

(1998) 12 BOM CK 0063
In the Bombay High Court
Case No : O.O.C.J.W.P. No. 287 of 1995

Hindustan Lever Ltd.

APPELLANT

Vs

Hindustan Lever Employees" Union and Others

RESPONDENT

Date of Decision : 04-12-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 2, 2A, 36, 9A

Citation : (1999) 2 LLJ 804

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Advocate : P.K. Rele, Vinod Tayade and R.P. Rele, instructed by Suresh S. Pakale, for the Appellant; K.K. Singhvi, M.H. Doshi and Sanjay Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Savant, J.—Heard both the learned Counsel; Shri Rele for the Petitioner and Shri Singhvi for the first respondent.

2. This is a petition by the employer M/s. Hindustan Lever Ltd. challenging the order dated January 5, 1995 passed by the Industrial Court, Mumbai allowing complaint (ULP) No. 855 of 1989. The complaint alleged unfair labour practice under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "1971 Act"), Item 9 reads as under:

"Failure to implement award, settlement or agreement."

The Industrial Court has recorded a finding that the employer had effected a change in the conditions of service applicable to the workmen and though the conditions of service related to items 1, 10 and 11 of the Fourth Schedule to the Industrial Disputes Act, 1947, no notice of change as required by Section 9-A of the I.D. Act was given. The Industrial Court came to the conclusion that after the lock-out was lifted on June 22, 1989, certain departments were closed down

which had rendered several workmen surplus; nearly 1000 workmen had voluntarily retired as a result of their being rendered surplus; 500 workmen were rendered idle and some skilled workmen were required to do un-skilled job as a result of their redeployment after the lock-out was lifted. It was further held that the petitioner had set up new units at Khamgaon where 300 new workmen were employed, at Yeotmal with 130 new workmen, at Sumarpur with 160 new workmen and at Orai where 250 new workmen were employed. The conditions of service of the newly employed workmen were much lower than of those who are surplus and idle at Mumbai at the petitioner's Severe factory where there was a lock-out.

3. Few facts relevant for appreciating the contentions raised before me may be stated as under:

4. For a period of about 17 months prior to June, 1988, the workmen employed in the petitioner's Severe factory in Mumbai, had resorted to go-slow compelling the petitioner to declare a lock-out on June 3, 1988 which came into effect from June 22, 1988. The petitioner's case is that during the period of the said lock-out, there were 56 instances of work stoppage, 45 instances of concerted absence and refusal to obey lawful instructions which resulted in substantial loss to the petitioner. The lock-out was ultimately lifted on June 22, 1989 as a result of the individual settlement entered into between the employer and the workmen in June/July 1989. There were several meetings between the employer and the first respondent Union with the intervention of the State Government including the then Chief Minister and Deputy Chief Minister and it was agreed to lift the Lock-out subject to certain conditions. After the lock-out was lifted, certain departments in the Severe factory were closed such as, Rin and Nickel Catalyst departments, 3 lines in Hard Soap Department and 3 lines in Toilet Soap Department. The petitioner also dismantled 3 rose wrapping machines, 3 Jone Stamper machines, 2 Mazzoni Machines and 3 conveyer belts, and a T.S.M. machine. The printing department was also closed.

5. The first respondent Union had also raised a dispute regarding discontinuance of Rin Department at the Severe factory with effect from April, 1988. The grievance of the Union was that there was retrenchment as a result of closure and there was a breach of the provisions of Section 25-O of the Industrial Disputes Act. The grievance was held to be without substance. The first respondent had filed Writ Petition No. 650 of 1989 which was rejected by this Court on April 26, 1989. Similar dispute was raised in respect of shifting of the workmen from the Nickel Catalyst Department from Severe in Mumbai to Taloja in Raigad district and the contention of the Union was that shifting of the said Department amounted to closure within the meaning of Section 2(oo) and Section 25-O of the Industrial Disputes Act was violated. This Court by its judgment dated September 15, 1993 in Writ Petition No. 3364 of 1988 of Hindustan Lever Employees Union Vs. State of Maharashtra and Others, rejected the contention.

6. The present proceedings arise out of the complaint filed on June 26, 1989 alleging unfair labour practice under item 9 of Schedule IV of the 1971 Act. The complaint alleges (i) reduction of wages, which is the first time in the fourth schedule to the I.D. Act, dealing with the conditions of service for change of which notice, has to be given u/s 9-A of the I.D. Act. Item 1 reads as "Wages, including period and mode of payment". The second grievance in the complaint is in respect of item 10 of the fourth Schedule to the I.D. Act viz. "rationalisation, standardisation or improvement of plant and technique which is likely to lead to retrenchment of workmen." The third grievance is in respect of item 11 viz "any increase or reduction (other than casual) in number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control)". The Union alleged that the petitioner did not comply with the requirement of giving notice of change u/s 9-A of the I.D. Act, and, therefore, the act of the petitioner in closing down the said departments which had adversely affected the workmen was contrary to the provisions of law and illegal.

7. The petitioner filed its written statement on November 16, 1989 denying the averments made in the complaint in respect of each of the three items viz. items 1, 10 and 11 of the fourth Schedule to the I.D. Act and it was contended that in view of the change in economic and business scenario, the petitioner was required to take certain decisions which it was entitled to do in its discretion. The company had to reschedule its production in the interest of business exigencies depending upon the demand for its products. Certain lines of production had to be discontinued as a part of business strategy depending upon the demand for the said product and with a view to making certain units more viable, it was necessary to dismantle and remove certain machinery. The petitioner placed reliance on the two orders passed in respect of the closure of certain departments which was upheld in the two judgments referred to in para 5 above viz. 1989 II CLR 420 and 1989 II CLR 847. It was pointed out that all the workmen had signed the individual settlement in June/July, 1989. Settlements were signed even by the office bearers of the first respondent Union and the workmen had enjoyed certain benefits of interest free loan/advance of Rs. 10,000/- each under the Settlements.

8. At the trial, the Union led the evidence of Bennet D'Costa, its General Secretary and produced several charts and documents to substantiate its contentions. The petitioner led the evidence of Rajesh Kumar Lal, the General Factory Manager at the Sewree factory. Industrial Court framed the issue as to whether the Union had made out a case of unfair labour practice under item 9 of Schedule IV of the 1971 Act and answered the same in the affirmative. In arriving at its conclusions, the Industrial Court recorded the findings that though there was an assurance given in the settlement that no workman would be retrenched and that the workmen would not become surplus due to reorganisation, rationalisation or modernisation, the first respondent had proved successfully that in the said process, certain workmen had become surplus. This

was result of discontinuation of some of the activities in Sewree factory. Nearly 1000 workmen had accepted voluntary retirement benefits as a result of their being rendered surplus due to modernisation of some lines, putting up high speed machines and discontinuing some of the activities. It was held that the workmen who had become surplus though not retrenched, were made to accept the benefit of voluntary retirement scheme and this was obviously with a view to avoid clutches of Section 9-A read with item 10 of the fourth schedule to the I.D. Act. Further finding has been recorded that on the basis of the evidence of R.K. Lal, the Factory Manager, the service conditions of some of the workmen were adversely affected and this resulted in attracting items 1, 10 and 11 of the fourth schedule to the I.D. Act which was done without complying with the mandatory provisions of Section 9-A. The Industrial Court recorded a further finding that Clause 8 of the Certified Standing Orders was also violated by the individual settlements entered into by the workmen. Clause 8 of the Standing Orders confirmed by the Industrial Court u/s 6(1) of the Industrial Employment (Standing Orders) Act, 1946 for the employees of the petitioner reads as under:

"8. Shift Working, Transfers Between Departments and Shifts: (i) (a) More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the Company. An employee may be transferred from one department to another or from one shift to another at the discretion of the General Factory Manager provided that his terms and conditions of service are not thereby adversely affected."

The petitioner's contention that it was entitled to transfer a workman in view of the settlement arrived at was rejected since it was found that the action was in violation of Clause 8 of the Standing Orders.

9. The Industrial Court further came to the conclusion that the evidence of R.K. Lal had established that certain skilled workmen were required to do unskilled work when they were redeployed in terms of Clause 2 of the settlement. As a result of the said redeployment, some workmen had lost incentives based upon departmental or individual performance. In the result, the Industrial Court passed an order on January 5, 1995 allowing the complaint. It was declared that the petitioner had committed unfair labour practice under item 9 of Schedule IV of the 1971 Act and it should cease and desist from indulging in the said unfair labour practice. It was further declared that discontinuation of lines in Hard Soap department, a section of Toilet Soap department, printing department and the closure of EPC (machine building) Department and sulphurisation department was illegal. The petitioner was further directed not to close down the departments or redeploy the workmen without following due process of law.

10. This petition was admitted on February 13, 1995 and interim relief in terms of prayer (b) was granted viz. stay of operation of the impugned order. Affidavit in reply has been filed by Bennet D'Costa, General Secretary of the Union reiterating the contentions raised in the complaint and the findings recorded by the industrial Court.

11. Shri Rele, the learned Counsel appearing on behalf of the petitioner has raised the following contentions.

(i) Section 9-A of the Industrial Disputes Act is not at all attracted in the present case in view of the individual settlement arrived at between the petitioner and all the workmen during the months of June/July 1989. Reliance has been placed on Clauses 2 and 3 of the settlement and it is contended that in view of the changed economic and market conditions, it had become necessary to take certain decisions which was purely a managerial function.

(ii) In terms of Clause 2 of the settlement, the workmen had unequivocally agreed that the petitioner may redeploy them for (a) meeting the business exigencies including changing market requirements with regard to the existing and new products; (b) introduction of new products/ processes/ technologies/ computerisation and improved Systems of work etc. and (c) improvement of quality, manufacturing costs, productivity etc. The management on its own, had assured that redeployment would not lead to retrenchment which assurance has been fully honoured for the last nearly 10 years.

(iii) Clause 3 of the settlement specifically provided Social Security and Resettlement Package in the form of Voluntary Retirement Scheme, which was availed of by a substantial number of workmen and it was an error of law to hold that this amounted to retrenchment. Reliance has been placed on the definition of the word "retrenchment" appearing in Section 2(oo) of the I.D. Act which specifically excludes voluntary retirement of the workman.

12. Shri Singhvi, the learned Counsel appearing for the first respondent has opposed the said contentions and has raised a contention which has not been raised in the Court below namely that a settlement as understood by Clause (p) of Section 2 of the I.D. Act must necessarily be with the Union, since the present controversy is not concerning either discharge, dismissal, retrenchment or termination of service of a workman, but concerns lock-out. It is only where the dispute relates to either discharge, dismissal, retrenchment or termination of the service of an individual workman that the dispute may be deemed to be an industrial dispute within the meaning of Section 2-A of the Act. Having regard to the spirit of collective bargaining and the scheme of the provisions of the I.D. Act, it is contended that individual settlements arrived at between the petitioner and the workmen cannot detract from the obligation of the petitioner to comply with the provisions of Section 9-A of the Act. Shri Singhvi contended that the settlement contemplated by Clause (a) of the proviso to Section 9-A of the Act must be a settlement within the meaning of Section 2(p) of the Act and not individual settlements that were reached between the petitioner and workmen. The fact that all the workmen including the office bearers of the union had entered into the said individual settlements was irrelevant for deciding the question of applicability of Section 9-A of the Act.

13. The first contention of Shri Rele is that Section 9-A of the Industrial Disputes

Act, 1947 was not at all attracted in view of the individual settlements arrived at between the petitioner and all the workmen. For answering this contention, it becomes necessary to examine the counter-submission of Shri Singhvi that the settlement as understood by Clause (p) of Section 2 of the I.D. Act must necessarily be with the Union since the present controversy is concerning a lock-out and does not concern either discharge, dismissal, retrenchment or termination of the service of a workman. Though Shri Rele has objected to such a contention being raised for the first time in the Writ Petition, having regard to the importance of the issues raised before me, and the fact that it is a pure question of law, I have permitted both the learned Counsel to address me on this aspect. Let me, therefore, first deal with the submission of Shri Singhvi that if there is no settlement with the Union, individual settlement will not attract proviso (a) to Section 9-A of the I.D. Act in the facts of this case where I am concerned with a lock-out.

14. Section 9-A of the Industrial Disputes Act reads as under:

" 9-A. Notice of Change - No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected;

or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change

(a) where the change is effected in pursuance of any settlement or award;

or

(b) where the workmen likely to be affected by the change are persons to whom the" Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other Rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply".

The word "settlement" is defined in Section 2(p) of the I.D. Act as under:

"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer."

15. Section 2-A, which was inserted in the Statute by amending Act No. 35 of 1965 reads as under:

"2-A. Dismissal etc, of an individual workman to be deemed to be an industrial dispute - 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".

Section 18 of the I.D. Act reads as under:

"18. Persons on whom settlements and awards are binding-

(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement:

Provided that, where there is a recognised union for any undertaking under any law for the time being in force than such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee) shall be arrived at between the employer and the recognised union only; and such agreement shall be binding on all persons referred to in Clause (c) and Clause (d), of Sub-section (3) of this section.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Sub-section (3-A) of Section 10-A or an arbitration award in a case where there is a recognised union for any undertaking under any law for the time being in force or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of

the dispute and all persons who subsequently become employed in that establishment or part".

16. Section 36 dealing with representation of parties reads as under:

36. Representation of parties

(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in Clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of association of employers to which the association referred to in Clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be".

Relying upon the Scheme of the above provisions, Shri Singhvi contended that the concept of an individual settlement, de hors the Union, is entirely unknown to the Industrial Disputes Act when the issue relates to a lock-out and it will destroy the principle of collective bargaining which is of great importance,

17. In Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal, , a dispute concerning an individual workman was taken up by the Union, of which the workman was a member as it was affecting the workmen in general and, on

that basis, Reference was made under the I.D. Act whether the individual workman could, ordinarily, claim to be heard independently of the Union? It was held by the Apex Court that when an individual workman becomes a party to the dispute under the I.D. Act, he is a party not independent of the Union which has espoused his cause. In such a matter, ordinary rule should be that such representation by the officers of the Union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the Tribunal to permit other representations of the workman concerned. Reliance was placed on the earlier decision in Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, of the Judgment in Ram Prasad Vishwakarma's case (supra) the Court emphasised the fact that the said view was re-affirmed in several later decisions recognising the great importance in modern industrial life, of the principle of collective bargaining between the workmen and the employers. Paras 6, 7 and 8 may be reproduced:

"(6) It is now well-settled that a dispute between an individual workman and an employer cannot be an industrial dispute as defined in Section 2(k) of the Industrial Disputes Act unless it is taken up by a Union of the workmen or by a considerable number of workmen. In Central Provinces Transport Service Ltd. v. Raghunath Gopal (supra), Justice VENKATARAMA AYYAR speaking for the Court pointed out after, considering numerous decisions in this matter that the preponderance of judicial opinion was clearly in favour of the view that a dispute between an employer and a single employee cannot per se be an, industrial dispute but it may become one if it is taken up by a Union or a number of workmen.

"Notwithstanding that the language of Section 2(k) is wide enough to cover disputes between an employer and a single employee", observed the learned Judge, "the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of adjudication under the Act, when the same had not been taken up by the Union or a number of workmen".

(7) This view which has been re-affirmed by the Court in several later decisions recognises the great importance in modern industrial life of collective bargaining between the workmen and the employers. It is well-known how before the days of collective bargaining labour was at a great disadvantage in obtaining reasonable terms for contracts of service from his employer. As trade unions developed in the country and collective bargaining became the rule the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workman, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards all other disputes.

(8) 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".

18. I may also refer to the decision of the Apex Court in *Western India Match Company Ltd. Vs. Workmen*, . The Apex Court held that Standing Orders cannot be modified by individual settlements. It was held in para 8 of the Judgment, at page 406, that if a prior agreement inconsistent with the Standing Orders will not survive, an agreement posterior to and inconsistent with the Standing Order should also not prevail. In para 9, the Court declared some of the decisions to be no longer good law. paras 8 and 9 may be reproduced below:

8. If a prior agreement inconsistent with the Standing Orders will not survive, an agreement posterior to and inconsistent with the Standing Order should also not prevail. Again, as the employer cannot enforce two sets of Standing Orders governing the classification of workmen, it is also not open to him to enforce simultaneously the Standing Orders regulating the classification of workmen and a special agreement between him and an individual workman settling his categorisation.

9. In view of the decisions of this Court cited earlier, the decisions in *J.K. Cotton Manufacturers Ltd., Kanpur Vs. J.N. Tewari and Others*, and *Banaras Electric Light and Power Co. Ltd., Behlupura v. Government of Uttar Pradesh* and Ors. 1961 25 FJ.R. 420, no longer lay down good law. They take the view that notwithstanding the Standing Orders it is open to the employer to conclude an agreement with an individual workman which may be inconsistent with the Standing Orders. These decisions are over-ruled".

In para 10 of the Judgment at page 406, the Apex Court observed that in the sunny days of the market economy theory, people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the unity of this law. But the exercise of the working of this law over a long period had belied their faith. Later generations discovered that the workmen did not possess adequate bargaining strength to secure fair terms and conditions of service.

19. In the case between *Brooke Bond India Ltd. Vs. The Workmen*, , it was held that if the office-bearers of the Union of Workmen had signed the agreement, without their having any authority to sign the agreement, such a settlement was not a settlement within the meaning of Section 2(p) of the Act. Unless the office-bearers who signed the agreement were authorised by the Executive Committee of the union to enter into a settlement or the constitution of the union contained a provision that one or more of its members would be competent to settle the

dispute with the management, no agreement between any office-bearer of the union and the management can be called a settlement as defined in Section 2(p).

20. The view expressed in Ram Prasad Vishwakarama's case (supra) has been re-affirmed recently in P. Virudhachalam and Others Vs. Management of Lotus Mills and Another, . The question considered by the Apex Court was "Whether an individual workman, governed by the Industrial Disputes Act, 1947, can claim lay-off compensation u/s 25-C of the Act despite a settlement arrived at during conciliation proceeding u/s 12(3) of the Act by a Union of which he is not a member and when such settlement seeks to restrict the right of lay-off compensation payable to such workman as per the first proviso to Section 25-C of the Act". This question was answered in the negative and in the course of discussion, the Apex Court observed in para 9 of the Judgment that in all negotiations based on collective bargaining, individual workman necessarily recedes in background. The reins of bargaining on his behalf are handed over to the union representing such workman. The unions espouse the common cause on behalf of all their members. Consequently, settlement arrived at by them with management would bind atleast their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members. It is further observed that individual workman comes into the picture only in connection with a limited class of industrial disputes as indicated by Section 2-A of the Act dealing with discharge, dismissal, retrenchment or otherwise termination of service of an individual workman. Save and except the aforesaid class of disputes, which an individual workman can raise, rest of the industrial disputes including disputes pertaining to illegal lock-out, lay-off and lay-off compensation have to be filtered through the process of collective bargaining and they are disputes of general nature or class of disputes wherein individual workman by himself has no say. The relevant observations in para 9 of the Judgment may be reproduced:

"9. It has to be kept in view that the Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. Thus principle of industrial democracy is the bed-rock of the Act. The employer or a class of employers on the one hand and the accredited representatives of the workmen on the other are expected to resolve the industrial dispute amicably as far as possible by entering into the settlement outside the conciliation proceedings or if no settlement is reached and the dispute reaches conciliator even during conciliation proceedings. In all these negotiations based on collective bargaining individual workman necessarily recedes in background. The reins of bargaining on his behalf is handed over to the union representing such workman. The unions espouse the common cause on behalf of all their members. Consequently, settlement arrived at by them with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members. Thus, settlements are the live wires under the Act for ensuring industrial peace and prosperity. Section 10(2) of the Act highlights this position by providing that where the parties to an

industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute of a Board, Court, Labour Court, Tribunal, or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly. Individual workman comes into the picture only in connection with a limited class of industrial disputes as indicated by Section 2-A of the Act dealing with discharges, dismissals, retrenchments or otherwise termination of services of an individual workman. Save and except the" aforesaid class of disputes, which an individual workman can raise, rest of the industrial disputes including disputes pertaining to illegal lock-out, lay-off and lay-off compensation have to be filtered through the process of collective bargaining and they are disputes of general nature or class of disputes wherein individual workman by himself has no say."

21. However, Shri Rele for the petitioner contended that there can be a settlement by an individual workman and there is nothing in the provisions of the I.D. Act or in any other law which takes away the individual freedom of the workmen to contract. My attention is invited to the decision of the Karnataka High Court in *Mysore Structural Ltd., Bangalore v. Their Workmen* 1983 (I) LLN 441. It has been observed in para 14 of the Judgment, at page 451 that though the union is impleaded as a party to the dispute for the purpose of representation, it cannot be said that the union alone has got power to enter into settlement in a dispute pertaining to individual workman. The view taken is that the concerned workman can always enter into settlement with the management and that personal right of his was not deprived merely because he was represented by the Union in any proceedings under the Act. Reliance was placed on an earlier decision rendered by K. JAGANNATHA SHETTY, J. (as he then was as a Judge of the Karnataka High Court) in a dispute between *Workmen of P.M. Madurai Moodaliar and Sons v. the Management* 1975 (II) LLN 86. It has been observed in para 16 of that Judgment, at page 92, that merely because the union is impleaded as a party to the dispute for the purpose of representation, it could not be said that the union alone had the power to enter into settlement in a dispute pertaining to individual workman. In short, it was held that there was no inhibition for the concerned workman in a dispute to enter into settlement with his management even though his union was party to the dispute. I must hasten to add that the two decisions of the Karnataka High Court dealt with cases of individual grievances of the type mentioned in Section 2-A of the I.D. Act viz. discharge, dismissal, retrenchment or termination of the workman. In the first case of *Mysore Structural Ltd., Bangalore*, (supra) there was a reference of an industrial dispute between the employer and the Union of workmen, who were retrenched. 67 workmen were retrenched and there were settlements entered into by 55 out of 67 retrenched workmen. Allegation was that the settlement was arrived at by fraud, undue influence and coercion. The question was whether the settlements arrived at between the employer and 55 out of 67 retrenched workmen were legal and enforceable, if there was no evidence of

fraud, undue influence and coercion. The Karnataka High Court took the view that there was no evidence of fraud, undue influence and coercion and even if the workman in the proceedings under the Industrial Disputes Act, either before the Industrial Tribunal or before the Court, was represented by the union, his right to settle the dispute with his employer was not taken away although such settlement cannot bind other workmen.

22. Similarly, in the second decision of the Karnataka High Court, on which Shri Rele has placed reliance viz. P.M. Madurai Moodaliar's case (supra), the employer had dismissed 82 workmen after summary inquiry and trial on the ground of failure to give minimum production in terms of an existing settlement u/s 12(3) of the I.D. Act. The management had entered into settlement with dismissed workmen individually before and after a reference of dispute regarding their dismissal. It was held that there was no inhibition for the concerned workman in a dispute to enter into a settlement with his management even though his union was a party to the dispute. With respect, to the ratio of the two decisions of the Karnataka High Court has no application to the case before me where the grievance is not an individual grievance of the type of discharge, dismissal, retrenchment or termination. The issue before me is of lock-out.

23. Shri Rele then invited my attention to some decisions of the Apex Court, which I must consider. In the case between The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co., , question arose whether the management had a right to lay-off their workmen and whether the workmen were entitled to claim wages by way of compensation. It was held that there was nothing in the definition of "lay-off in Section 2(kkk) of the I.D. Act which indicates conferment of any power on the employer to lay-off a workman. At page 500 of the Report, in para 19 the Apex Court observed as under:

"19. In the case of the Delhi Office of the respondent the Tribunal has held that the lay-off was justified. It was open to the Tribunal to award a lesser amount of compensation than the full wages. Instead of sending back the case to the Tribunal, we direct that 75% of the basic wages and dearness allowance would be paid to the workman concerned for the period of lay-off. As we have said above this will not cover the case of those workmen who have settled or compromised their disputes with the management".

Relying upon the above italicised observation of the Apex Court it was contended by Shri Rele that an individual settlement was not unknown to labour jurisprudence. With respect, it is difficult to appreciate how the above observation can be taken as a decision on the point urged before me.

24. My attention was then invited to another decision of the Apex Court in Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others, . This was a case where the appellant Company was manufacturing machine tools at its factory in Faridabad. A workman, Sadhu Singh, faced a departmental inquiry on the charge of

instigating workmen to go on strike. He was also found loitering in the factory. The findings of the Inquiry Officer were accepted by management and order of dismissal was passed. The dismissal of Sadhu Singh formed the subject of a settlement u/s 12 of the I.D. Act and it was agreed that the dismissed workmen, including Sadhu Singh, should be regarded as retrenched from service. The settlement was signed by the Management on the one hand and the individual workmen and Sadhu Singh on the other. The Labour Court came to the conclusion that Sadhu Singh had no sufficient opportunity in the domestic inquiry. On the material placed before it, the Labour Court came to the conclusion that the dismissal was not justified and Sadhu Singh was entitled to reinstatement and back wages. The management challenged the decision in the High Court. The High Court having dismissed the Writ Petition, an appeal was filed to the Apex Court. In para 4 of the Judgment, at page 357, the Apex Court observed as under:

"4. The appellant challenges the findings of the Labour Court. It is contended that the settlement dated November 21, 1970 was binding on Sadhu Singh and it was not open to him to resile from it. Now Section 36 of the Act provides for representation of the parties to a dispute. The workmen are entitled by virtue of Sub-section (1) to be represented in a proceeding under the Act by a member or the executive or other office-bearer of a registered trade union of which they are members or of a federation of trade unions to which that trade union is affiliated, and where the workman is not a member of any trade union, he can be represented by a member of the executive or other office-bearer of a trade union connected with, or by any other workman employed in, the industry in which the workman is employed. It is not obligatory, however, that a workman who is a party to a dispute must be represented by another. He may participate in the proceeding himself. Where conciliation proceedings are taken and a settlement is reached, it is a valid settlement and binding on the parties even if the workmen who are party to the dispute participate in the proceedings personally and are not represented by any of the persons mentioned in Section 36(1). That is what happened here. The evidence shows that the individual workmen negotiated the settlement themselves and individually signed the memorandum of settlement. By executing a memorandum they bound themselves by the terms of the settlement. In the present case, however, while several workmen signed the memorandum of settlement on November 21, 1970, Sadhu Singh did not. It is also established that Sadhu Singh did not authorise any of the other workmen to sign the memorandum on his behalf. And what is of importance is that, as found by the Labour Court, the demand that the dismissal of Sadhu Singh be set aside and that he should be reinstated was never included in the charter of demands of the workmen which led to the conciliation proceedings, and those proceedings did not involve the consideration of such a demand. According to the Labour Court, that was the admitted position. Consequently, the settlement of November 21, 1970 can on no account be understood as covering and concluding the demand for recalling the order

dismissing Sadhu Singh, In such circumstances, it was open to Sadhu Singh to assail his dismissal from service and to contend that the settlement of November 21, 1970 did not bind him. The Labour Court was right in adjudicating on the propriety of his dismissal and, having found that the dismissal was not justified in granting relief.

25. It must, however, be borne in mind that in the above two cases on which reliance is placed by Shri Rele, the issue did not arise for consideration in the manner in which it has been raised before me. In the case of Firestone (supra), with respect, there is only an observation in para 19 that what the Apex Court said could not cover the cases of those workmen who had settled or compromised their dispute with the management. It is true that the question related to lay-off and not to discharge, dismissal, retrenchment or termination. With respect, the question as to whether an individual workman can enter into an agreement on the general issue of lay-off was not argued and decided by the Apex Court. It is difficult to find anything in the said Judgment which would support the proposition of Shri Rele that individual freedom of a workman is not taken away even in a case of lock-out.

26. As far as the decision of the Apex Court in M/s. Ametee Machine Tools (supra) is concerned, it is clearly a case of dismissal of an employee, and therefore, falls within the categories of four individual disputes of dismissal, discharge, retrenchment or termination as contemplated by Section 2-A of the Act Here again, the italicised portion in para 4, which I have reproduced in para 24 above, cannot be pressed into service by Shri Rele in support of his contention that, in the present case of a lock-out, the workmen can enter into individual settlements so as to absolve the management of its obligation u/s 9-A of the ID. Act.

27. In the light of the above discussion, I am inclined to hold that in this case, a settlement, as understood by Clause (p) of Section 2 of the I.D. Act, must necessarily be with the union since the dispute before me is not concerning either discharge, dismissal, retrenchment or termination of the service of a workman. It would be only in the event of individual grievance of such type that the law contemplates individual settlement by a workman independently of the Union, irrespective of the fact whether there is a recognised Union or not. Admittedly, in the present case, there is no recognised union. The issue relates to the lock-out between June, 22, 1988 and June 22, 1989. In order to accept the first contention of Shri Rele, it must be held that the petitioner was not required to comply with the provisions of Section 9-A of giving a notice of change. Such a situation is possible only when the change is effected in pursuance of any settlement or award. Since I have come to the conclusion that individual settlement is not recognised in a matter where the dispute relates to the general class, of workmen and is not of an individual type of discharge, dismissal, retrenchment or termination, it would follow that there was no settlement within the meaning of Clause (a) of the proviso to Section 9-A of the

I.D. Act. My view is consistent with the decisions of the Apex Court (i) Prasad Vishwakarma (supra), (ii) Western India Match Co. (supra), (iii) Brooke Bond India (supra) and (iv) P. Virudhachalam (supra).

28. Question then arises whether Section 9-A of the I.D. Act was attracted in the present case in view of the individual settlements arrived at between the petitioner and the workmen. Shri Rele has placed reliance on the terms of individual settlements that were signed in the month of June/July 1989. It is true that in Clause (2) of the settlement, it has been provided as under;

"2. Re-deployment of workmen

The workman agrees that in view of the changes in the economic and business environment in which the Company has to carry on its business, the Company may re-deploy the workman for:

(a) meeting the business exigencies (including changing market requirements) with regard to existing and new products etc.

(b) introduction of new products/ processes/technologies, computerisation and improved systems of work etc.

(c) improvements in quality, manufacturing cost, productivity etc.

The management on its part, assures that re-deployment will not lead to retrenchment."

Similarly, Clause 3 of the settlement reads as under:

"3. Social Security and Resettlement Package

At the suggestion of the Government of Maharashtra, the Company agrees to re-introduce the Social Security & Resettlement Package, which has already been availed of by approximately 550 workmen on a purely voluntary basis for a further period of six months".

Relying upon the above clauses, it is contended by Shri Rele that no notice of change was required to be given by the employer. Admittedly, no notice of change has been given in this case. Once it is held that an individual settlement is not recognised in matters which relate to a general grievance of the workmen, as against individual grievances of discharge, dismissal, retrenchment or termination, it is not possible to accept Shri Rele's contention that as a result of Clause (2) of the Settlement, the individual workman or the union could not make any grievance of the change in the conditions of service.

29.1 will now briefly refer to the evidence on record and the findings of the Tribunal on the question of the alleged violation of the type mentioned in the Fourth Schedule to the I.D. Act., viz. Items 1, 10 and 11 of the Fourth Schedule. There are specific pleadings on each of the three items, of which violation has been alleged.

30. On the first item viz. "wages, including the period and the mode of payment", on appreciation of evidence, a finding has been recorded that the evidence of the petitioner's Factory Manager R.K. Lal and the General Secretary of the first respondent Union D"Costa had established that, some workmen were rendered surplus and some skilled workmen were required to do unskilled work when they were re-deployed pursuant to the settlement. As a result of re-deployment, some workmen have lost the incentives. My attention has been invited to the various Charts produced on record, on the basis of which this finding has been recorded. The surplus workmen could not get the incentive as a result of their being re-deployed, consequent upon rationalisation and reorganisation. It may be relevant to note that what the workmen had consented in terms of Clause (2) of the Settlement was that the employer may redeploy them for certain purposes. There is, however, no consent given for an adverse change in the conditions of service of the type mentioned in the Fourth Schedule to the LD. Act.

31. Similarly, on the second grievance covered by Item 10 of the Fourth Schedule viz. "rationalisation, standardisation or improvement of plant or technique, which is likely to lead to retrenchment of workmen", on the basis of the evidence on record, a finding is recorded that though there was an assurance in the settlement that the workmen will not be retrenched, as a result of rationalisation and reorganisation, the workmen had become surplus and had no option, but to accept voluntary retirement. The findings on record further show that the number of surplus workmen was as high as 500. This is independently of about 1000 workmen, who had accepted voluntary retirement in terms of Clause (3) of the Settlement. There is, thus, a finding of fact that as a result of rationalisation and reorganisation, the workers were adversely affected and what was done by way of voluntary retirement was nothing short of retrenchment.

32. Regarding the third grievance viz. Item 11 of the Fourth Schedule, viz. "Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control)", the finding recorded is that as a result of closure of some departments, the workmen had become surplus. Some lines in Toilet Soap and some in Premium Soap department were discontinued. In printing department also, some lines were discontinued. The Shampoo department and the E.P.C. department were also closed. It is admitted that the workmen in the above departments were re-deployed in other I departments. No error of law or illegality, much less perversity, has been pointed out in any of those findings. The short question which arises for any consideration is whether all these adverse effects which the workmen had to face were permissible in the absence of a notice of change given in accordance with the provisions of Section 9-A of the Act.

33. At this stage, it is necessary to remember that a Tribunal constituted under the I.D. Act is not a Court. It has to deal with the material that is placed before

it, which may not be strictly "evidence" as understood by the Indian Evidence Act. There should be material placed before the Tribunal. This is clear from I the observations of the Apex Court in Food Corporation of India Workers Union Vs. Food Corporation of India and another, . It is also necessary to bear in mind that while construing the provisions of the items mentioned in the Fourth Schedule, read with Section 9-A of the I.D. Act, the Court has to adopt a liberal construction, as was done by the Apex Court in the case between Tata Iron and Steel Co. Ltd. v. The Workmen and Ors. (supra). In para 15, at page 266, the Apex Court has observed that in order to effectively achieve the object underlying Section 9-A, it would be more appropriate to place on the Fourth" Schedule read with Section 9-A, a construction liberal enough to include change of weekly rest day from Sunday to some other week day.

34. I will now deal with the requirement of complying with the mandate of Section 9-A before effecting any change in the conditions of service of the workmen. In the case between Northbrook Jute Company Limited and Anr. v. Their Workmen 1960 I LLJ 583, question arose whether the proposal of rationalisation in the two Mills viz. Northbrook Jute Company and Dalhousie Jute Mills involved any increase in workload. If so, what relief the workmen were entitled to? Admittedly, Notice u/s 9-A was given for introducing the Scheme of rationalisation which was likely to render some of the workmen surplus and also to increase the workload. The dispute relating to justifiability of such Scheme was referred for adjudication. Pending adjudication, but after the expiry of the period mentioned in the Notice u/s 9-A, the employer attempted to introduce a new Scheme. No permission as required by Section 33 of the I.D. Act was obtained by the employer for introducing the new Scheme. The industrial dispute relating to the claim by the concerned workmen for wages for the period of lock out was also referred for adjudication. The Award granting wages to the concerned workmen was passed. In Appeal by Special Leave upholding the Award of the Industrial Tribunal directing payment of such wages to the concerned workmen, the Apex Court held that in deciding, for the purpose of Section 33 of the Act, at what point of time the employer "alters" any conditions of service, the time when the Change of which notice u/s 9-A is given, is actually effected, must be ascertained. If at the time the change is effected the proceedings is pending before the Tribunal, Section 33 is attracted and not otherwise. The Apex Court spelt out the elaborate Scheme u/s 9-A of the Act and indicated that the legislature had contemplated three stages. The first stage is the proposal by the employer to effect a change; the next stage is when he gives a notice and the last stage is when he effects the change of the conditions of service after expiry of 21 days from the date of the notice. The conditions of service do not stand changed either when the proposal is made or the notice is given, but only when the change is actually effected. The actual change takes place when the new conditions of service are actually introduced. In the result, the Apex Court held that the Tribunal was right in its opinion that the closure of the mills by the employer amounted to an illegal lock-out and workmen, unable

to work in consequence of the lock-out, were entitled to wages for the period of absence caused by such lock-out.

35. In the *Workmen of the Food Corporation of India v. Food Corporation of India* (supra), the Apex Court held that in case of workmen employed by the Food Corporation of India for handling foodgrains, the abolition of the contract system and the introduction of direct payment system brought about a basic qualitative change in the relationship between the Corporation and the workmen engaged for handling foodgrains. On the disappearance of the intermediary contractor, a direct relationship of master and servant came into existence between the Corporation and the workmen. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the I.D. Act would be void. After introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. By cancelling the direct payment system and introducing the contractor, both the wages and the mode of payment were being altered to the disadvantage of the workmen. It was, therefore, held that introducing such a change without complying with the provisions of Section 9-A would be illegal inviting penal action u/s 31(2) of the Act. Having regard to the findings summed up in paras 30 to 32 and the ratio of the decisions of the Apex Court referred to in para 33 onwards, there is no merit in the first contention of Shri Rele that Section 9-A of the Industrial Disputes Act was not at all attracted in the present case in view of the individual settlements arrived at between the petitioner and the workmen during the months of June/July, 1989.

36. The second contention raised by Shri Rele is that in terms of Clause (2) of the individual settlement, the workmen had unequivocally agreed that the petitioner may re-deploy them for (a) meeting the business exigencies (including changing market requirements) with regard to the existing and new products etc. (b) introduction of new products/processes/technologies/ computerisation and improved systems of work etc. and (c) improvements in quality, manufacturing costs, productivity etc. It was contended that the management had, on its own part, assured that re-deployment will not lead to any retrenchment which assurance has been fully honoured in the last more than 9 years. It is, therefore, contended that it was pre-condition for lifting the lock-out that the complainant and its workmen agree to. re-deployment to meet the business "exigencies" regarding existing and new products as also to the introduction of new products, processes, technologies and improved system of works. Dismantling and shifting of machinery has been done strictly in accordance with the terms of settlement and what was done was a need of the business exigencies depending upon the market conditions. Though rationalisation and modernisation was likely to lead to retrenchment Shri Rele emphasised the fact that, in fact, none was retrenched. It is not possible to accept these submissions. The evidence of the petitioner's Factory Manager R.K. Lal and the General Secretary of the Union viz. D"Costa clearly shows that as a result of rationalisation and modernisation, certain

departments have been discontinued, certain machines have been dismantled and have been shifted. As a result of such discontinuance of some of the activities at the Sewree factory, there is a surplus of workmen. About 1000 surplus workmen have accepted the benefit of Voluntary Retirement Scheme. There were still about 500 workmen who were surplus and who had not accepted Voluntary Retirement. It is true that these 500 workmen have not been retrenched. There is, however, an admission by R. K. Lal that the company had engaged fresh workmen whose service conditions were much lower than that of those working in Sewree factory. New factories were set up at Kahangaon where 300 new workmen were employed; at Yeotmal with 130 new workmen; at Somarpur with 160 new workmen and at Orai where 250 new workmen were employed. It would follow that the surplus workmen could have been accommodated in the new factories rather than employing fresh workmen. However, fresh workmen have been employed at much lesser wages. R.K. Lal has also admitted that most of the surplus staff nearly 500 - was lying idle since lifting of the lock-out. He has also admitted that after the lock-out was lifted, some of the skilled workmen are doing unskilled work where they were re-deployed. In these facts, the second contention of Shri Rele cannot be accepted.

37. It is true that in *D. Macropollo and Co. (Private) Ltd. Vs. D. Macropollo and Co. (Private) Ltd. Employees' Union and Others*, , Apex Court has upheld the right of the employer to reorganise its business. It has been observed that if a reorganised scheme had been adopted by the employer for reasons of economy and convenience and such a scheme had been introduced in all the areas of its business, the fact that its implementation had led to discharge of some of the employees would have no material bearing on the question whether the reorganisation scheme adopted by the employer was bonafide or not. In the circumstances, it was held that Industrial Tribunal, considering the issue of retrenchment, should not have attached any importance to the consequences of reorganisation. The resulting discharge and retrenchment would have to be considered as an inevitable, though very unfortunate, consequence of the reorganised scheme, which the employer, acting bonafide, was entitled to adopt. I must hasten to add that this decision of the Apex Court was rendered when Section 9-A of the I.D. Act was not on the statute book. Section 9-A was inserted by Industrial Disputes (Amendment) Act, 1956 which came into force with effect from March 10, 1957. A perusal of the judgment of the Apex Court in the case of *D. Macropollo & Co.* shows that the question of Section 9-A did not arise for consideration since it was not on the statute book at the relevant time.

38. It is also true that while dealing with the reference for adjudication of the dispute u/s 10 of I.D. Act, the Apex Court has observed in *Parry and Co. Ltd. Vs. P.C. Pal and Others*, that the employer can reorganise his business which is essentially a managerial discretion. Dealing with the issue of retrenchment u/s 25-F of the I.D. Act, it was held that benefit of reorganisation of the business resulting in retrenchment of a labour did not give jurisdiction to the Tribunal to go into the question as to the propriety of such reorganisation and the

consequent discharge of surplus labour. It was further held that profitability, economy or convenience of business reorganisation are matters to be decided by the employer and not by the Tribunal. However, there was no occasion to consider the provisions of Section 9-A of I.D. Act while deciding the case of M/s. Parry and Co. Hence, in my view, with respect, the ratio of the decisions in (i) D. Macropollo and Co. "s and (ii) M/s. Parry and Co."s case cannot support the contention that since the employer had the discretion to take decisions regarding reorganisation of his business, any change in the conditions of service would not attract the provisions of Section 9-A of the I.D. Act in the light of Clause (2) of the settlement. It must be borne in mind that under Clause (2) of the settlement, the workmen had only consented to certain steps being taken towards rationalisation and modernisation. However, they had not consented that their rights could be prejudicially affected or that their conditions of service could be adversely affected as a result of the proposed change. In my view, therefore, the ratio of the two decisions in D. Macropollo and Co. and M/s. Parry and Co. "s case is of no assistance to Shri Rele.

39. Similarly reliance placed by Shri Rele on the two decisions of this Court rendered by (i) A.C. AGARWAL J. in 1989 II CLR 420 and (ii) by me in 1993 II CLR 847 cannot advance the case of the petitioner. Both the cases are of the petitioner company. In the case decided by A.C. AGARWAL J. the issue was about the discontinuance of manufacture of Rin Soap. It was held that the discontinuance did not amount to closure as contemplated by Section 2(oo) of I.D. Act and, therefore, the provisions of Section 25-O were not attracted. The question of unfair labour practice under item 9 of Schedule IV of M.R.T.U. and P.U.L.P. Act did not arise for consideration of this Court nor was there any issue raised about the provisions of Section 9-A of the I.D. Act. Similarly in the second case of Hindustan Lever Employees Union v. State of Maharashtra and Ors. (supra), decided by me, the question was of shifting Nickel Catalyst Department from Sewree in Mumbai to Taloja in Raigad district. The staff working in Nickel Catalyst Department was transferred and accommodated in other departments. It was held that shifting of the department was in pursuance of Garg Committee Report on Pollution Hazards and since the shifting was bonafide, it was held to be not amounting to closure within the meaning of Section 2(oo) and hence provisions of Section 25-O of I.D. Act were not attracted. There was no occasion for me to consider the provisions of M.R.T.U. and P.U.L.P. Act nor was the question of Section 9-A of I.D. Act considered in that case. Hence, I do not think that the ratio of these two decisions is of any assistance to Shri Rele.

40. I may now refer to the decision of the Apex Court in the case between Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, . The decision was rendered in two proceedings. One was on a reference made by the Government of West Bengal on September 30, 1966 to the Industrial Tribunal for adjudication of the following question: "Is the human rationalisation as a measure of economic reorganisation of the company reflected through job-integration that have either been effected or proposed to be effected justified? To what relief, if

any, were the workmen entitled? Pending adjudication of this issue, on a reference to the Industrial Tribunal, the workmen had filed an application u/s 33-A of the I.D. Act, before the same Tribunal alleging that during the pendency of the adjudication their service conditions were changed adversely and their salary for the month of October, 1966 had not been paid. The Tribunal held in favour of the workers and passed its Award on February 23, 1967. The employer had approached the Apex Court. The main reference was finally disposed on August 11, 1969 by the same Tribunal holding in favour of the employer and against that order, the workmen had approached the Apex Court. These two proceedings - one by the employer and other by the workmen - were disposed of together. In the reference that was made on September 30, 1966, the Apex Court upheld the Tribunal's findings and held that it was unable to hold that there was any change in the terms and conditions of services of the workers to their detriment. It was, therefore, held that Section 9-A was not attracted. However, in the appeal arising out of the application u/s 33-A filed by the workmen, the Apex Court held that in the face of the finding of the Tribunal that reorganisation scheme had rendered some workers surplus and that scheme had seriously prejudiced the workers and the apprehension of the workers that reorganisation would result in some members of the staff becoming, surplus coming true, it could not be said that failure of the employer to give notice u/s 9-A for introducing a scheme of reorganisation was justified. It, therefore, followed that refusal of the workmen to work under the new scheme was justified. It would, therefore, follow that refusal on the part of the employer to pay wages amounted to alteration of conditions of service and the application u/s 33-A of the Act was, therefore, maintainable and was rightly entertained and decided in favour of the workmen. In the result, the Apex Court dismissed both sets of appeals, namely, of the employer and the workmen. It is clear from the findings of the Apex Court that, on the evidence led by the parties in the two different proceedings, the findings of the Tribunal were held to be justified. The ratio of the aforesaid decision in *Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others*, clearly shows that (i) non-payment of wages in the circumstances of that case amounted to an alteration in the conditions of service; (ii) the fact that the scheme was introduced before the reference u/s 10 was made did not bar the application u/s 33-A and (iii) that the Tribunal was justified in coming to the conclusion that the alteration in the conditions of service could not have been made without complying with provisions of Section 9-A of I.D. Act.

41. I may now refer to the observations of the Apex Court in *Shankar Pandurang Jadhav and Others Vs. Vice-Admiral, Flag Officer, Commanding-in-Chief and Others*, . This was a case of time keepers working in the Naval Dockyard, Mumbai which was under the control of Vice Admiral, Western Naval Command. There were several posts of Junior Time Keepers and only two posts of Senior Time Keepers. Since the promotional posts were limited in number, there was stagnation and cadre of time keepers was sought to be amalgamated with the clerical cadre in the same department. As a result of the Presidential Order of

merger of time keepers with the clerical cadre in all the Naval establishments, Senior Time Keepers were redesignated as upper division clerks. The employees working in the time keeping department were entitled to the benefit of overtime and productivity linked bonus. The question arose whether consequent upon merger, the transfer of time keepers to the clerical cadre should be with the consent of the time keepers or in the event of loss being caused to the time keepers on merger to the clerical cadre, the department should undertake to make good the loss. Apex Court resolved the issue by holding that those who had entered the administrative department as clerks after the merger under the Presidential Order had no right to the post in the time keeping department. So long as those who were in the time keeping department before the order of merger and continued to be posted there and discharge the functions of time keeper, they would be entitled to over time wages and bonus. Apex Court, therefore, concluded that those who joined the time keeping department after the Presidential Order became effective either by direct posting in that department as L.D.C. or on transfer to that department had no right to continue in that department merely because their transfer would entail economic loss since they are governed by merger scheme which had become operative before their entry in that department. They were borne on the common cadre and were never members of the earlier time keepers' cadre. However, it was held that those time keepers who were serving as such in that department, on the date of the Presidential Order of merger, would be entitled to be treated differently. They belonged to a separate cadre of time keepers on the date of issuance of the Presidential Order. Their terms and conditions of services would not, therefore, be varied or modified to their detriment without their having an opportunity to exercise their option. Apex Court, therefore, read down that the Presidential Order of merger and resolved the issue by protecting those who were already working in the time keeping department on the date of the Presidential Order and differentiated their case from those who joined the administrative cadre after the Presidential Order of merger. It is difficult to see how the ratio of this decision can support Shri Rele's contention. It is only pursuant to the lifting of the lock-out on June 22, 1989 that the service conditions of the workmen have been changed to their detriment. They have been adversely affected which would squarely attract the provisions of Section 9-A of the I.D. Act. Thus, in my view, the ratio in Shankar Pandurang Jadhav's case does not advance the case of the petitioner.

42. Shri Rele also placed reliance on the decision of this Court in *Gulf Air, Bombay Vs. S.M. Vaze*, Member, Industrial Court, Maharashtra, Bombay and others., . In that case the petitioner company appointed respondent No. 3 M/s. Jet Air as its general sales agent for the purpose of reservation and ticketing in Maharashtra and issued the circular to the Union of its employees informing them of the appointment and also the fact that the same will have no implication on the staff and their service conditions. The question arose whether notice u/s 9-A of the I.D. Act was required to be given. It was held on facts that appointment of

M/s. Jet Air as general sales agent of Gulf Air did not fall within item 10 of the Fourth Schedule to the I.D. Act as there was no likelihood of its leading to retrenchment of any workman. It was held that the emphasis was not on rationalisation but on its likely effect on employees namely rationalisation, standardisation, or improvement of plant "which is likely to lead to retrenchment of workmen". Since, on facts, it was held that there was no likelihood of retrenchment and there was nothing to lead a reasonable person to believe that there is probability of retrenchment, the case did not fall under item 10 of the Fourth Schedule. There is nothing in the said decision to the contention of Shri Rele.

43. I have already referred in para 33 above to the decision of the Apex Court in *Tata Iron and Steel Co. Ltd. v. The Workmen and Ors.* (supra) where the view taken is that the Court has to put a liberal construction on the wording used in the Fourth Schedule read with change. Any change without complying with the provisions" of Section 9-A would be illegal inviting penal action u/s 31(2) of the I.D. Act.

44. I may also refer to the Division Bench decision of this Court in *Shankarprasad Vs. Lokmat Newspapers Pvt. Ltd., Nagpur*, . This was a case where the respondent newspaper publishing company was carrying on work of composing by hand prior to 1981. However, in January, 1981 the respondent installed a photo composing machine and in October, 1981 switched over completely the work of composing on the photo composing machine. As a result of this, 25 employees received notice of retrenchment. It was held that prior notice of change u/s 9-A in the matter of rationalisation, standardisation or improvement of plant or technique which was likely to lead to retrenchment of the workmen had to be given. It was not open to the employer to say that after actually introducing rationalisation, standardisation or improvement of plant or technique, the employer found that it had effect of retrenchment and, therefore, he proceeded to comply with Section 9-A of the I.D. Act. The Division Bench held on facts that the rationalisation and standardisation was introduced first and the provisions of Section 9-A were followed subsequently. Not only was the scheme of the I.D. Act violated but the collective bargaining power of the workmen or Union was considerably affected.

45. In the light of the above legal position, it is not possible to accept Shri Rele's second contention that merely because individual settlements were signed by the workmen, the employer was entitled to effect the above change pursuant to Clause 2 of the settlement and that despite the change having adversely affected the workmen, notice u/s 9-A of the I.D. Act was not necessary. It is of no consequence that actual retrenchment as such has not taken place in the last nearly 10 years. It is already established from the evidence of R.K. Lal that nearly 1000 workmen, who were rendered surplus, had accepted the benefit of voluntary retirement scheme and excluding these 1000 workmen there were 500 workmen who were rendered surplus and were lying idle. The second contention

is, therefore, rejected.

46. The third and last contention of Shri Rele is that clause 3 of the settlement specifically provided for social security and resettlement package in the form of voluntary retirement benefit which has been availed of by a substantial number of workmen - as many as 1000 and, therefore, it was an error of law to hold that there was any retrenchment. Reliance has been placed on the definition of "retrenchment" appearing in Section 2(oo) of the I.D. Act which specifically excludes voluntary retirement.

Section 2(oo) of the I.D. Act reads as under:

2(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

(a) voluntary retirement of the workman, or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill health."

Clause 3 of the settlement reads as under:

"3. Social Security & Resettlement Package. At the suggestion of the Government of Maharashtra, the Company agrees to re-introduce the Social Security & Resettlement Package, which has already been availed of by approximately 550 workmen on a purely voluntary basis for a further period of six months."

47. Evidence of D"Costa, General Secretary of the Union and of R.K. Lal, Factory Manager shows that it was as a result of lifting of the lock-out on June 22, 1989 when the workmen were redeployed that a substantial number of them were rendered surplus. 1000 workmen accepted voluntary retirement benefits and excluding these 1000 workmen, another 500 workmen were rendered surplus. Evidence of R.K. Lal further shows that skilled workers were given unskilled job. New factories were opened at Khamgaon, Yeotmal, Sumarpur and Orai. Fresh workmen at Khamgaon were 300, at Yeotmal 130, at Sumarpur 160, and at Orai 250 at lesser wages. It is on the basis of this evidence that the Tribunal has come to the conclusion that the surplus workmen have been removed by the petitioner though not by way of retrenchment but by way of introducing voluntary retirement scheme. What the workmen had consented in terms of clause 2 was only right of the company to redeployed them for one of the 3 purposes mentioned in Sub-clauses (a), (b) and (c) of Clause 2. It is difficult to

read in clause 2 any consent on the part of the workmen to adversely change any condition of service without complying with the mandate of Section 9-A of I. D. Act. Assuming that in exercise of the right under clause 2 of the settlement, the company redeployed the workmen for any of the three purposes namely (a) meeting the business exigencies (including changing market requirements) with regard to existing and new products etc. (b) introduction of new products/processes/technologies, computerisation and improved systems of work etc. and (c) improvements in quality, manufacturing cost, productivity etc. If such a change adversely affected the workmen, in my view, compliance with the provisions of Section 9-A was absolutely essential. That not having been done, it is not possible to accept Shri Rele's contention that there was no retrenchment in view of Clause 3 of the settlement.

48. I may, therefore, summarise my conclusions as under: For a period of 17 months prior to June, 1988 workmen employed in the petitioner's Sewree factory resorted to go-slow compelling the petitioner to declare a lock-out which came into effect from June 22, 1988. It may be that during the period of lock-out, the company suffered a substantial loss of revenue. As a result of negotiations held between the employer and union, due to intervention of the Chief Minister of the State, the lock-out was lifted on June 22, 1989 in terms of the individual settlements arrived at between the petitioner on the one hand and each individual workman on the other. It is true that the union did not sign the settlement but all the workmen signed them. I have already reproduced Clauses 2 and 3 of the said settlement. As a result of rationalisation, and modernisation number of workmen were rendered surplus. About 1000 workmen accepted the benefit of voluntary retirement scheme. Excluding these 1000 workmen nearly 500 workmen were rendered surplus. The finding of the Industrial Tribunal based on the evidence on record shows that some skilled workmen were given unskilled job. As a result of rationalisation and modernisation some new departments were opened at some other places like Khamgaon, Yeotmal, Sumarpur and Orai where fresh workmen were employed whose conditions of service were lower than those of the workmen at Sewree who were adversely affected. No notice u/s 9-A of the I.D. Act was given for effecting the above change which had adversely affected the conditions of service of the workmen. Incentives were lost to some workmen. It is well-settled that incentive is an additional wage as held by the Apex Court in *Raza Buland Sugar Co. Ltd. v. Their Workmen* (1972 II LLJ 335. The ratios of the decisions of the Apex Court in the cases of (i) *North Brooke Jute Co. Ltd. v. Its Workmen*, (supra), (ii) *Food Corporation of India Ltd. v. Its Workmen*, (supra), (iii) *Hindustan Lever v. Ram Mohan Ray*, (supra), (iv) *Shankarprasad Jadhav v. Vice-Admiral, Flag Officer*, (supra), (v) *Tata Iron & Steel Co. Ltd. v. Its Workmen*, (supra) and (vi) *Shankar Prasad Gopal Prasad Pathak v. Lokmat Newspapers*, (supra) clearly establishes that such a change had to be affected only after following the mandate of Section 9-A of the Industrial Disputes Act. Finding recorded by the Tribunal that the action of the management in introducing these changes attracts items 1, 10 and 11 of the

Fourth Schedule to the I.D. Act, and, therefore, necessitates notice of change as required u/s 9-A of the I.D. Act is a finding based on evidence on record. I am exercising writ jurisdiction. There is no illegality or perversity in the said finding.

49. In the circumstances, my answer to the three contentions raised before me are as under:

(i) While it is true that the rationalisation, modernisation is essentially a managerial function, if as a result thereof, the conditions of service of the workmen are adversely affected, notice u/s 9-A of the I.D. Act is necessary. Since no notice was given by the petitioner the change effected by it, would be illegal. Reliance placed on Clause 2 of the individual settlement is irrelevant. There is no consent given to bring about a change which adversely affects the conditions of service. While rejecting the first contention of Shri Rele I hold that individual settlement in a matter of lock-out cannot be accepted and an individual settlement is permissible only if the dispute relates to one of the four categories namely discharge, dismissal, retrenchment or otherwise termination of an employee as contemplated by Section 2-A of the I.D. Act. The decisions of the Apex Court in (i) Prasad Vishwakarma (supra), (ii) Western India Match Co. (supra) (iii) Brooke Bond India Ltd. (supra), and (iv) P. Virudhachalam (supra) clearly support my conclusion that save and except the aforesaid four kinds of disputes contemplated by Section 2-A of the I.D. Act, which the individual workman can raise and settle, rest of the Industrial Disputes including the "dispute pertaining to illegal lock-out, lay-off and lay-off compensation have to be filtered through the process of collective bargaining since they are disputes affecting the general class of workmen where the individual workman has no say.

(ii) There is nothing in Clause 2 of the individual settlement so as to authorise the petitioner to bring about a change which would adversely affect the workmen as a result of their redeployment for (a) meeting the business exigencies (including the changing market requirements) with regard to existing and new products etc. (b) introduction of new products/process, technologies, computerisation and improved systems of work etc. and (c) improvements in quality manufacturing cost, productivity etc. What was authorised was redeployment of the workmen. This would not, ipso facto, dispense with the statutory requirements of Section 9-A if the Section was attracted as held by me in the present case. The fact that no retrenchment as such, has taken place for the last nearly ten years is of no consequence.

(iii) Mere fact that 1000 workmen have accepted benefit of voluntary retirement scheme was by itself, not enough to hold that there was no retrenchment. Evidence on record justifies the finding that 500 workers were rendered surplus and some skilled workmen were given unskilled job. Fresh establishments were opened where new employees were recruited namely 300 at Khamgaon, 130 at Yeotmal, 160 at Sumarpur and 250 at Orail with lesser wages, while surplus staff of about 500 was still lying idle at the Sewree factory.

50. In these circumstances, there is no error of law in the impugned findings. They call for no interference. In the result the writ petition is dismissed. Rule is discharged. However, there will be no order as to costs.

51. At this juncture Shri Rele prays for stay of operation of this judgment for a period of 8 weeks. Having regard to the fact that the petition has been pending since 1995, it will be just and fair to grant the petitioner's prayer. Hence, operation of this order is stayed for a period of eight weeks from today.