for the proposition that the principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal. He also stated that settlement had been made on 23-10-1971, before the receipt of intimation by the union from respondent No. 2. The union never had any authority to settle. Even assuming that union had entered into agreement on 23-10-1971, it would not assist the petitioner. This is because even assuming there was any authority given to the union, the same stood revoked by 23rd October, 1971 when the agreement was placed before respondent No. 1 for acting on it. Admittedly as respondent No. 2 was against it, and had not authorised the filling of the agreement by the union before respondent No. 1, the latter could not take note of or act on the basis of a document filed by union whose authority had been specifically revoked prior to that date. Moreover it seems to me that it is patently unjust to accept the alleged settlement on like terms which to the knowledge of the Union had been rejected by respondent No. 2 long time back. According to the present terms of settlement the total amount payable to respondent No. 2 has been agreed by union at Rs. 32,861.00. We have it on record a letter dated 21-8-1970 written by the Secretary of the union to its federation office, Calcutta in which it is clearly stated that respondent No. 2 was only agreeable if the company was to give him full compensation for 4-1/2 years which comes to Rs. 1,30,000.00 and had also

emphasised that as far as Khushi Ram is concerned if company does not agree to above terms he would like to fight the case even up to the Supreme Court. Coupled with the admission of the secretary of the union that respondent No. 2 was not agreeable to the present term of the settlement, there can be no doubt that the union was never given any authority to settle the matter on any terms less advantageous than an amount of Rs. 1,30,000/-. As regards points 7(a) (b), it has to be held that the Union has no authority to settle the dispute on behalf of the respondent No. 2 on terms other than for the amount of Rs. 1,30,000.00 and that further, the authority to represent him for a limited purpose had been validly revoked before the settlement was filed in before respondent No. 1, for acceptance, and was thus unauthorised.

(20) I was referred to *Sirsilk. Ltd- v. Govt. of Andhra Pradesh & Another* A. I. R. 1954 S.C. 160 In that case after the matter had been concluded before the Tribunal and the award has been sent to the Govt. for publication the parties entered into an agreement, the question that arose was whether it was open to the Government not to publish the award u/s 17. In that connection the Supreme Court noted that as the parties have arrived at the settlement, the Government can withhold the publication of the award as a settlement had been arrived at which would be binding u/s 18(1). Mr. Ginwala sought to rely on this for the proposition that once a settlement had been intimated to respondent No. 1 by the union and the management it had no option but to stay its hand on the ground that no dispute was outstanding. But this argument begs the whole question because the validity of the settlement itself is being challenged. It is essential for respondent No. 1 to decide about the validity of the settlement before it could act on it. That case only resolved the difficulty which arose in view of the settlement arrived at between the management and the union and the mandatory duty of the Government to publish the award.

(21) One of the arguments sought in support of the argument that the union has power to make settlement is that u/s 18(1) of the Act, the settlement is binding on the parties to the agreement and Therefore, if a settlement was made the same would bind the union, as per Section 18(3) a settlement arrived at in the course of conciliation proceedings or an award of Labour Court, is binding on all the parties to the industrial dispute. It was, Therefore, urged that if the union is not a party to the industrial dispute u/s 18(3) the award will not be binding on it and, Therefore, in spite of the award dismissing the claim of the workman, it would be open to the union to raise that issue again. I do not see any difficulty. If the union has espoused the case of an individual workman it will also be a party to the dispute along with workman and, Therefore, would be bound by the settlement or award given u/s 18(1) or 18(3) respectively. If it has not espoused the case of the workman the union would not be so bound. I do not see any anomaly or injustice in it. If the union has not espoused a dispute concerning an individual workman, I see nothing wrong if it is not held bound by an agreement entered into by the concerned workman with the management. Moreover the question of the award and the settlement being binding on the party is distinct

matter and different from the main point which is being canvassed as to who is competent to settle the dispute. That power cannot be given to the union when the individual workman has himself also raised the dispute and is thus a party to the industrial dispute. Point No. 7(0 really is an off shoot of the same point namely that in spite of respondent No. 2 being opposed to the settlement the union could nevertheless make a valid agreement. I have already repelled this argument and for the same reasons it must be held that any settlement made against the wishes of the respondent No. 2 cannot bind him. Being a member of the union does not make him a serf and deprive, the respondent No. 2 of his individual rights given under the Act. Point 4(B) arises out of objection- by Mr. Sikri, the learned counsel for respondent No. 2 that the issue that the present reference was individual dispute u/s 2A . of the Act was rest judicator as it was decided in prior proceedings before the parties and, Therefore, it was not now open to the petitioner to urge that it was a collective dispute which was referred and, Therefore, union alone had the power to make a settlement with the management. In this connection my attention was drawn to the judgment of Shankar J., in Civil Writ 147/71 (between the present parties) where while dealing with the case of Bengal Club Ltd. Vs. Santi Ranjan Somaddar and Another, , his lordship observed as follows :-

" REFERENCE was struck down in this case while it was yet pending before the Industrial Tribunal. This was because it was admittedly an individual dispute between the employer and the individual workman relating to period prior to introduction of Section 2A in the Industrial Disputes Act and on the face of it the Court found that it could not form the subject matter of a referenceS. This is so in this case because there are no admitted facts which parent ly show that the dispute referred is not an Industrial Dispute."

(22) I was also referred to some of the paras in the grounds taken by the " petitioner management: in SLP 3586/71 filed in the Supreme Court where in para 23 it was stated "your petitioner states that an individual dispute between Dunlop India Limited and its workman Khushi Ram Aggarwal was, thus referred to the Additional Labour Court, Delhi. Even though the union has been given the status as the workmen"s representative under the Order Reference such a representation does not in law indicate the existence of a collective dispute, which is a pre-requisite of an order of reference u/s 10 of the Industrial Dispute Act. Further in para No. 10 it was stated "Because from the reference itself it is clear that the Government was of the opinion that the dispute it was referring was an industrial dispute. The mention of the union was merely because of representation by the Respondent No. 3 in conciliating proceedings u/s 36 of the Industrial Disputes Act. The mere fact of representation by union, it is submitted docs not convert an individual dispute into an industrial dispute.

(23) It was strongly maintained by Mr. Sikri that the grounds taken by the petitioner itself shows a complete round about by the petitioner when it is urged that a collective dispute has been referred while previously its considered stand

was that it was individual dispute. Mr. Ginwala objects to the reference being made to these material on the ground that no such objection was taken either before the tribunal and in the writ petition in this court, with the result that the petitioner has not had any opportunity to explain and rebut this material. Mr. Sikri had also referred me to the order of respondent no. 1 dated 19-9-72 where on the objection by management that Mr. Sikri could not represent Aggarwal, as he had no authority from the union which had settled with the management, the respondent No. 1 held that Khusi Ram Aggarwal had certainly a right to prosecute the case even in the absence of union who earlier sponsored it.

(24) Though there is prima fade force in the argument of Mr. Sikri that the line of approach now being taken by the petitioner from that taken in the previous proceedings does run counter to each other, I have not thought fit to shut out the contention of the petitioner on this ground of res judicata, and that is why I permitted the counsel , for the petitioner to argue his points and am giving my decision on merits, it is not Therefore necessary to pursue this point any further.

(25) Mr. Ginwala had challenged the virus of Section 2A of the Act. He sought to adopt the reasons given in the judgment in Jute and Jute Goods Buffer Stock Association v. The Second Industrial Tribunal of West Bengal and ors. (76 Calcutta weekly Notes 196) (9) where it was held that Section 2A of the Industrial Disputes Act read with Section 10(1) is void and illegal. The said decision however was over-ruled by a division bench of Calcutta High Court in State of Bengal and Jute and Jute Goods Buffer Stock Association and others 1973 II LLJ 489 which held that Section 2A does not offend article 14 of the Constitution. Madras High Court in Singh (H. S.) and Labour Court, Coimbatore and another (19 F.L.R.) 362 also up held the validity of Section 2A. A Division Bench of this High Court in Fedders Lilyod Corporation (Pvt.) Ltd. v. Lt. Governor Delhi through under Secretary (Labour) Delhi and others 1970 Lab. I.C. 421 has also held that the Parliament had power to enact section 2A of the Act and has up-held its validity .The said decision is binding on me. I Therefore reject the challenge to the virus of Section 2A.

(26) Mr. Sikri had also argued in the alternative that even if it was to be held that the union had the power to enter into settlement in spite of title opposition and against the consent of respondent No. 2, it would be no avail because in fact no such agreement ever took place on 23-10-1971. This argument was sought to be supported by referring to the recital in the application dated 25-10-1971 filed before respondent No. 1 by the management and the union that the parties had agreed to settle the matter mutually out of court and it was urged that this shows that agreement was only to settle and not that an agreement in fact had taken place. Mr. Sikri made much of it that no copy of the agreement was filed on 26-10-1971 when the parties appeared in court, and the same was produced by the Secretary of the union. Bodh Raj only when he gave his evidence on 19-9-72. Respondent No. 1 has given a finding which a finding of fact that the union and management had in fact reached a settlement on 23-10-1971. This

being a finding of fact it is not open to review in these proceedings. Moreover I find that the management had written to the Secretary, Department of Labour, Delhi Administration a letter on 23-10-1971 in which it has purported to enclose a copy of the Memorandum of settlement reached between the union and the management. No attempt was made by respondent No. 2 to prove by evidence before respondent No. 1 that this letter was not accompanied by the agreement of 23-10-1971 which has now been produced. I cannot, Therefore, accept the argument of Mr. Sikri that no settlement was in fact reached between the union and the management.

(27) Mr. Sikri had next urged that even if it be assumed that the agreement was in fact entered into between the management and the union, the same was not in accordance with Rule 58 of the Rules, which provides that the settlement arrived at in the course of conciliation proceedings or otherwise shall be in form "H". Mr. Sikri says that there is non-compliance with the requirement mentioned in form H. The only objection pointed out however is that no short recital of the case is given in the settlement. I find the objection is without any merit. It is mentioned therein that the matter is pending before the Additional Labour Court, and that it had been settled between the management and the union on the terms mentioned therein. Reference to the letter written to the Secretary, Delhi Administration shows that the details and number of the I.D. reference and the parties are mentioned. Copy of the memorandum of settlement was sent to all the persons mentioned in form H as is clear from the said letter. I can not Therefore agree that the said settlement was bad as not having complied with Rule 58.

(28) There is, however, another fatal objection to the settlement between the union and the management dated 23-10-71 being accepted as valid in law, even if it was assumed that the union is competent to settle the matter against the consent of respondent No. 2. u/s 13 of the Trade Unions Act, 1926 every registered Trade Union shall be a body corporate by the name under which it is registered. Bye-laws 10 of the constitution of the union shows that the annual general meeting of the union shall be held within 45 days from the close of the financial year i.e. March 31st. At least a month's notice of the date and place of such meeting shall be given to all members of the union. Bye-law 17(c) provides for calling of an extra-ordinary general meeting by the Secretary and lays down that an extraordinary general meeting may be called for special purpose to deal with important matter and propaganda work in the interest of the union wherever he thinks necessary or on a requisition made in writing by at least 33 per cent ordinary members of the union clearly specifying the object of the meeting. A fortnight's clear notice shall be given of such meetings (emphasismine) . According to the evidence of Bodh Raj, General Secretary of the Union, the general meeting passed a resolution on 23-10-1971 wherein he was authorised to sign the settlement between the union and the management and he signed the settlement after that resolution was passed. It is thus apparent that the authority to sign the resolution of Bodh Raj was derived from

the general body meeting which was held on 23-10-1971. Consequently it follows that before any validity can be attached to the settlement signed by Bodh Raj on behalf of the union with the management, a valid general meeting of the union should have taken place. Mr. Bodh Raj has admitted that the notice of the meeting was sent to members only on 22-10-1971. He has also admitted that no notice of this meeting was sent to Aggarwal, respondent No. 2, though he was in Delhi and that he could give no reasons for that. He has also stated that Khushi Ram Aggarwal was a member of the union on 23-10-1971. Mr. Ginwala sought to urge that notice of the meeting might have been put on the notice board and that should be considered sufficient. But there was no suggestion even that the notice was put on notice board. As a matter of fact Bodh Raj was definite that no notice was sent to respondent No. 2. It was never his plea that he would have notice of meeting because it was pasted on the notice board. It is thus clear that though respondent No. 2 was a member of the union on 23-10-1971, no notice, however, of the meeting in which the resolution to enter into an agreement with the management was passed was sent to him. That meeting was being convened only for this purpose, i.e., also clear from the evidence of Bodh Raj wherein he stated that Mr Sundaram had come from Calcutta on 21-10-1971, in connection with this dispute. No information to Mr. Aggarwal that Mr. Sundaram had come for this settlement was given. The meeting was thus held without issuing any notice to respondent No. 2, a member of the union. It cannot be said that respondent No. 2 had no interest in the matter. Both Raj stated that Aggarwal was told of the terms of the settlement but he was not agreeable to the amount agreed, and that Aggarwal never took part in the negotiations with the management. As already noticed respondent No. 2 was definitely against settling the matter on terms at less than Rs. 1,30,000.00 as is clear from union letter of 22-8-1970 sent to the federation. Thus notice to respondent No. 2 a member of union was not only mandatory in law but consistent with justice. The union was purporting to call a general meeting to settle the respondent No. 2 case on terms definitely not agreeable to him. Surely the failure of sending any notice of a general meeting where the union was going to consider that matter cannot but vitiate the meeting and all proceedings subsequent thereto. Omission to give notice even to one member of a meeting of a body corporate like company invalidates the meeting, vide *Musselwhite and another v. C. H. Musselwhite and sons Ltd.* and others 1962 Com Cas 804. The consequences flowing from the omission to send a notice to a member of incorporated body was laid down by the Supreme Court in *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, :

" THE reason for the stricter rule laid down in the cases before us is that though an incorporated body like an University is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried only duly recorded in the manner laid down by its constitution. If its rules require such resolutions to be moved and passed in a meeting called for the

purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views. Individual assents given separately cannot be regarded as equivalent to the assent of a meeting because the incorporated body is different from the persons of which it is composed. Hence, an omission to give proper notice even to a single member in these circumstances would invalidate the meeting and that in turn would invalidate resolutions -which purport to have been passed as it. (emphasis mine). But this is only when such inflexible rigidity is imposed by the incorporating constitution."

(29) In that case though the Supreme Court found on facts that the defect of notice had been cured by holding subsequent meeting, the proposition of law laid down above is the one which would be applicable to meeting of body corporate like the trade union also. The effect of notice not having been served on a member of incorporated body makes the meeting invalid was accepted a century back by Lord Campbell and which were referred with approval in AIR 1934 62 (Privy Council) :

" THE election being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned and, if there was any omission to summon any of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance as for instance, abroad there could not be a good electoral assembly and even a unanimous election by those who did attend would be void."

(30) This rule was applied to the absence of notice given of a meeting of the institute of Chartered Accountants by a division bench of this court in Mohan Chandra and Others Vs. The Institute of Chartered Accountants of India and Others, where the resignation at a meeting was held to be invalid because the same had not been validly convened.

(31) In the present case on the admission of the General Secretary of the Union that no notice had been sent to respondent No. 2 who was a member of the union it is obvious that the meeting was not properly convened and a resolution passed therein for entering into a settlement with the petitioner is null and void. Faced with this Mr. Ginwala was forced to resort to the extreme argument that even if the meeting was held not to be properly constituted, the fact that the agreement was signed by the Secretary of the Union was sufficient compliance of Rule 58 because the same could be signed in the case of workman by an officer of a trade union. I regret my inability to accept such contention. When rules of the union authorises an officer of the trade union to sign the memorandum of settlement on its behalf, it obviously mean that the officer has been duly authorised to enter into an agreement. The power of the Secretary are found in clause 13(3) and only makes him responsible for proper execution of the directions of the executive committee and attend to all correspondence and generally look after and manage the office. No power is given to the Secretary to bind the union by any settlement without proper authority. As a matter of fact it

is only executive committee which is given the power to carry on the work of the union in accordance with the general directions that might have been given by the general body and shall be responsible for the efficient administration. Thus settlement in order to be validly binding has to be sanctioned by the general body meeting and only then can the Secretary derive any authority to sign on behalf of the union, and which can be held to be binding on the union. This contention Therefore fails. Notice to members as provided by byelaw 17(c) requires a fortnight's clear notice to be given of a meeting. Admittedly the notice was given on 22-10-1971 and on this ground also the meeting said to have been held on 23-10-1971, would be invalid. No valid settlement Therefore could be made by the Union in pursuance of the invalid meeting held on 23-10-1971 and the respondent No. 1 obviously could not act on this invalid agreement. That is another reason why the petitioner cannot insist upon the said agreement of 23-10-1971 to be accepted by the respondent No. 1, even if it was assumed that the union was competent to enter into an agreement. Union being a body corporate could only act and function in the manner laid down by its constitution. This has not been done in the present case. It must Therefore be held that on this ground to the memorandum of settlement dated 23-10-1971 said to have been agreed between the Union and the petitioner management was invalid and could not be acted upon by respondent No. 1.

(32) In this judgment at some places respondent No. 2 has been described as a workman. I wish, however, to make it clear that, this should not be taken as if a decision has been given that respondent No. 2 is a workman within the meaning of the Act. The said point has been specifically directed by Shankar, J. to be decided by respondent No. 1, and it has still to give a decision on this point.

(33) The result is that there is no merit in the writ petition. The same is dismissed with costs. Counsel's fee Rs. 500.00.

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