

(2018) 07 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 9199, 9293 Of 2017

Grindwell Norton Ltd.

APPELLANT

Vs

Transport and General Kamgar Union & Ors.

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 23 Rule 3

Maharashtra Recognition of Trade

Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 1C, 2(a), 2(b), 28

Industrial Disputes Act, 1947 — Section 10, 10(1), 18, 18(1), 18(3), 23, 33

Citation : (2018) 07 BOM CK 0081

Hon'ble Judges : A.K. MENON, J

Bench : Single Bench

Advocate : Sudhir Talsania, M.D'Souza, Avinash H. Fatangare, Avinash Jalisatgi, Amol B. Desai, .Sanjay Singhvi, K.Prasanna Kumar

Judgement

1. Heard. Rule. Rule returnable forthwith. Respondents waive service. By consent of parties taken up for final hearing.

2. This common order disposes of above two petitions challenging the order passed by the Industrial Court dated 31st July, 2017 granting increase in

wage of Rs.3,000/- per month to each of the workers of the petitioner. It has also stayed the implementation of settlement dated 12th July, 2017

entered into between the petitioner company and majority of workers employed by their factory at Mora. Respondent No.1 is the complainant Union

and Respondent Nos.2 and 3 are also Unions operating in the petitioner company at Mora.

3. In Writ Petition No.9293 of 2017 the petitioners are two Unions operating in respondent no.1's plant. These Unions are respondent nos.2 and 3 in

Writ Petition No.9199 of 2017. The challenge in this petition is directed against

the same order impugned in Writ Petition No.9199 of 2017. The

Unions are aggrieved by the order and judgment which rejected the original interim application and stayed implementation of the settlement dated 12th

July, 2017 till pendency of the complaint and ordered increase in payment of Rs.3,000/- per month to all workmen. The petitioners are aggrieved by

the fact that increase in wages was restricted to Rs.3,000/since according to them they were entitled for higher increase in wages and other benefits

but the Industrial Court has restrained the parties from implementing the settlement. Considering that both parties were aggrieved and have filed

separate petitions which are directed to be heard together. Considering the scope of dispute it was appropriate that the petitions be disposed of finally

at the stage of admission.

4. The facts in brief are as follows : Writ Petition No.9199 of 2017 being earlier in point of time, reference is made to the facts of this petition. The

respondent no.1 Union is stated to recently represent few workers employed by the petitioner. Respondent Nos.2 and 3 are also Unions operating in

the petitioner company (the company). The company and said respondent nos.2 and 3 and one Raigad Shramik Sangathana had entered into

Long Term Settlement dated 30th August, 2011 which expired by efflux of time on 31st August, 2014. The respondents meanwhile submitted a

Charter of Demands on 18th July, 2014 seeking revision of wages. According to the petitioner - company and as canvassed by Mr. Talsania, learned

Senior Advocate meetings were held from time to time with the Union and they had entered into an amicable settlement of demands raised by the

Union as well as the company's demand in relation to productivity etc.

5. The demands made by respondent no.1 were admitted in Conciliation and then referred to the Industrial Tribunal under Reference (IT) No.48 of

2015. The company challenged the same in Writ Petition No.646 of 2016 since Reference did not include the demands of the company regarding

productivity. The High Court vide order dated 25th July, 2017 held that the issue of productivity will be adjudicated by the Industrial Tribunal in

reference along with demands of the Union. While Reference (IT) No.48 of 2015 was still pending, the respondent no.1 Union filed a complaint

alleging unfair labour practice under Items 1(c), 2(a) and (b) of Schedule-II of the MRTU & PULP Act, 1971. For ease of reference these items are

reproduced below :

1. To interfere with, restrain or coerce employees in the exercise of their right to organise, form, join or assist a trade union and to engage in

concerned activities for the purposes of collective bargaining or other mutual aid or protection, that is to say

(a) ...

(b) ...

(c) granting wage increase to employees at crucial periods of union organisation, with a view to undermining the efforts of the union at organisation.

2. To dominate, interfere with, or contribute, support financial or otherwise - to any union, that is to say" (a) an employer taking an active interest in

organizing a union of his employees; and

(b) an employer showing partiality or granting favour to one of several unions attempting to organise his employees or to its members, where such a

union is not a recognised union.

6. It is alleged that the complaint was filed to prevent the parties from entering into settlement. Later an application seeking interim relief was taken up

to restrain the company from negotiating and entering into settlement with any Union. The complaint also sought directions that any proposal for wage

rise arrived at by the Company shall be placed before the Industrial Court along with application for the interim relief. The respondent opposed the

application vide affidavit dated 26th April, 2017 on the basis that reference was pending adjudication and respondent no.1 had attended meetings only

with a view to obstruct bilateral discussions which were aimed at disturbing industrial peace. The company contended that the petitioner and

respondent nos.2 and 3 had concluded discussions on the charter of demand and arrived at an understanding.

7. It is contended that at a meeting held on 14th February, 2017 the company and respondent nos.2 and 3 came to an understanding on the issue of

productivity and all matters relating to the Charter of Demands were amicably resolved and settled. While a settlement came to be signed between the

petitioner-company and respondent nos.2 and 3 on the 12th July, 2017, the majority of workers received average wage increase of Rs.5,730/- per

month amongst other benefits and in consideration thereof the employees and their union agreed to increase the productivity by minimum 15% above

the present plant level output of 132% average output for the month. The total of 102 out of 163 employees accepted the settlement dated 12th July,

2017. The petitioner states that all employees of the Mora factory have been given option of acceptance of the settlement till 11th August, 2007.

8. On 27th July 2017, Respondent no.1 filed an application seeking stay of the implementation and effect of the settlement. The petitioner opposed the same and filed a reply dated 29th July, 2012. The Industrial Court after hearing the parties passed an order dated 31st July, 2017 (â??impugned

orderâ?) staying the effect and implementation of the settlement dated 12th July, 2017 and directed the petitioner to pay an interim wage rise of

Rs.3,000/- per month to all the workers employed by the petitioners.

9. Mr. Talsania submitted that the effect of the impugned order is not only to direct payment of sum of Rs.3,000/- to all those who are not party to the

settlement without any reference to ensuring higher productivity level contemplated in the settlement but even those who had signed the settlement

were prevented from receiving a sum of Rs.5,730/- payable as per the settlement. Mr. Talsania submitted that the impugned order has resulted in

grave prejudice not only to the petitioner-company but also to the workmen who have signed the settlement. The impugned Â order was passed in

excess of the powers of the Industrial Court by overlooking settled law laid down by the Supreme Court in *Jaihind Roadways vs. Maharashtra Rajya*

Mathadi Transport & General Kamgar Union & Ors. [(2005) 8 SCC 51] and *State of Uttranchal vs. Jagpal Singh Tyagi* [(2005) 8 SCC 49] to the

effect that a challenge to fairness of a settlement is maintainable only on specific grounds otherwise there could be no order contrary to such

settlement. He further submitted that the company was not heard on the interim application on the issue of grant of interim relief of Rs.3,000/-. In fact

the applicant-respondent no.1 had not sought interim relief of Rs.3,000/- per month in its application. Moreover, binding a settlement accepted by 102

out of 163 employees has now been partially stayed. Mr. Talsania further submitted that the Industrial Court had also incorrectly held that the

company avoided negotiations with respondent no.1-union when documents placed on record clearly establishes that respondent no.1 had meeting with

the petitioner-company on 5th August, 2015 when they steadfastly declined to negotiate on increasing productivity but insisted only on increase in

wages. Attempts were made by the respondent no.1-union to also disrupt all negotiations by raising unconstitutional demands. The stay granted on the interim application during pendency of main reference thus runs against the accepted norms that the settlement should not be normally interfered with unless exceptional circumstances exists. In the present case there are no such exceptional circumstances that can be pointed out by respondent no.1.

Moreover, grant of interim relief under the MRTU & PULP Act is questionable. By virtue of the interim application, the main complaint remained

pending at the same time the workers who had signed the settlement would also be affected inasmuch as the promise to ensure higher productivity

may not be honoured in view of reduction in interim wage rise. He, therefore submitted that the impugned order is liable to be quashed and set aside.

10. On behalf of the respondent no.1, Mr.Singhvi contended that there was nothing amiss with the interim order. It is contended that unions by

respondent nos.2 and 3 were involved in negotiations. It is contended that there is no revision in the service conditions of the employees due since the

end of year 2014 and there is no instance of any disturbance in the factory. All employees have been fully co-operative but when respondent no.1-

union realised that they have been singled out for discriminatory treatment and a settlement had been arrived with other unions they approached the

Industrial Court much prior to signing of the settlement. According to respondent no.1, the management of petitioner had discriminated against the

respondent no.1-union and had indulged and encouraged the other unions in order to prevent effective and collective bargaining. The General

Secretary and President of Respondent No.1-union were not allowed to participate fully on the Charter of Demands and in the negotiations.

Respondent No.1-union was forced to approach the Conciliation Officer and seek intervention. only upon realisation that the petitioner was unwilling

to permit fair settlement respondent no.1-union.

That the interim application seeking restraint order against the petitioner was heard on 4th May, 2017. Thereafter the matter was adjourned for

passing orders on the interim application. It is contended that the company made a statement that no settlement will be signed until passing of the

interim order. I may observe that this contention has been refuted by the company in their affidavit in rejoinder in paragraph 11 where they contend

that the Industrial Court had heard application for the interim relief but has not passed the order for two months and in the meantime on 12th July,

2017 the settlement came to be signed.

11. Mr.Singhvi further submitted that the settlement was entered into without any scientific study. He submitted that in absence of wage increase and

three years after last settlement was signed, the new settlement offered one time settlement for an amount of Rs.85,000/- and some of the employees

were pressurized by the petitioner-company to sign the settlement. According to Mr.Singhvi the company had deceived the unions and total workmen

involved in production were 150 and not 163 as contended. It is submitted that the respondent no.1 had denied the allegations of having adopted

disruptive tactics. He stated that the respondent no.1-union had never avoided discussions on the issue of productivity. He further submitted that

unless there is scientific study done there is no possibility of increasing productivity and the settlement with other unions have created hegemony,

disparity and disturbance to smooth functioning of the plants. He therefore submitted that the impugned order could not be faulted.

12. Vide the affidavit in rejoinder filed on behalf of the company, it is clarified that 107 workers are employed at the factory at Mora and they have

submitted their individual undertaking to abide by the terms and conditions of the settlement. The workers have also started honouring the promises to

increase productivity as per the terms of settlement and as against overall minimum productivity level of 132%, the productivity that is now achieved is

at 152% on an average. It is submitted that the workers who are not parties to the settlement are not paid as per productivity and lump sum amount

has been paid to the workers who are on the rolls of the company and have continued in service till date. All benefits of the settlement have been

accepted by the workers and the settlement is implemented in its entirety. It is further contended that the President and General Secretary of

respondent no.1 are not employed at Mora factory and hence they did not participate in the negotiations and Charter of Demands submitted by the

union. It is further disclosed that respondent no.1 was granted sufficient time to consult with their external union representatives and their internal

union leaders working in the establishment who have participated in the numerous meetings as evident from the minutes. However, the Minutes dated

5th August, 2011 record that respondent no.1-union has refused to negotiate on productivity levels and have raised exorbitant demands towards wage

increase. It is contended that respondent no.1-union was not ready and willing to have meaningful negotiations. It is further submitted that Complaint

(ULP) No.133 of 2017 was filed in February 2017 and heard on 4th May, 2017. It is stated that on 25th July, 2017 when the Writ Petition came up for

hearing inadvertently the Court was not informed that the settlement had already been arrived at. In any case, it is stated that no harm is caused by

the settlement to those members who have not signed the settlement and upon whom no further burden has been cast by virtue of settlement.

13. Mr. Talsania submitted that the impugned order has arbitrarily granted wage increase to all the workers by being completely silent on the aspect of

productivity. It is therefore submitted that the impugned order is liable to be set aside. In the course of submissions, reliance is placed by Mr. Talsania

on the application for passing an award in terms of settlement which had been filed in the pending reference. He also relied upon the decision of this

Court in the case of very petitioner in Writ Petition No.4994 of 2007 wherein in similar circumstances in relation to settlement dated 26th May, 2006

which applied to two unions, the members of petitionerunion had certain reservations. In that case the members of the petitionerunion were not averse

to increase in wages but no assurance was forthcoming for increase in production levels. The Court found it appropriate to direct the Tribunal to

consider whether the settlement is fair and proper in the first instance and whether the award should be passed in terms of the settlement. In the

instant case as well, Mr. Talsania submitted that the application for passing an award in terms of the settlement is pending and it is only appropriate

that the same may be considered.

14. In Writ Petition No.9293 of 2017, Mr.Jalisatgi, learned counsel appearing for the petitioner â?" union contended that his client has been adversely

affected by virtue of litigation initiated by the Transport and General Kamgar Unionâ?"Respondent No.2 in this petition. He submitted that the unions

were functioning at the factory of respondent no.1 in this petition. For the sake of convenience reference to the parties are being made in accordance

with array of parties in Writ Petition No.9199 of 2017. 15. Mr.Jalisatgi submitted that respondent no.1-union had filed Complaint (ULP) No.133 of

2017 wherein the interim order which has been passed directly affects the employees of respondent nos.2 and 3-unions in Writ Petition No.9199 of

2017, who are equally aggrieved by the impugned order inasmuch as despite the settlement having been signed, the same cannot be put into operation

by virtue of the impugned order. As against sum of Rs.5,730/- to be paid in view of settlement to members of respondent nos.2 and 3-union, the

interim order reduced the amount to Rs.3,000/- at the same time the workers had agreed to rendered higher productivity.

16. Mr.Jalisatgi submitted that respondent nos.2 and 3 had informed the Industrial Court that negotiations between the petitioner and respondent nos.2

and 3 were at an advanced stage and is likely to result in a settlement. This aspect was brought to attention of the Industrial Court and the orders

remained to be passed for two months and in the meantime consent terms were signed since there was no restriction in arriving at the settlement. In

the circumstances, it is contended that the impugned order is bad in law and deserves to be quashed and set aside. Mr.Jalisatgi further submitted that

the settlement which resulted from detailed negotiations between the parties and involving majority of the workmen whose interest were duly

represented by respondent nos.2 and 3-union could not be deprived at the interim stage on the basis of the complaint under MRTU & PULP Act. The

members of respondent nos.2 and 3 have been handsomely compensated by increasing wages as well as lump sum in exchange of promise of higher

productivity which promise has been kept. In the circumstances, he submitted that the impugned order operates against the interest of the workmen.

He therefore submitted that the interim order is bad in law and liable to be set aside.

17. Mr.Jalisatgi relied upon the decision of this Court in the matter of Tata Consulting Engineers and Associates' Staff Union vs. Tata Sons Ltd.

Mumbai & Anr. 2001 II CLR 856 wherein it was observed that the petitioner Union which had minority representation had made a reference ignoring

the fact that except 23 workmen the remainder of over 200 workmen had accepted the settlement. The settlement had increased benefits to the

workmen and majority of it had received benefits although under protest. In that case, the Court observed that if the respondent-union had acted

against the interest of the workmen they would have been replaced by the petitioner-union and that the view of majority had to be accepted on the

basis that it is not always that the majority is right but at the same time it cannot be said that the majority is always wrong. The minority union cannot adopt a tyrannical attitude.

18. Mr. Talsania referred to the decision of the Supreme Court in case of *Herbertsons Ltd. vs. The Workmen of Herbertsons Ltd. and Others* (1976)

4 SCC 736 in which he referred to the observations of the Supreme Court in paragraphs 24 and 25 wherein it is held that the question of adjudication

has to be distinguished from a voluntary settlement. The settlement, therefore, cannot be judged on the touchstone of the principles which are laid

down by the Supreme Court for adjudication. There may be several factors that may influence parties to come to a settlement in a phased manner in

the course of collective bargaining. Once cordiality is established between the employer and labour in force there is always a likelihood of further

advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. It is in that spirit that a settlement has

to be judged and not by the yardstick adopted in scrutinizing an award in adjudication. Hence in that case, the Tribunal fell into an error in invoking the

principles that should govern in adjudicating a dispute regarding dearness allowance, in judging whether the settlement was just and fair.

19. Mr. Talsania further relied on the decision of *National Engineering Industries Ltd. vs. State of Rajasthan and Others* (2000) 1 SCC 371 wherein in

paragraph 24 the Supreme Court observed that the High Court has jurisdiction to entertain a Writ Petition when there is an allegation that there is no

industrial dispute and none apprehended which could be the subject matter of reference for adjudication of the Industrial Tribunal under Section 10 of

the Industrial Disputes Act. That the a question of jurisdiction of the Industrial Court could be examined by the High Court and the settlement of the

dispute between the parties is to be preferred where it could be arrived at as against adjudication and a settlement would lead to more lasting peace

than an award. It is further observed that a settlement arrived at in the course of conciliation proceedings with a recognised majority union will be

binding on all workmen of the establishment and even those who belong to the minority union which had objected to the same. The recognised majority

union is expected to protect the legitimate interests of labour and enter into a settlement in the best interests of labour. This is with the object to uphold

the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union

from scuttling the settlement. In that case, it was not shown to the Court as to how a settlement arrived at on a holiday would be invalid. The Court

found that there is no bar in having conciliation proceedings on a holiday and to arrive at a settlement.

20. On behalf of the respondent no.1 Mr.Singhvi relied upon the following decisions :

(a) The State of Bihar vs. D.N. Ganguly and Others, Supreme Court Reports 1191;

(b) Sital Sukhram vs. Central Government Industrial Tribunal cum Labour Court, Jabalpur & Others AIR 1969 MP 200;

(c) Sirsilk Ltd. & Anr. vs. Government of Andhra Pradesh & Anr. AIR 1964 SC 160;

(d) ICL Ltd. Vs. N.A. Kadam & Others 1993 I CLR 378;

(e) General Manager, Security Paper Mill, Hoshangabad vs. R.S. Sharma and Others (1986) 2 SCC 151;

(f) M.S. Patel & Co. vs. Workmen represented by Association of Engineering Workers and Others (1994) 68 FLR 413 (Bom.);

(g) C.T.R. Trade Union & Ors. vs. C.T.R. Manufacturing Industries Ltd. & Ors. 1992 I CLR 632;

(h) Grindwell Norton Ltd. vs. Grindwell Norton Workers Union and Others (1987) 54 FLR 727 (Bom.);

21. Relying upon the decision of D.N. Ganguly (supra) Mr.Singhvi contended that if the dispute is referred under Section 10(1) and settled between

parties, the only remedy for giving effect to the such a compromise would be to cancel the reference and to take the proceedings out of the jurisdiction

of the Industrial Tribunal. The Supreme Court, however, did not accept this argument which was based on assumption that the Industrial Tribunal

would have to ignore the settlement by the parties of their dispute pending before it and would have to make an award on merits, despite settlement.

That the Act did not contain any provision authorizing the Industrial Tribunal to pass an order under Order 23 Rule 3 of the Code of Civil Procedure.

But it would be reasonable to assume that the Industrial Tribunal would insist upon dealing with the dispute on the merits even after it is informed that

the dispute has been amicably settled between the parties. The Court observed that amicable settlement of dispute would lead to Industrial peace and

harmony. Settlements reached before the Conciliation Officer would be binding under Section 18. He therefore submitted that in the instant case,

settlement was not arrived at in conciliation proceedings and was not binding on all employees.

22. On the other hand in case of *Sital Sukhram (supra)*, Mr. Singhvi relied upon paragraph 11 to contend that it is open to the Tribunal to record a

compromise or agreement between the parties and, it is not that a compromise arrived at between the parties before a Tribunal may not be considered

by it at all, but the Tribunal cannot deal with it like a settlement between the parties which may be recorded under Order 23 Rule 3 of the Code of

Civil Procedure. That the Tribunal, by virtue of Section 18 of the Act, makes an award and it can adopt the compromise entered into by the parties as

the foundation of the award after considering whether it is a fair and just settlement of the disputes.

23. In *Sirsilk Ltd. (supra)* Mr. Singhvi relied upon the fact that the parties to the industrial dispute have arrived at a settlement which is binding under

Section 18(!), the dispute between the parties comes to an end and the settlement arrived between the parties should be respected and industrial peace

should not be allowed to be disturbed by the publication of the award which might be different from the settlement. That if a settlement has been

arrived at pending dispute, the parties would file the settlement before the Tribunal which could make the award on the basis of settlement. Reference

is made to the decision in *D.N. Ganguly (supra)* while dealing with an argument urged before the Court that where a settlement has been arrived at

between the parties while an industrial dispute was pending before a tribunal, and that the only remedy for giving effect to such a settlement would be

to cancel the reference. The Supreme Court observed that though the Act did not contain any specific provision authorizing the Industrial Tribunal to

record a compromise and pass an award as contemplated under Order 23 Rule 3 of the Code of Civil Procedure, it would be very unreasonable to

assume that the Industrial Tribunal would insist upon dealing with the dispute on the merits even if it is informed that the dispute has been amicably

settled.

24. In case of *D.N. Ganguly (supra)* it was held that the settlement or compromise would have to be filed before the Tribunal and the Tribunal would

make an award in accordance with the settlement. The difficulty arises when the matter has gone beyond the purview of the Tribunal and such

situation has to be resolved in order to avoid possible conflict between Section 18(1) which makes the settlement arrived at between the parties

otherwise than in the course of conciliation proceedings binding on the parties and the terms of an award which are binding under Section 18(3) on

publication and which may not be the same as the terms of settlement binding under Section 18(1). In conflict between a settlement under Section

18(1) and an award binding under Section 18(3) on publication, the only remedy is to withhold the award from publication.

25. Relying upon a decision of this Court in ICI Ltd. (supra) Mr.Singhvi pointed out that in that case on 11th December, 1970 there was a settlement

between the company ICI Ltd and their employees Union which expired on 31st December, 1973. The respondent concerned submitted a fresh

charter of demands, which were negotiated with the petitioner and a settlement was signed on 10th September, 1974 which was valid upto 31st

December, 1977. This settlement was signed outside conciliation proceedings. Therefore taking the view that the settlement would bind only the

petitioner and members of respondent no.3 union, the petitioner insisted that the workmen express their willingness to accept the terms of said

settlement dated 10th September, 1974 and each workmen was asked to declare in writing that he had received a copy of the said settlement and that

he had become a willing party to said settlement, similar to the case at hand. The Court observed that the decision in Herbertsons (supra)

merely postulates that, upon an industrial dispute ensuing, the Tribunal has judicial discretion to examine the settlement, and if it is satisfied, the

Tribunal can apply the same to the workmen who are unwilling to be party to the settlement.

26. In the case of General Manager, Security Paper Mill, Hoshangabad (supra) the Supreme Court had made distinction between the binding effect of

a settlement entered into during conciliation proceedings and a settlement de hors conciliation proceedings. It was a case where a section

of workmen, who were not members of a particular Union or parties to the agreement entered into by the said Union and the employer, challenged the

validity of the agreement before the Competent Authority under the Payment of Wages Act. In the Supreme Court, the only point agitated was that

the employees' union which had entered into the agreement on 11th April, 1979 was entitled to represent all workers, including the workers who are

respondents to the appeal. Analyzing the provisions of Section 2(p), Section 18(1) and 18(3) of the Act, the Supreme Court came to the conclusion

that there was no evidence to show that the respondent-workmen were members of the union which had entered into agreement and consequently,

held that the agreement was not binding on such workmen. It had not been shown that the previous settlement between parties had been terminated.

Mr.Singhvi therefore submitted that in the present case as well, it was not possible to accept the terms of settlement upon respondent no.1-union and it

was open for the union to raise the dispute and have the same settled. The Court held that the Tribunal has jurisdiction to make an award extending

the terms of settlement to all workmen in the industrial establishment. As to whether the terms of the settlement are fair and need to be extended to

the entire body of workmen, and what need not be extended to entire body of workmen are matters within the judicial discretion of the Tribunal.

27. Relying upon these observations, Mr.Singhvi submitted that it is open for the Tribunal to consider validity of the settlement at the time of making an

award after final determination. Mr.Singhvi relied upon the observations of the Supreme Court in paragraph 8 wherein alternate argument of the

Management was considered that the agreement reducing the incentive benefit was fair and just and therefore it should not be interfered with. No

material was placed by the Management before the Authority under the Payment of Wages Act or Industrial Court to show that the said agreement

was fair and just. A reduction of incentive benefit in the circumstances of the case cannot be considered as either fair and just. Applying the aforesaid

decision to the facts of the present case Mr.Singhvi sought to submit that merely because increase in productivity is promised it does not mean that it

would be achieved especially in absence of a scientific study.

28. Relying on the judgment of C.T.R. Trade Union & Ors. (supra) Mr.Singhvi submitted that Respondent No.1â?"company was directed to extend

the benefits under the settlement between itself and the Respondent no.2union to the members of petitioner-union without seeking any

declaration/undertaking of the petitioner and question as to whether the members of the petitioner-union should be subjected to the obligation arising

under the said settlement shall be determined by the Tribunal. In the instant case, similar order could be passed which would meet the ends of justice.

29. Finally, relying upon the decision of Grindwell Norton Ltd. (supra) Mr.Singhvi submitted that there is no justification in refusing to pay the

employees on a uniform basis simply because the reference made by some respondents is pending. In the instant case, merely because respondent

no.1-union has made a reference, there is no reason not to pay increase in wages as directed by the impugned order. He therefore submitted that the

interim order does not require any interference.

30. I have heard learned counsel for the parties at length and have perused the Charter of Demands dated 18th July, 2014, Complaint (ULP) No.133

of 2017 dated 24th April, 2017 alleging unfair labour practice as well as application for interim relief and affidavit in support of the interim application

and pleadings in the interim relief application.

31. I shall first deal with contents of memorandum of settlement. The objectives of the settlement are set out in the opening recitals. The intention is to

make improvements at Mora Plant in terms of services and increase market share in domestic and export markets, to build upon culture of Safety at

Mora plant, minimum increase of 15% in output index over and above existing â??plant level average indexâ? of 132%, linking benefits to

performance in terms of productivity and adopting globally prevalent manufacturing practices such as new methods including carrying out scientific

studies on all work stations and operations during the course of agreement period, sustainability of plant, improve overall performance by outsourcing

non-core activities were also to be considered. In effect, it contemplated in increase in wage structure of the participating unions and variable

incentive scheme which was based on 15% increase in output index over and above existing â??plant level average indexâ?. The plant incentive was

linked with productivity increase as well. The settlement is thus even otherwise seen to be assure one of the key features to increase in productivity.

Annexure â??Câ? sets out incentive table for operative of workstations and sets out incentive earning under old measurement of production index,

provided increase in production is achieved along with settlement there are several individual. There is specimen copy of the individual undertaking

wherein an employee concerned has agreed to adhere to the settlement. Thus,

the settlement is arrived at pursuant to the Charter of Demands which contained 41 demands including interim relief of higher wages. The settlement arrived at comes into effect from 1st August, 2017 and shall remain in operation till 31st July, 2020 unless amended or superseded by any subsequent settlement or award as per provisions of the Industrial Disputes Act.

32. In the meantime the complaint filed under Section 28 read with Item 1(c), 2(a) and (b) of the MRTU & PULP Act states that respondent nos.2

and 3 had proceeded to enter into negotiations without participation of the complainant-union and that the petitioner has been favouring other unions or

having small membership so as to encourage the membership of other unions. That the management with active involvement of respondent nos.2 and

3 arrived at settlement with some persons so that employees can be pressurized to accept the terms of settlement helpful to the management.

However, in conciliation no such acceptable or fair settlement has been arrived at. In the circumstances they sought declaration of unfair labour

practice and a direction to the respondents to cease and desist from engaging in unfair labour practices. No specific allegations that meet with the

specification under Item 1(c) have been made out in the complaint. There is no evidence that the petitioner and respondent nos.2 and 3, at any crucial

stage, have undermined, efforts of respondent no.1-union. Thus, unless respondent no.1 was able to demonstrate that the settlement was entered into

at the stage when respondent no.1 union was being organised, there was no occasion in my view to attract Item 1(c) of Schedule II for alleging unfair

labour practice. Secondly, even under item 2(a) and (b) nothing on record indicates that the petitioner has interfered or conflicted with officially or

otherwise to organise respondent nos.2 and 3-unions. Equally, nothing has been shown whereby the petitioner has acted with partiality, to grant any

favours to respondent nos.2 and 3 in attempting to organise employees. It is also not a case that respondent nos.2 and 3 are not recognised union. In

the circumstances, the complaint does not prima facie justify the allegations of unfair labour practice.

33. Further reliefs sought in the complaint is quashing all undertakings in the settlement reached between the employees and management without

involving respondent no.1 and to restrain the petitioner management from negotiating or arriving at a settlement or implementing settlement without

involving respondent no.1. In the application for interim relief similar prayers have been incorporated to restrain the petitioner from arriving at an understanding or settlement or implementing any settlement, if any, arrived at. The affidavit in support of the application does not demonstrate as to how there has been breach of Item 1(c), 2(a) and (b). On the other hand in the affidavit in reply, a specific averment has been made as to the several attempts made to hold meetings with respondent no.1 complainant, the Charter of Demands of the complainant which have been referred for adjudication and how the complaint is not maintainable. The reply specifically states that even at that stage the petitioner was willing to discuss matters pertaining to the Charter of Demands and acceptance of respondent no.1 complainant that the management has never refused to resolve the issue between them but approach of respondent no.1 has been adamant and against interests of the employees and an application is also filed to oppose interim relief, in which it is specifically stated that respondent no.1 refused to discuss expectation of the petitioner for increasing productivity which has since been agreed between the petitioner and respondent nos.2 and 3. That the petitioner and respondent nos.2 and 3 have arrived at an understanding for increasing productivity as on 14th February, 2017 and a copy of the minutes of meetings were also referred to.

34. This additional affidavit was dated 2nd May, 2017 whereas the application for interim relief was heard and closed for orders on 4th May, 2017.

Thus, all materials on facts have been placed before the Court. The impugned order, however, proceeds to consider whether the complainant â?

respondent no.1 has made out any prima facie case and has also considered balance of convenience and considered whether the parties had altered

service conditions to prejudice of the workmen as contemplated under Section 33 of the Industrial Disputes Act. After considering the judgments of

this Court in case of Kirloskar Oil Engines Ltd. vs. V.B. Dharurkar 1987 I LLJ 366, Mumbai Mazdoor Sabha vs. Bombay Dyeing 1982 LAB I.C.

1533 and Prakash Cotton Mills Ltd. vs. Rashtriya Mill Mazdoor Sangh 1994 II CLR 966 in paragraph 18, the Court observed that none of the Unions

were recognised unions. That out of three unions respondent no.1-union had avoided negotiations with the petitioner. It holds that the act of the

petitioner in arriving at the settlement with other two unions does not appear to benefit the workers and that reference is already pending before the

Tribunal in respect of wage revision. Since Reference (IT) No.48 of 2015 was pending on file of the Industrial Court, the Court found that the legality and propriety of the settlement dated 12th July, 2017 has to be examined. The settlement was already placed on record but the Court has declined to pass any order prohibiting negotiations between the petitioner and employees, however, after observing so, the Industrial Court proceeded to hold that on plain reading of Section 23 of the Industrial Disputes Act, service conditions cannot be altered to prejudice the workmen during pendency of the Industrial dispute. Respondent No.1 was disputing increase in productivity being demanded since it would be detrimental to health of the workmen and therefore legality and propriety of the settlement had to be examined in Reference (IT) No.48 of 2015.

35. Exhibit U-2 seeking to restrain the petitioner from negotiating with the respondent nos.2 and 3 was rendered infructuous. However, Exhibit-U-11 was allowed in part holding that the petitioner has prima facie engaged in unfair labour practice under Item 1(c), 2(a) and 2(c) of Schedule II and implementation of settlement was also stayed but subject to granting interim wage rise of Rs.3,000/- per month. No mention is made of increase in productivity. The impugned order in my view cannot be sustained. The option given to the Charter of Demands as seen has been detailed in all aspects have been considered prior to the settlement being entered into. The record indicates that attempts have been made to engage respondent no.1 also in negotiations so as to arrive at a comprehensive and inclusive settlement. Needless to mention, the Company expected to benefit from some measure of increase in productivity. However, respondent no.1 has steadfastly declined to negotiate and thwarted such attempts by contending that it would not be conducive to the health of the workers with no evidence of such detrimental effect of increased productivity. Various judicial pronouncements referred to and relied upon by the counsel for the parties merely indicate that the Tribunal could while determining a dispute, make an award on the basis of a settlement arrived at between the parties should it consider appropriate to do so.

36. In the case at hand, the impugned order imposed upon the petitioner an obligation to pay ad hoc wage increase of Rs.3,000/- per month per worker without any obligation on the part of the worker to increase productivity. The settlement is put in operation and it is said that the workmen who are

bound by higher productivity have been frustrated on two counts firstly, on being deprived of the wage increase by Rs.5,350/and at the same time by not linking wage increase of the other union's members to higher productivity. In view of the fact that reference is still pending before the Tribunal the effect of interim order is to impose upon the petitioner an additional monthly burden of Rs.3000/- per month without leading to higher productivity agreed to be offered by the workmen concerned. Equally, it ignores the fact that each of the workmen who are bound by the said settlement were undoubtedly in the majority union and minority membership would have succeeded in delaying the settlement at least temporarily till the Industrial Court decides. This is certainly not a desirable state of affairs given the fact that the respondent no.1 has clearly indicated that it is not willing to increase productivity on the basis that no scientific study has been carried out and their submission is that increase in productivity is likely to have negative effect on the health of workmen. In this scenario, it is not open to respondent no.1-union to prevent operation of the settlement in the interregnum pending decision of the reference.

37. As far as complaint in MRTU & PULP clearly appears to be frivolous and in my view unsustainable. Given the stage at which the matter presently stands, an interim order such as the one impugned, is not justifiable. In the circumstances considering the overall factual matrix the following order is passed :

- (i) The impugned order dated 31st July, 2017 passed by the Industrial Court,Thane in Complaint (ULP) No.133 of 2017 is quashed and set aside.
- (ii) Rule is made absolute in above terms.
- (iii) No order as to costs.