
(2003) 12 AHC CK 0030
In the Allahabad High Court
Case No : C.M.W.P. No. 10794 of 1985

Hind Lamps Ltd.	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Banking Regulation Act, 1949 — Section 45
Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 16, 17, 18
Uttar Pradesh Industrial Disputes Act, 1947 — Section 18(1), 4K

Citation : (2005) 1 ESC 526

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : Vijay Bahadur Singh and Vijay Sinha, for the Appellant; B.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Petitioner, Hind Lamps Limited, is a company registered under the Indian Companies Act, situated at Shikohabad, through its General Manager, has approached this Court for quashing of the award of the Industrial Tribunal IVth Agra dated 7.5.1985 (Annexure 1 to the writ petition) to the extent house rent allowance has been allowed to the worker of the aforementioned establishment, who have not been provided the house accommodation with effect from 31.3.1980.

2. Brief background of the case, as mentioned in the writ petition, is that the petitioner, which is a public limited company having its registered office at Shikohabad is carrying on the business of manufacturing electric lamps, tubes and miniature lamps in its factory at Shikohabad and there are 1700 employees working in the aforementioned establishment. In the year 1976 there existed only one Union of the workmen, which was known by the name of Indicate Shramik Sangh, which was registered trade Union and which was recognised by the petitioner. Primarily 90% workmen were its members. In the year 1977

another worker's Union, namely Hind Lamps Shramik Sangh, respondent No. 3 came into existence. This particular union gathered support initially and was recognised by the petitioner as the majority union. Subsequently however, respondent No. 3 led strike in the year 1978, which came to an end after two months on account of which the aforementioned union lost a lot of its support and Indicate Shramik Sangh again become majority union of the petitioner Unit. As Indicate Shramik Sangh, had an overwhelming majority of workmen as its member the petitioner entered into long-term settlements with aforementioned Union from time to time. Earlier on 9.8.1973, settlement was arrived at between the petitioner and the Union, which continued to remain in force till 30.4.1976, when it was terminated by the workmen as well as by the employers. In this agreement a scheme for good attendance leave was provided which remained in force for a period of three years after termination of the aforesaid agreement, Indicate Shramik Sangh had submitted a charter of demand dated 12.10.1976, which included the demands for Holiday Allowance, House and Cycle Allowance. These demands were settled by means of settlement deed dated 18.4.1977, which was duly registered by the Labour Authorities. According to this settlement all the demands stood fully settled which were raised in the demands in the year 1976. During this period the respondent No. 3 came into existence and at one stage was recognised by the petitioner, the respondent No. 3 placed a charter of demands through letter dated 8.9.1977 and settlement again arrived at on 13.1.1978 and all the demands, including good attendance leave were finally settled. The respondent No. 3 again submitted statement of demand vide letter dated 21.10.1978, in which apart from other demands, the workers claimed House /Rent Allowance at the rate of 15%. Pursuant to aforementioned demands made by the workers, the workers went on strike which continued upto 15.12.1978. At that point of time, a large number of workers left the fold of the respondent No. 3 and Joined their duties on 15.12.1978, at the call of Indicate Shramik Sangh. On 3.1.1979, the then Chief Minister of the Government of U.P. called a meeting of the Management and the workmen in which representatives of both the unions and Labour Authorities participated and thereafter on 11.1.1979, settlement was arrived at and this was based on the agreement reached before the Chief Minister. It was made clear in the meeting with the Chief Minister, that the matter of wages, dearness allowance etc. would be negotiated with Indicate Shramik Sangh, under the mediation of the Labour Commissioner separately. By way of abundant caution, the management further issued notice to all workmen stating therein that it was open to workmen to collect the benefits under the settlement dated 11.1.1979 and it was mentioned therein such workmen who accepted the benefits thereunder would also be bound by it and same would amount to acceptance of the settlement dated 11.1.1979, which was duly registered by the Labour Authorities. It was agreed that the settlement would be signed by the Indicate Shramik Sangh the settlement provided for good attendance leave and other benefits. It was also agreed in the aforementioned agreement that the matter of wages, dearness allowance, bonus etc. would be negotiated with Indicate Shramik Sangh under

the mediation of the Labour Commissioner and this was duly settled by settlement dated 20.7.1979, which was also registered under the U.P. Industrial Disputes Act. The settlement dated 20.7.1979 was applicable from 1.1.1979 for the period of four years. The aforementioned settlement was by way of package deal, which was finally put to rest, all the demands made by the workmen vide notice and demand dated 21.10.1978. After the settlement there remained no dispute between the petitioner and the workmen in terms of Clause 13 of the aforementioned settlement. This settlement to bind all the workmen in the establishment with settlement entered into between the petitioner and the Indicate Shramik Sangh on 20.7.1979. The petitioner had issued notice stating that it was open to all workmen to accept payment under the settlement and acceptance of payment would imply the acceptance of the settlement. Pursuant to the aforementioned agreement workmen received all the benefits arrived at in the settlement dated 20.7.1979 and thus demands which were raised in the settlement of demand dated 21.10.1978 especially the demand of house rent allowance and other demands were fully complied with and only four workmen who were in fact office-bearers of the respondent No. 3 did not accept payment under the settlement dated 20.7.1979. On 22.11.1982 the Indicate Shramik Sangh which enjoyed support of majority of 90% of workmen in the petitioner's establishment raised demand in which apart from other demands, the demand of House Rent Allowance, good attendance leave, head allowance and holiday allowance was raised. On the basis of the statement of demands which was made, settlement was arrived at wherein an ad hoc increase of Rs. 40 and other benefits was to be given to all the workers in their wages and there package deal considering all the demands raised in their demand. Apart from this ad-hoc increase of Rs. 40/-, other allowance such as production bonus, good attendance leave were given under this agreement which was duly registered on 2.7.1983. In paragraph-16 of the aforesaid settlement specific condition has been incorporated that the said agreement dated 14.6.1983 settled all the demands raised in the demand dated 22.11.1982. This agreement dated 14.6.1983 was applicable from 1.1.1983 for a period of three years i.e. upto 31.12.1985. Pursuant to the settlement dated 14.6.1983, the petitioner issued a notice dated 4.7.1983 to all the workers stating that the settlement dated 14.6.1983 had been registered and in accordance with the terms of the settlement, the workers could collect the arrears of their wages and other benefits but that it must be clearly understood that by accepting payment of arrears of wages, it would amount to acceptance of the terms and conditions of the agreement dated 14.6.1983. Even though the demand raised by respondent No. 3 vide its demand notice dated 21.10.1978 have been duly settled by the intervention of the Chief Minister of the State, but State Government had referred industrial dispute between the petitioner and its workmen by exercising its power u/s 4-K of the U.P. Industrial Disputes Act, 1947. Aforementioned reference has been made and the same was registered as Adjudication Case No. 40 of 1984. In pursuance of the aforesaid Reference Order, notice were issued to the parties for filing their statement. From the side of respondent No. 3 written statement had been filed

on 15.5.1981 and from the side of the petitioner written statement had been filed on 16.9.1980. In the written statement filed by the petitioner precise plea has been taken to the effect that reference was illegal because the dispute referred for adjudication no longer existed as the said dispute has already been settled by the agreement dated 20.7.1979. From both side rejoinder statement had been filed and from the side of the petitioner, it has been stated in the rejoinder statement that the reference was not valid as the settlement had already been arrived at and settled which was for a period of 4 years i.e. upto 31.12.1982. Thereafter, there was no justification for awarding the House Rent Allowance. During the pendency of the aforesaid reference, four workmen, namely, the office-bearers of respondent No. 3, who had earlier refused to accept also took benefit under settlement dated 20.7.1979, they drew all the benefits thereunder retrospectively. Thus, each and every single workman had accepted the settlement dated 20.7.1979. Thereafter the petitioner moved an application before Industrial Tribunal incorporating the aforesaid pleading before it. The Union objected to the aforementioned application and against aforementioned objection additional rejoinder statement was filed. On behalf of the petitioner two witnesses, namely, Shri K.H. Masand, Deputy Manager (Personnel) and Sri S.K. Sinha Roy, Manager, Plant Engineering Department were examined and thereafter Labour Court has passed the award by means of which Holiday Allowance has been proved and further House Rent Allowance has been provided.

3. At this juncture present writ petition has been filed. On the presentation of the writ petition, this Court on 8.8.1985, stayed the operation of the award to the extent it directed payment in respect to grant of House Rent Allowance and realisation of the amount was also stayed.

4. To this writ petition, counter affidavit has been filed on behalf of the Union and it has been mentioned in Para-4 of the counter-affidavit that the Indicate Shramik Sangh, was a minority Union and could not act on behalf of the workmen and further submitted that respondent No. 3, still represented the union of the Company workmen. It has further been contended that Indicate Shramik Sangh was a pro-employer union and had made illegal and unauthorised settlements with the employers and it being minority Union had got no support of the workmen of the company. It has further been contended that demands were raised by the respondent No. 3 on 8.9.1977, and the same was settled between the employer and respondent No. 3. It has further been mentioned that at the point of time after the intervention of the Chief Minister of the State the matter was not finally decided and that is why State Government referred the dispute to the Industrial Tribunal u/s 4-K of U.P. Industrial Disputes Act, 1947. Further it has been stated that Indicate Shramik Sangh neither raised any demand nor participated and Indicate Shramik Sangh has no right to enter any settlement. It has further been alleged that settlement between the petitioner and Indicate Shramik Sangh will make no difference qua Hind Lamp Shramik Sangh is concerned. It has been further alleged that settlement made by Indicate Shramik Sangh, is not at all binding and further order passed by the

Industrial Tribunal is justifiable and the petitioner cannot be permitted to adopt pick and chose policy in providing residential accommodation to the workmen and in this background prayer has been in the counter affidavit that the petition be dismissed.

5. To this counter affidavit, rejoinder affidavit has been filed and therein it has been stated that Indicate Shramik Sangh, is the majority Union and in this connection, it has also been submitted that election which was held on 18.2.1985 therein out of 1561 members of the Union 1319 has participated and it is a majority Union. It has further been contended that petitioner have provided residential accommodation to some of their workmen, supervisors and officers in the colony built inside the factory premises in pursuance of Clause 34 of the Standing orders of the company. The residential quarters were provided to those persons who were required to be in the close vicinity of the factory and who were further required for essential services for running the factory and who could be called in case of emergency. It was for these essential services that petitioner had provided housing facilities to the workmen for the benefit of proper running of the factory.

6. A supplementary affidavit has been filed and therein it has been mentioned that the petitioner has been paying dearness allowance to its work force which is calculated as per settled norms on the basis of Consumer Price Index (CPI), compiled and notified by Labour Bureau of Shimla for industrial workers from time to time known as Shimla series which is an agency recognised throughout the country with regard to the dearness allowance to the industrial work force which function under the Ministry of Labour Government of India. The methodology and norms compiling the Consumer Price Index for payment of Dearness Allowance, therein House Rent Allowance is included and is a component of Dearness allowance. While calculating the dearness allowance weightage and consideration for various goods and services is taken care of which includes housing and thus in the D.A., items of housing is also included which is paid by the petitioner company. It has further been asserted therein that no Industrial Unit in the Region of Shikohabad where the factory is situate, is paying HRA to its work force and on, the principle of Industry cum Region basis no direction can be issued against the petitioner's company to pay House Rent Allowance to its work force. It has further been stated that the petitioner have already suffered an accumulated loss to the tune of Rs. 10.97 cores by the year 2001-2002, and for the purpose of rehabilitation and survival the matter was referred to BIFR under the Sick Industrial Companies (Special Provision) Act, 1985 and the reference has been registered as Case No. 9 of 2002. Thereafter proceedings u/s 15 for enquiry and under Sections 16, 17 and 18 towards the rehabilitation process is going on. It has further been contended that the Unit in question is established in the remote rural backward area of U.P. State Shikohabad and its work force now approximately is 1400 and if House Rent Allowance is paid as per direction of the award the cost of production will become so high that it will be impossible for the petitioner to survive in open market

when large number of units and big sectors operate in the field. Lastly, it has been contended that the petitioner is breathing and fighting for its survival and, as such, liability which is sought to be imposed is liable to be quashed.

7. To this supplementary affidavit, supplementary counter-affidavit has been filed and therein it has been mentioned that the Dearness Allowance is fixed, keeping in view the various factors, but on that basis of House Rent Allowance/City Compensatory Allowance and all other allowance cannot be denied. In para-6 of the supplementary counter affidavit it has been mentioned that various industries pay house rent allowance to their employees for a long period and further Industrial Adjudication has been defeated on account of pending litigation for last more than 18 years.

8. After the pleadings have been completed, the matter has been taken up for hearing with the consent of the parties.

9. On behalf of the petitioner Sri Vijay Bahadur Singh Senior Advocate along with Sri Vijay Sinha have appeared and for the respondent-workman and Indicate Shramik Sangh, Sri B.N. Singh Advocate has appeared and argued the matter.

10. Sri V.B. Singh has assailed the validity of the award primarily on the ground that reasoning which has been given for allowing House Rent Allowance is totally unjustifiable and the Presiding Officer of the Industrial Tribunal U.P. Agra has passed award which on the face of it not at all justifiable. In this connection he has referred to Issue No. IV of the award which deals with House Rent Allowance and there in purported reasoning which has come forward on the basis of which House Rent Allowance has been awarded is (i) there should not be any discrimination in the matter of housing accommodation and in case employer gives house accommodation at cheaper rates to some employees then they should give House Rent Allowance to their employees to whom the employers do not provide houses and (ii) U.P. Government gives house rent allowance to its employees. These are two reasons, which has weight with Industrial Tribunal for passing of the award for payment of House Rent Allowance. Relevant Para of the award is being quoted below :

(i) In the matter of housing accommodation, the employers should make any discrimination. In case the employers give house accommodation at cheaper rates (as in this case) to some employees, then they should give house rent allowance to the employees to whom the employers do not provide house.

(ii) The U.P. Government give house rent allowance to their employees. I take judicial notice of this fact."

11. Sri Singh submits that these two grounds on the face of it are wholly unjustifiable and arbitrary ground, inasmuch as, discrimination cannot be made foundation and basis for making award of HRA, especially when services are governed by Standing Orders and Clause 34 of the Standing Order deals with providing of houses and contains condition that quarter will be allotted to

operatives by the Manager whenever available either on payment of rent fixed by the company or free in case the Manager feels the necessity of providing an operative with a quarter for efficient conduct of the business of the company. Notice for such allotment will be given in writing to the operative concerned indicating whether a quarter is allotted only for himself or also for its family. It is also provided that operatives occupying a company's quarters shall abide by all the rules and regulations of house licence issued for the purpose and by conditions laid down in Standing Order. In respect to second ground he submits that no parity can be claimed with the State Government employees, inasmuch as, State Government employees are concerned, they are governed by certain service conditions, rules and regulations and parity could have taken only with these Government industries which are situated in the region and engaged in similar activity. It has also been contended that Industrial Tribunal grossly violated principles of natural justice, inasmuch as, during the course of the argument at no point of time it had been indicated that Industrial Tribunal was taking notice of this fact, and as such opportunity ought to have been afforded to the incumbent in order to rebut presumption which was sought to be drawn.

12. Sri B.N. Singh, on the other hand submits that under industrial law pick and chose policy is treated as unfair labour practice. One section of workmen has been provided house and similarly situated workmen were discriminated as such Industrial Tribunal has rightly redressed the aforementioned grievance and has rightly passed the award in favour of the workmen and same warrants no interference by this Court under Article 226 of the Constitution of India, inasmuch as, social justice has been advanced by passing aforementioned award.

13. In order to appreciate the contention of the respective parties, pleadings of the parties has to be seen which clearly reflects that in respect to House Rent Allowance demand had been raised on 21.10.1978 and therein at item 10 precise demand was in regard to House Rent Allowance, this particular demand was later on accepted by means of settlement dated 11.1.1979 and it contained categorical condition therein that the same was applicable for a period of four years and under the aforementioned award various benefits had been extended. In the present case, pursuant to aforementioned agreement, all the workmen accepted the benefit as indicated in paragraph 15 of the writ petition, wherein it has categorically stated that except for four workmen, each and every workmen have accepted benefits under the aforementioned settlement. This statement of fact stated in paragraph 15 of the writ petition has not been disputed. In paragraph 16 of the counter-affidavit, it has been mentioned that it will make no difference as far as the demand raised by the Hind Lamp Shramik Sangh is concerned.

14. At this juncture, it has to be seen that once settlement had been arrived at and benefits have been received then whether the same can be re-agitated. While passing the award, House Rent Allowance has been directed to be paid from the date of reference dated 31.3.1980. The settlement dated 20.7.1979

was applicable from 11.1.1979 for the period of four years and thus, on the date of reference settlement was in operation and benefits of the same had already been accepted by the concerned workmen, which has not at all been disputed by the respondent. Under the Industrial Law, settlement has to be preferred over adjudication. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them and underlying assumption that the settlement reached with the help of Conciliation Officer is fair and reasonable when the settlement has been arrived at. Settlement on behalf of workers' union is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. Hon'ble Supreme Court in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, has taken aforementioned view, and has been held that reference made during the subsistence of settlement, is not justifiable and the same reflects non-application of mind by State Government in making the reference.

15. Here, in the present case, it is clearly reflected that settlement existed between the parties, and benefit out of the said settlement had been accepted by each and every workmen except four workmen, who also later on accepted the same. Thus, on the date, when the reference has been made, agreement was subsisting and this shows reference itself was made in the most casual and mechanical manner. This question as to whether having accepted various benefits under the settlement the workers union is precluded from questioning the validity of portion of the settlement is also subject of debate. The Madras High Court in the case of Indian Overseas Bank Officer's Union, Madras v. Indian Overseas Bank, Central Office, Madras 1994 1 CLR 378, has considered this aspect of the matter and following the principles laid down in the case of Hebertsons Limited v. Workmen AIR 1977 SC 322, it has been held by His Lordship A.R. Lakshmanan as he then was that the settlement has to be accepted or rejected as a whole and there cannot be mid way exercise. Once it is accepted, then no further grievance could have been made. Relevant paragraphs 13, 14, 15, are being quoted below :

"13. It cannot be gainsaid that the employees of E.B.O.T. including the members of the writ petition (in W.P. No. 3834 of 1992) have accepted the various benefits provided under the Settlement dated 12.11.1990. The writ petitioner (in writ petition No. 3834 of 1992) Which represents hardly 10 per cent of the employees of E.B.O.T. have confined their challenge only to Clause 5 (a) of the Settlement. As I have already referred, the said settlement was one reached u/s 18 (1) of the Industrial Disputes Act. At this stage, it is useful to refer to the decision in Hebertsons Limited v. Workmen AIR 1977 SC 322, where in paragraph 27 it has been held as follows :

"It is not possible to scan the settlement in bits and pieces and hold some parts

good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust."

14. Applying the above ratio laid down in the said decision to the facts and circumstances of the present case, it has to be held that there is no merit at all in the contention of Mr. K.V. Ananthakrishnan learned counsel appearing for the petitioner that Clause 5 (a) of the settlement dated 12.11.1990 is unfair and illegal. Having accepted the various benefits under the settlement the petitioner is precluded from questioning the validity of Clause 5 (A) of the settlement. Therefore, there is no merit in the contention that the said Clause 5(a) of the settlement is contrary to the Scheme of amalgamation framed u/s 45 of the Banking Regulation Act. Clause 11 of the Scheme of Amalgamation reads as follows :

"11. The transferee (IOB) Bank shall, on the expiry of a period not longer than three years from the date on which this scheme is sanctioned, pay or grant to the employees of the transferor Bank the same remuneration and the same terms and conditions of services as are applicable to the employees of the corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees of the transferor bank being the same as or equivalent to those or such other employees of the transferee bank :

Provided that if any doubt or difference arises as to whether the qualifications or experience of any of the said employees are the same or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank or as to the procedure or principles to be adopted for the fixation of the pay of the employees in the scale of pay of the transferee bank, the doubt or difference shall be referred to the Reserve Bank of India whose decision shall be final."

Therefore, the said Clause 11 of the Scheme of Amalgamation does not provide for the same terms and conditions of service to the E.B.O.T. amalgamated with Indian Overseas Bank. There is a clause, which says that is subject to qualification and experience. The said clause states that the transferee bank shall grant the same remuneration and same terms and conditions of service as are applicable to the employees of the corresponding rank or status of the transferee Bank subject to the qualification and experience of the said employees of the transferor Bank being the same as or equivalent to those of such other employees of the transferee bank. Having regard to all these facts, a provision was also made in the Settlement dated 12.11.1990, in Clause 5 under which the parties have inter alia agreed that the services of the workmen of E.B.O.T. for the purpose of arriving seniority, promotion entrustment of minor supervisory duties etc, will only be in the ratio of 2:1. The parties to the said Settlement have also agreed upon that clause having due regard to the qualifications and experience

of the employees of the E.B.O.T. vis-a-vis the qualifications and experience of the employees of the respondent Bank. Such a clause entered into between parties after negotiation and deliberation cannot be by no stretch of imagination be characterised as unreasonable, unfair and discriminatory. Equally, untenable is the contention of the learned counsel appearing for the petitioner that the employees of the E.B.O.T. to have the same terms and conditions of service of the employees of the respondent Bank.

15. I am also of the view that since the majority of the employees of the E.B.O.T. have accepted the above settlement in toto, it is not open to the petitioner's union representing 10 per cent of the employees of E.B.O.T. to challenge the validity of a portion of the said settlement. What is good for the majority is good for the minority and that is the Rule of democracy. The petitioner cannot be permitted to tear the settlement dated 12.11.1990, in bits and pieces. The settlement has to be accepted or rejected as whole. There cannot be mid way exercise. That is precisely what the Supreme Court has depreciated in *Hebertsons Limited v. Workmen* AIR 1977 SC 322, case referred to above."

16. On these principles, which have been narrated above, it is clear that since House Rent Allowance was one of the demands raised and thereafter when the settlement was arrived at the aforementioned benefit was not made an issue, and finally the settlement had taken place. Of the aforementioned settlement, each and every workmen had taken benefit, and it was not at all open to the union to raise industrial dispute in this respect. When there was settlement in between the parties then issue of HRA had been raised in the demand, but when the settlement had been arrived at, then it is understood that the same has been given away and package, has been accepted in the lieu of same. The settlement has to be taken as package. The aforementioned settlement is to be breached, then industrial pieces would be completely broken. Thus, having accepted the settlement package, demand of House Rent Allowance could not have been made.

17. Even otherwise in the present case, the first ground which has been mentioned for awarding of House Rent Allowance is discrimination vis-a-vis other employees. This ground is totally fallacious and incorrect. In view of specific provision in Clause 34 of the Standing Order which clearly provides that quarter will be allotted to operatives whenever available either on payment of rent fixed by the company or free in case the Manager feels the necessity of providing an operative with a quarter for efficient conduct of the business of the company. The provisions contained under Clause 34 of the Certified Standing Order are treated as service condition of the employees. Thus, discretion has been vested in the Manager to make allotment of quarters either on payment of rent or free in case he feels the necessity of providing quarter for efficient conduct of the business of company. Here in the present case Industrial Tribunal has not at all cared to consider the provisions as contained in Clause 34 of the Standing Order and that House Rent Allowance was not the right of the workmen and further discrimination, which had been alleged, was totally in the teeth of the provisions

as contained under Clause 34 of the Standing Order. Observation, which has been made by the Industrial Tribunal makes Clause 34 of the Standing Order redundant. The first ground of discrimination falls when there being merely of the same thus, to the ground. Further second ground which has been taken by the Industrial Tribunal in allowing the House Rent Allowance is payment to State Government employees. Notice of fact that State Government employees are getting House Rent Allowance, has been taken without there being any foundation or basis and in fact same has been unnecessarily extended without assigning any reason. For the purposes of fixation or revision of scales or wages, pays or dearness allowance, principle of industry-cum-region is followed. The principle of industry-cum-region is that unfair completion may not result between an establishment and another in the region. In other words, comparable units may be compared, but not units which are dissimilar. [See Kamani Metals and Alloy's Ltd. v. Workmen AIR 1976 SC 1175. Here in the present case, comparison has been made to U.P. Government employees. This was totally unequal comparison could have been made with the petitioner's unit with the unit similarly placed in the aforementioned region. Comparison could have been made amongst similar units but the Industrial Tribunal without applying its mind to this aspect of the matter in most arbitrary without affording any opportunity to the petitioner has drawn unwarranted presumption of parity with the State Government employees and passed aforementioned award. The second ground for passing the aforementioned award is totally unwarranted and unjust and totally against the principle of industry-cum-region which is well accepted principle for fixation or revision of scales or wages, pays or dearness allowance. Here, comparison has been done which is totally dissimilar. In this view of the fact second ground is unsustainable.

18. Apart from this Hon"ble the Supreme Court in the case of Patna Electric Supply Company Ltd. v. Patna Electric Supply Worker's Union, [Civil Appeal No. 227 of 1958, dated 23rd April, 1959], wherein it has been held that the Industrial Tribunal have consistently taken the view that in the present economic condition of industries it would be inexpedient on the employers the obligation to provide housing accommodation. It has also mentioned therein that scheme of wages properly fixed necessarily takes into account house-rent amongst other relevant facts and under a proper scheme of dearness allowance adjustments can be made when necessary from time to time so as to take into account an appreciable rise in the rents which industrial labour may have to pay and this fact has also been mentioned that this is the reason that Industrial Tribunal did not entertain employees' claim for housing and do not even allow a separate demand for house rent allowance as such. Relevant paragraphs are being quoted below :

"But assuming that the tribunal had jurisdiction to entertain the dispute the question still remains whether, apart from the agreement on which the tribunals have based their decision, the award under appeal can be justified on general grounds. In our opinion, under the present conditions the answer to this question

has to be in favour of the appellant and against the respondent. Industrial tribunals have consistently taken the view that housing accommodation of industrial labour is the primary responsibility of the State; and there has also been no difference of opinion on the point that in the present economic condition of our industries it would be inexpedient to impose on the employers the obligation to provide housing accommodation for their employees. Besides a scheme of wages properly fixed necessarily taken into account house-rent amongst other relevant facts; and under a proper scheme of dearness allowance adjustments can be made when necessary from time to time so as to take into account an appreciable rise in the rents which industrial labour may have to pay. That is why usually tribunals do not entertain employees' claim for housing and do not even allow a separate demand for house allowance as such. This position is not disputed before us by the respondent.

We may, however, refer to a few typical decisions of the industrial tribunals on this point. In *Eastern Plywood Manufacturing Company Ltd. v. Their Workers* 1949 LLJ 291, the Industrial Tribunal rejected the workmen's claim for housing accommodation or in the alternative for house-rent allowance of Rs. 10 per month on the ground that the obligation for housing labour in an urban area is not really on the employer, and that the tribunal had already considered in the issues on basic pay and dearness allowance as to how much the company should be directed to pay in emoluments to its workmen. The tribunal thought that it would not be reasonable to saddle the company with any further financial commitments in the shape of house-rent allowance.

In *Mahomad Rai Akbarali Khan v. Associated Cement Companies Ltd.* 1953 II LLJ 845, the Labour Appellate Tribunal has considered this problem. It was urged by the employees before the Appellate Tribunal that the employers should either provide quarters or pay house-rent allowance, whereas the company contended that it was not the function of the management to provide accommodation for its employees. The Appellate Tribunal, however, took the view that the employers' contention should be accepted subject to considerable qualifications in certain cases; and it proceeded to consider the special features of the problem presented by the employers' factory at Sevalia. Sevalia was a village until the employer went there to start its factory which needed the services of a large contingent of workers.

"When an industrial concern like this," observed the Appellate Tribunal, "bursts upon a rural area, there is very considerable nearby join the factory as well as those living further away; there is also an influx of persons from outside; in short it means that accommodation becomes scarce and expensive; and if a workman has to go further a field for his accommodation, he is put to considerable physical fatigue and inconvenience. In such circumstances it has not been the policy of the tribunals to ignore a claim for house-rent allowance."

After making these observations, the Appellate Tribunal proceeded to readjust the dearness allowance payable to the employees after taking into account the

increased house-rent which they had to pay for their housing accommodation in Sevalia; and having thus readjusted the dearness allowance the Appellate Tribunal held that no separate order as to house-rent allowance was necessary. Industrial Tribunal appears that in that case the industrial tribunal had taken the view that the problem was not likely to be solved by granting house-rent allowance to the employees and that the only practical course, therefore, was that the company should either help the workers in building their houses or that the company itself should construct quarters. That is why it had rejected the employees' demand for house-rent allowance but had recommended to the concern to undertake building operations. The Labour Appellate Tribunal reversed this conclusion and took a more practical and a wise course by readjusting the dearness allowance so as to grant adequate relief to the employees" in that behalf. It would thus be seen that even where the employer had started its factory at a small village like Sevalia the Appellate Tribunal did not accept the employees demand for housing accommodation and did not also think it proper to ask the employer to pay to its employees any separate special house-rent allowance.

In *Samastipur Central Sugar Company Ltd. v. Their Workmen* [1955 II LLJ 727, the Labour Appellate Tribunal had occasion to consider this question once again. In dealing with the merits of the problem, it accepted the decision of the Appellate Tribunal in *Mahomed Rai Akbarali Khan v. Associated Cement Company Ltd.*, (supra) and observed that :

"where the basic wage and dearness allowance are consolidated, house-rent at the normal time and the subsequent rise must be presumed to have been taken into account when the total consolidated amount was fixed."

The same view was taken by the Labour Appellate Tribunal in *National Carbon Company (India) Ltd. v. National Carbon Company Mazdoor Union, Calcutta* 1956 L.A.C. 660. In that case the tribunal had directed the employer to pay his workmen house-rent allowance because it had taken the view that in making the said order it was granting a relief lesser than granting free quarters which the employees had claimed and that the lesser was involved in the greater relief and could be granted by it. On the evidence adduced in the said proceedings the Labour Appellate Tribunal did not agree with this view. It held that :

"Provisions for free quarters by constructing house cannot permit of comparison with payment of house-rent allowance in money month after month to determine which is greater and which is smaller than the relief of providing free quarters."

On this view the Labour Appellate Tribunal have consistently refused to entertain a claim for housing accommodation or for the grant of a special and separate housing allowance against their employers. That is why in making the award under appeal the tribunals below were at pains to emphasise the fact that the scheme sanctioned by the Bihar Government made the position substantially different so far as Bihar was concerned.

The problem housing industrial labour has been the subject-matter of some legislative enactments. As regards the workers employed in plantations. The Plantations Labour Act, 1951 (69 of 1951), provides that it shall be duty of every employer to construct and maintain for every worker and his family residing in the plantation necessary housing accommodation subject to the other provisions of the Act. Housing Boards have also been established in different States to tackle the larger problem of housing in general. The Bombay Housing Board Act, 1948 (Bom. 69 of 1948), the Mysore Labour Housing Act, 1949 (Mys. 28 of 1949), the Madhya Pradesh Housing Board Act, 1950 (Madhya Pradesh 43 of 1950), the Hyderabad Labour Housing Act, 1952 (Hyd. 36 of 1952), the Saurashtra Housing Act, 1954 (Saurashtra 32 of 1954) and the U.P. Industrial Housing Act, 1955 (U.P. 32 of 1955), are attempts made by the respective States to meet their responsibility in the matter of providing housing accommodation to its citizens in general and to industrial labour in particular.

This problem appears to have been considered by the Planning Commission in its report on the Second Five-Year Plan. Chapter 26 of the report deals with the general problem of housing and Chap. 27 deals with labour policy and programmes. The discussion of the problem in these two chapters shows that housing shortage can be conquered only by sustained and well-planned efforts made by the States and the industry together. It is a very big problem and involves the expenditure of a huge amount. Efforts are being made by the Central Government to invite the co-operation of industrial employers to tackle this problem with the progressively increasing financial and other assistance offered by the State Government. But it is obvious that his problem cannot at present be tackled in isolation by industrial tribunals in dealing with housing demands made by employees" individual cases. In the present economic conditions of our industries it would be inexpedient to impose this additional burden on the employers. Such an imposition may retard the progress of our industrial development and production and thereby prejudicially affect the national economy. Besides, such an imposition on the employers would ultimately be passed by them to the consumers and that may result in an increase in prices which is not desirable from a national point of view. It is true that the concept of social justice is not static and may expand with the growth and prosperity of our industries and a rise in our production and national income; but so far as the present state of our national economy and the general financial condition of our industry are concerned, it would be undesirable to think of introducing such an obligation on the employers today. That is why we think the industrial tribunals have very wisely refused to entertain pleas for housing accommodation made by workmen from time to time against their employers.

In the present case, it is clear that the question about the financial ability of the appellant to meet the additional burden imposed by the award has not been considered at all. In fact the tribunals below seem to have taken the view that since the appellant is bound by the scheme. It is immaterial, if not irrelevant, to enquire whether the appellant would be able to meet the expenses involved in

the construction of quarters as directed by the award. It is obvious that such a view proceeds on purely theoretical considerations which have no relation to existing facts in regard to the financial position of the industry or the state of national economy. In fairness to the tribunals we ought to add that if the tribunals had not taken an erroneous view about the effect of the scheme sanctioned by the Bihar Government, they would not have granted the demand made by the respondent for housing accommodation."

19. In this case also, it has been stated that D.A. which is being paid to the workforce which is calculated as per settled norms on the basis of Consumer Price Index (CPI), compiled and notified by Labour Bureau of Shimla for industrial workers from time to time known as Shimla series which is an agency recognised throughout the country with regard to the dearness allowance to the industrial work force which functions under the Ministry of Labour, Government of India. In the norms for compiling the Consumer Price Index for payment of Dearness Allowance, House Rent Allowance is one of the components of Dearness Allowance. While calculating the dearness allowance weightage and consideration for various goods and services is taken of which is inclusive of housing also. This particular statement of fact has not been disputed in paragraph-5 of the supplementary counter affidavit and therein it has been mentioned that House Rent Allowance cannot be denied to the workman and thus, this fact has been accepted by the respondent union that Dearness Allowance includes in itself with housing as one of the components as per the judgment of Hon'ble the Supreme Court in case of Patna Electric Supply Company Ltd. v. Patna Electric Supply Worker's Union. In this background, no House Rent Allowance was made admissible and thus, in this view of the fact also award was not at all just.

20. In the fact and circumstance of the case, one more point which has been contended is that the financial condition of the company is not good and it is suffering loss. The Industrial Tribunal accepted this factual position, but ignoring the same has proceeded by mentioning that the concern is still running and it has not been closed because of loss. All these facts clearly show that the most relevant factor in respect of financial status of the establishment has been totally ignored as to whether the establishment in question is in a position to bear the aforementioned burden or not. The award of Industrial Tribunal in this respect also is totally whimsical as per the judgment of Hon'ble the Supreme Court in the case of Patna Electric Supply Company Ltd. v. Patna Electric Supply Workers' Union (supra) it is the duty cast upon the Industrial Tribunal to see whether the employer would be able to meet the expenses involved in the construction of quarters or it can meet expenses directed towards the House Rent Allowance.

21. For the reasons stated above, the impugned award passed by the Industrial Tribunal being unjust on the face of it, it is liable to be quashed. Consequently, the writ petition succeeds and is allowed. The award, dated 7.3.1985, is quashed to the extent it allows House Rent Allowance.