

(2011) 08 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No. 2157 of 2011

Hindustan Unilever Ltd.

APPELLANT

Vs

Hindustan Lever Kamgar Sangh

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 119D, 73A
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 3 BomCR 188 : (2012) 132 FLR 397 : (2012) 1 MhLj 85

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : J.P. Cama and H.V. Thakur, for the Appellant; S.D. Thakur and A.D. Sonak, Asstt. Govt. Pleader, for the Respondent

Judgement

R.M. Savant, J.—Rule with the consent of the learned Counsel for the parties made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 15/04/2011 passed by the Industrial Court, Akola Bench, Akola ("Tribunal" for short), by which order the application Exhibit9B as amended by application Exhibit25 was allowed and the Respondent Company was directed to pay an amount of Rs. 3,500/per month as an interim relief to the TO. T1, T2, T3, T4 & T5 grade of employees with effect from 01/06/2008 till the decision of the Reference. The Industrial Court also directed that the arrears of the interim relief with effect from 01/06/2008 to 31/03/2011 shall be paid by the Respondent Company in three equal installments in the month of June, July and August, 2011 respectively.

3. The above petition therefore is directed against the interim order passed by the Industrial Court in the said Reference Proceedings being Reference (BIR) No. 1/2008.

4. The factual matrix involved in the above petition can be stated thus.

i) The Respondent Company i.e. M/s. Hindustan Unilever Limited (HUL for short) is engaged in the manufacturing of Soaps and Detergents, Personal Products, Beverages, Foods, etc. at its plant at Khamgaon, District Akola. The Respondent Union (Union for short) is the representative of the workmen working in the said Khamgaon Unit of the HUL. There was a settlement between the Union and the HUL regarding the wages of the workers. The said settlement was in operation between the period 01/06/2004 and 31/05/2008. The Union had terminated the said settlement and submitted a notice of change with respect of the service conditions and general demands of the workmen. The parties entered into negotiations and also went before the Conciliation Officer. However, the negotiations were not successful and No. settlement could be reached between the parties. The Conciliator by his letter dated 14th October, 2008 recorded that the dispute was not capable of being settled by conciliation and, therefore made a reference to the Industrial Court u/s 73A of the Bombay Industrial Relations Act. The Union has raised as many as 36 demands in its statement of claim and has filed a statement of claim justifying the demands raised by it. The Union filed an application for interim relief, for grant of the said relief to the workmen covered by the present Reference, who are working in the TO, T1, T2, T3, T4 and T5 grades in the factory of the HUL. The Union was seeking an interim relief of Rs. 3,500/per month. The said application for interim relief, came to be numbered as Exhibit.

ii) The case of the Union in the said application for interim relief is that there has been an unprecedented all round inflation resulting in drastic erosion of the purchasing power of the employees after the settlement in question came to an end on 31/05/2008. It is the case of the Union that the Consumer Price Index (CPI) on 01/06/2004 was around 508 points and immediately prior to the failure of the conciliation proceedings in the month of August, 2008, it had jumped to 730 points with a phenomenal rise of 222 points in barely a period of four years and three months resulting in an unprecedented rise of 43.70% in the cost of living. It was the case of the Union that the wage level that was obtaining on 01/06/2004 has been drastically wiped out to the extent of 43.70%.

iii) The Union sought to compare the corresponding wages of workmen in the comparable lowest grade and highest grade in the HUL with Mahindra and Mahindra in Nagpur, Tata Motors Limited in Pune, Hindustan Petroleum Corporation Limited, Akola and Piaggio Vehicles Limited Baramati and Hindustan Lever Mumbai Region. It is the case of the Union that the Khamgaon Factory is an integral and inseparable part of the Development Department and Research Center, Andheri (Mumbai) and therefore the HUL could not object to a comparison with the said Unit of the said Company situated at Mumbai. The Union sought to compare the wages and benefits of the employees of the competitor of the HUL more particularly NESTLE, which is nearest competitor of the HUL and which has factories at Goa, Punjab and Karnataka and which is manufacturing food line products as ice cream, soup powers, coffee, etc. The Union sought to give a comparison of the wage structure of the workmen in HUL

and NESTLE at the highest and the lowest level. The Union also in its interim application relied upon charts to indicate as to what would be the difference between the wages of the workmen of HUL and the workmen of the Mahindra and Mahindra, Tata Motors Limited, if the interim reliefs were to be granted to the workmen of HUL. It is the case of the Union that even if the interim relief sought is granted, the workmen covered by the said Reference would be drawing far less than the workmen in other comparable companies. It is therefore the case of the Union that considering the high rise in the cost of living, the need for the grant of interim relief is crying and immediate, if the workmen have to sustain themselves.

5. The said application for interim relief was replied to by the HUL. The HUL at the outset, contended that in the absence of the adjudication of the demands on merits by leading evidence by both the parties, No. interim relief could be granted to the Respondent Union and the application for interim relief, therefore, could not be entertained. It is further contended on behalf of the HUL that the workmen represented by the Union are being paid wages, which are best in the region and besides the workmen are also provided with the best work environment. It is further contended that the conduct of the workmen warranting disciplinary actions being taken against them has an impact on both the competitive cost of the Unit as well as on the reliability on the undertaking in terms of timeliness for delivery. It is pointed out by the HUL that from 2004 to 2009 show cause notices were issued to many workmen on account of various acts of omissions and commissions. This factor according to the HUL has had an impact on the production in the Khamgaon Unit. It is further contended that the workmen continue to get rise in their wages by way of annual increase in basic salaries as per the scale and variable dearness allowance, which is referable to the Consumer Price Index and hence the rate of inflation is fully neutralized by increase in payment of dearness allowance from time to time. It is further contended that the variable dearness allowance payable goes up as the Consumer Price Index goes up. It is contended that the Consumer Price Index is computed on the basis of family budget enquiry for industrial workers and that the family enquiry takes into account all the usual items of expenditure, which includes, food, cereals and products, pulses and products, meat, fish and eggs, milk and products, condiments and spices, vegetables and fruits, etc., which are part of the basket on the basis of which the Consumer Price Index is computed. It is contended that at present the neutralization of the Consumer Price Index is to the extent of 167%. It is contended that though there is an increase in Consumer Price Index, the workmen have been adequately compensated for the rise in the Consumer Price Index. It is contended that the purchasing power of the workmen has not diminished. In fact, it has increased by 67% since the inflation is neutralized by staggering 167%. It is contended that the hardship can be said to be caused if someone is deprived of the basic amenities and not when someone craves for luxurious items. It is further contended that the family members of the workmen are covered by generous medical scheme called the

Contributory Medical Benefit Scheme. The contribution made by the HUL to the said Scheme has been stated in the reply. It is further stated that the wages of the workmen are a major cost component and that the said wages need to be pegged at the existing level at least for the next four years where after the position can be reviewed as to whether any increase is called for. In so far as the comparative charts on which the Union relies upon are concerned, it is contended by the HUL that the comparison must be done on the basis of the region-cum-industry principle and the various companies with which the Union wants a comparison are neither from the same industry nor are they from the same region. It was further sought to be contended that the Development Center at Andheri and the Khamgaon Unit are independent establishments by virtue of their activities and they are completely different in terms of the nature of the activities being carried out in as much as the Research and Development Center at Andheri is employing mainly scientists whereas the workmen at Khamgaon Unit are engaged in various kinds of manual jobs based on skills required at different levels which are not comparable by any standards with the employees Research and Development Center at Andheri. It is further contended that NESTLE is situated in a different region and State and, therefore, the wages drawn by the workmen in the said factory cannot be relevant for the comparison of the wages sought by the Union. It is contended that the contribution of the Khamgaon Unit was a paltry 2.6% to the overall annual turnover of the company, which was Rs. 16,345 Crores. It is further contended that the uncooperative attitude of the Union, high absenteeism and unhealthy labour practices is another challenge the Khamgaon Factory is facing. The HUL has sought to give details as regards how the workmen are conducting themselves, out of 650 employees, 66 employees did not attend for 240 days in the year. The unhealthy labour practices have crept in affecting efficiency of the Unit to perform competitively. It is contended that the wage revision settlement is a bilateral and collective process and that there are demands from Union as well as there are demands from the Management, the demands from both the sides therefore needs to be discussed deliberated to arrive at common acceptable terms and conditions. The HUL therefore opposed the grant of interim reliefs.

6. In respect of the said application for interim relief, the parties also submitted written submissions. The Industrial Court as indicated above by the impugned order dated 15/04/2011 has allowed the said application to the extent mentioned in the earlier part of this order. The gist of the reasoning of the Industrial Court as can be seen from the impugned order is that, that after the year 2004, the prices of the essential commodities have increased manifold thereby resulting rise in the cost of living. The Industrial Court has observed that the time of the last settlement the Consumer Price Index was at 508 points while the Consumer Price Index in August, 2008 was at 730 points, which is an increased of 43.70% whereas the wage packet in the month of August, 2008 at the minimum and maximum increased by 14.20% and 12.32% for T1 workers on account of the rise of cost of living. This according to the Industrial Court itself showed that the

value of the wages as applicable on account of the last settlement is itself eroded by the rise in the cost of living. The Industrial Court held that though the HUL had different units the financial position of the HUL as a whole is required to be considered. In the said context the Industrial Court has observed that there was an increase in the net profit of the Company in 2007 in comparison to the year 2006. The Industrial Court has further observed that the prices of the essential commodities have reached the sky in comparison to the prices in the year 2008. The Industrial Court considering the material on record, wherein certain activities are said to have been shifted from the other places to the Khamgaon Unit, has observed that the Khamgaon Unit is an integral and inseparable part of the Development Department and Research Center at Andheri and, therefore, the HUL could not object to a comparison with the said unit of the same company situated at Khamgaon. The Industrial Court, in so far as the comparison which the HUL wanted to make with Vardhan Syntex, Khamgaon is concerned, has held that there could be No. comparison between the HUL and the said Vardhan Syntex, as the net profits of Vardhan Syntex could not be compared with the net profits of the HUL, which inter alia show that the said Vardhan Syntex was a small company and could not be compared with the HUL. The Industrial Court relying on the judgment of Apex Court in the case of French Motor Car Co., Limited Vs. Workmen, Supreme Court has observed that where a particular concern is already paying the highest wages in its own line of business, the Industrial Court would be justified in looking at wages paid in that region in other lines of business and that care should be taken to see that the concern from the other lines of business taken into account is such as nearly similar as possible to the line of business carried out before it. The Industrial Court held that the wages of the workmen of the HUL can be compared with NESTLE, because NESTLE is in the same line of business. The Industrial Court has observed that NESTLE is producing food products and milk products and nutrition's which appears to be similar to the products of the HUL and, therefore, the comparison of the wages of the workmen of the HUL with the wages of the workmen of the NESTLE can be made. In so far as the report of one Omam Consultants Private Limited which was sought to be relied upon by the HUL, the Industrial Court has observed that the said report could be considered at the time of the final Award. The Industrial Court has further observed that even if the interim relief is granted there would be a minimum difference of Rs. 5994 to 4498 rupees. The Industrial Court held that from April, 2004 to November, 2010, the cost of living index has jumped from 508 to 978 resulting in erosion of real wages to a whopping 92.52% which inter alia means that the workman belonging to the lowest grade has lost purchasing power to the extent of huge sum of Rs. 5862/per month and the workman at the minimum of the highest grade has similarly lost the purchasing power to the extent of Rs. 9189/per month. The Industrial Court was of the view that to mitigate hardship, the interim relief becomes payable as the Reference will take its own time for final decision and, therefore, has granted the relief as reproduced in the earlier part of the instant order.

7. Submissions on behalf of the Petitioner by learned Senior Counsel Shri J.P. Cama.

i) That the Industrial Court has not considered the material on record and has merely accepted the case of the Union whilst granting the interim relief. The Industrial Court failed to appreciate that on account of variable dearness allowance, there is a neutralization of the inflation to the extent of 167%. The Industrial Court in accepting the case of the Union has considered the rise in price of the items, which are beyond the items which can be in the basket whilst computing the Consumer Price Index.

ii) That the principle of industry-cum-region has to be applied by the Industrial Court when it is considering the question of wage structure, dearness allowance and similar condition of service. The learned senior counsel placed reliance on the judgment in the case of French Motor Car Limited v. Their Workman (supra), wherein the tests have been laid down for determining the wage structure. The Industrial Court in comparing HUL with NESTLE has thereby given a go by to the said principle.

iii) The Industrial Court erred in considering the company as a whole whilst considering the grant of interim relief. It was submitted that the Khamgaon Unit should have been considered as a separate Unit. The Industrial Court further erred in not taking into consideration that the Khamgaon Unit's contribution is very minuscule in the profits of the Company as a whole. Reliance was placed by the learned senior counsel on Shivraj Fine Arts Litho Works and Others Vs. The State Industrial Court, Nagpur and Others, , as also on the judgment in the matter of Ahmedabad Mill Owners' Association Etc. Vs. The Textile Labour Association, wherein also according to the learned Senior Counsel, the tests have been laid down which have to be applied to whilst considering a revision of the wage structure.

iv) That the basic wages and dearness allowance must be worked out on the principle of industry-cum-region, since the dearness allowance is linked to the cost of living index of a particular center which has a local favour and, therefore, the tests of industry-cum-region has to be applied in that sense and therefore the comparison with NESTLE was improper, NESTLE being in Goa i.e. beyond the region and is also not a similar industry. That whilst considering the wage revision, the capacity of the employer to sustain the burden or its paying capacity is not the criteria. The Tribunal is obliged to consider not only the wages, but also the allowances and other amenities given to the workmen comparing the total wage packet with the total wage packet of the employees of the comparable company. The learned Senior Counsel placed reliance on the judgment of this Court in the matter of Mukand Ltd. v. Mukand Kamgar Union Kurla and Anr. reported in 2000 I CLR 694, as also the judgment of this Court in the matter of Concept Pharmaceuticals Ltd., Aurangabad v. Concept Pharmaceuticals Kamgar Sanghatana reported in 2005 II CLR 337. The fact that there is neutralization to the extent of 167% of the cost of living is not

considered by the Tribunal. It is well settled that 100% neutralization is not possible. Reliance was placed on Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd. Vs. G.S. Barot, Member, Industrial Court and Another, .

v) The manner in which the workers of the Khamgaon Unit have been conducting themselves which has a direct effect on the proceedings has not been considered by the Industrial Court.

8. Submissions on behalf of the Respondent Union by learned Counsel Shri S.D. Thakur.

i) That the above Writ Petition is directed against the interim order of the Tribunal. The said order has been passed by considering the material that was placed on record by both the sides. No fault therefore can be found with the findings of fact recorded by the Tribunal in the said interim order for this Court to interdict in the writ jurisdiction.

ii) That there has been an erosion to the extent of 43.70% of the wage level since 01/06/2004 when the last settlement was entered into. The Tribunal had therefore to see whether a prima facie case for grant of interim relief so as to enable the workers to tide over the financial difficulties on account of rise in the cost of living was made out.

iii) That there is a phenomenal rise of 222 points in the Consumer Price Index in four years since the end of the settlement. The need for interim relief was therefore pressing and immediate.

iv) That in seeking the interim relief the Respondent Union was merely seeking the restoration of the position as regards the purchasing power of the workmen in July, 2004.

v) That there is nothing inflexible about the formula of industry-cum-region, as the ultimate objective is to give a living wage to the workmen, which is the mandate of the Directive Principles of the State Policy. Reliance was placed by the learned Counsel for the Respondent Union on the judgment in Workmen of Orient Paper Mills Ltd. Vs. Orient Paper Mills Ltd., and Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, . In the said case the Tribunal which was seized with the issue of wage revision had considered the minimum wages paid by three collieries though the nature of the industry was different.

vi) That the method adopted by the HUL to come to a conclusion that there was 167% neutralization has been rejected by the Division Bench of this Court as well as the Apex Court in the case of the HUL itself. The said judgment of the Apex Court is reported in Hindustan Lever Limited Vs. B.N. Dongre and Others, .

vii) That the Khamgaon Unit cannot be considered as a separate Unit, the earning of all the Units are merged in the all India balance sheet of the Company.

The Unit referred to in Hindustan Steel's case supra was a separate industry in that case. That the HUL has been compared with the Mahindra and Mahindra Company as they are in the same region. In so far as the NESTLE is concerned, the case of the Union of comparing HUL with NESTLE was not specifically dealt with by the HUL in its reply to the interim relief application as well as in the written arguments and only general submissions were made.

9. CONSIDERATION:

i) Since the HUL has taken exception to the maintainability of the interim relief application on the ground that No. interim relief can be granted till the adjudication of the Reference. The said issue would have to be addressed at the outset. It is required to be noted that the Reference before the Industrial Court is in respect of the 36 demands raised by the Union amongst which was the demand for wage increase. In terms of Section 119D of the B.I.R. Act, 1946, an Industrial Court, Labour Court or a Wage Board has the jurisdiction to pass such interim orders as it deems fit. Therefore, the contention of the HUL that No. application for interim relief can be considered cannot be accepted, in view of the said provision. A useful reference could be made to the judgment in Ahmedabad Miscellaneous Industrial Workers' Union Vs. Ahmedabad Electricity Company Ltd., , wherein it has been held by the Gujarat High Court that in fit cases the Courts can issue interim orders for payment of some amount which would be adjustable against the amount payable under the final Awards. Therefore, the conclusion reached by the Appellate Tribunal that there is No. bar for entertaining an application for interim relief in a Reference u/s 73A of the Bombay Industrial Relations Act cannot be faulted with.

ii) Now comes the question of the demand of Rs. 3,500/per month made by the Union as and by way of interim relief. In the said context, it is required to be noted that the last settlement has come to an end in 2008. It is required to be noted that after 2004, the price of the essential commodities which are part of the basket to be taken into consideration while computing the Consumer Price Index has seen a phenomenal rise. It is relevant to note that at the beginning of the settlement on 04/06/2004 the Consumer Price Index was 508 while the Consumer Price Index in August, 2008 was 730, which is an increase of 43.70%, whereas the wage packet in August 2008 at the minimum and maximum increased by 14.20% to 12.32% for the lowest category i.e. T1 workers on account of the rise of the cost of living. The said fact itself shows that the value of the wages as applicable on account of the last settlement has eroded by the rise in the cost of living. It is required to be borne in mind that what the Union is seeking by way of the interim relief is the restoration of the position as regards the purchasing power of the workmen as on 01/06/2004 and nothing more.

iii) Since an issue is raised by the HUL based on the principle of industry-cum-region, which is applicable to the revision of the wage structure and in support of which contention it seeks to rely upon the case in French Motor Car's supra, though it is held in the said case that there should be greater emphasis on the

region part of the industry-cum-region principle, however, when a particular concern is already paying the highest wages in its own line of business, the Industrial Court would be justified in looking at wages paid in that region in other lines of business. In the said context, the comparison drawn by the Tribunal with NESTLE cannot be said to be so abhorrent as it is sought to be contended by the learned senior counsel for the Petitioner. It is the contention of the learned senior counsel for the Petitioner that now apart from it not being situated in the said region is also not in the similar line of business. In that context, it is pertinent to note that in the reply filed by the HUL to the interim relief application, the para in the interim application wherein the facts and figures relating to NESTLE are mentioned have been generally dealt with and the case of the Union for comparison with NESTLE has not been specifically dealt with by the HUL. It is required to be noted that NESTLE is also an FMCG (Fast Moving Consumer Goods) Industry like the HUL, though it is outside the region wherein the Khamgaon Unit is situated but is in the adjoining State. However, as submitted by the learned Counsel for the Respondent Union that the industry-cum-region principle is not an inflexible rule as the ultimate objective is to give a living wage to the workmen, and that there have been cases when comparisons have been drawn with industry situated outside the region as also not involved in similar lines of business. A useful reference could be made to the judgment in the case of Tata Chemicals Ltd. (supra), as also in the case of Monthly Rated Workmen at the Wadala Factory of the Indian Hume Pipe Co. Ltd. Vs. Indian Hume Pipe Co. Ltd., Bombay, . In the case of Tata Chemicals (supra) the industrial unit situated at Sankaleshwar was compared with the industrial unit at Baroda, paragraph No. 22 of the said judgment is material and is reproduced herein under -

22. Re: Question No. 5: This takes us to the determination of the last question. The decision of this Court is Bengal Chemical and Pharmaceutical Works Ltd. v. Its Workmen and Anr. 1959 I L.L.J. 751; at p 758 No. doubt shows that in fixing wages and Dearness Allowance, the Industry-cum-region formula is inter alia to be kept in view. At the same time, it has to be borne in mind that there can be No. comparison between a small struggling concern and a large flourishing unit. It follows, therefore, that when there is a large disparity between the two concerns engaged in the same line of business in a region with which the Industrial Court dealing it is not safe to fix the same wage structure for the large flourishing concern of long standing as obtains in a small struggling concern. (see French Motor Car Co., Limited Vs. Workmen, . It cannot also be lost sight of that with the march of time, the narrow concept of Industry-cum-region is fast changing and too much importance cannot be attached to region. The modern trends in industrial law seem to lay greater accent on the similarity of industry rather than on the region. It was observed by this Court in Workmen of New Egerton Wollen Mills v. New Egerton Wollen Mills and Ors. 1969 II L.L.J. 782, that where there are No. comparable concerns in the same industry in the region, the Tribunal can look to concerns in other industries in the region for comparison but in that case such concerns should be as similar as possible and not

disproportionately large or absolutely dissimilar. On the parity of reasoning, it is reasonable to conclude that where there are No. comparable concerns engaged in similar industry in the region, it is permissible for the Industrial Tribunal or Court to look to such similar industries or industries as nearly similar as possible in adjoining or other region in the State having similar economic conditions.

In so far as the Indian Hume Pipe Company's case is concerned, an Engineering Company was compared with a Pharmaceutical Company, the relevant excerpt from paragraph No. 38 is reproduced herein under -

The only grievance that the Respondent's counsel can have against these cases were considering pharmaceutical units which were not comparable with the unit in question. We do not agree that this distinction can be pressed in to service to deny the workmen the slab system existing in this unit. The Tribunal has found this unit to be an engineering unit which is not in a far less disadvantageous position than pharmaceutical units.

It would be pertinent to note that the HUL sought to draw comparison with companies who were situated in different parts of the country and were also not in the same line of business, at least the HUL had placed nothing on record to indicate that they were in the same line of business. In the light of the aforesaid, in my view, the comparison with the case of NESTLE, which is also an FMCG cannot be said to be contrary to the principle of industry-cum-region, as enunciated in the French Motor Car Company's case supra.

iv) On comparison of the wages drawn and the gross wages of the workmen of HUL and the NESTLE is concerned, even after the grant of interim relief of Rs. 3,500/-, there would be a minimum difference of Rs. 5994/- to 4498/- rupees between the wages drawn by the workmen of the said two companies. The said comparative charts are reproduced herein under:-

Lowest grade (T0 of HUL and Grade I A of Nestle)

Nestle

HILL

Difference Rupees

% Difference

Salary of HUL if I.R.Is granted

Difference after IR

Min

17221

7967

9253.7

53.74

11467

5753.7

Max

18346

8851

9494.7

51.75

12351

5994.7

Highest grade (T5 of HUL and Grade 3 of Nestle)

Nestle

HILL

Difference Rupees

% Difference

Salary of HUL if I.R.Is granted

Difference after IR

Min

20733

1216 8

8564.7

41.31

15668

5064.7

Max

22310

1431 1

7998.7

35.85

17811

4498.7

v) The submission of the learned senior counsel for the Petitioner that the said comparison is fallacious, as the Union has not set out the different amounts that are received by the workmen under various heads and only the gross figures are put, this the learned senior counsel has sought to demonstrate from the record. However, the learned Counsel Shri Thakur appearing for the Union submitted that the Petitioner has not annexed Exhibit to the said interim application wherein all the amounts received by the workmen of Khamgaon unit by way of various allowances have been mentioned by the Union. In my view, in the light of Exhibit, there is No. substance in the said contention of the Petitioner that comparison was sought to be made without disclosing the various allowances that the workmen of the HUL get.

vi) Now coming to the aspect of the 100% neutralization of the inflation on account of the variable index, though the dearness allowance is related to the Consumer Price Index and on account of which the rise in the Consumer Price Index is according to the HUL is neutralized and which neutralization is to the extent of 167%. The same by itself in my view, would not suffice and there has to be a revision in the basic wages. There can be No. dispute that the workers depend exclusively on the wages to provide themselves with the three basic requirements in life mainly food, clothing and shelter. It is required to be borne in mind that the protection against price rise by the D.A. is limited to only those items included in the basket and not to all items which a wage earner at the lowest level consumes, hence for those items not included in the baskets the workman has to face the brunt of inflation. Therefore, if the rise in the pay packet does not keep pace with the rise in prices of essentials the purchasing power of the pay packet falls thereby reducing the real wages and thereby adversely affecting the workers. It is required to be noted that in the cost of living wherein the sliding scale system is applicable the basic wages are automatically adjusted to the price changes shown by the cost of living index. By this method the purchasing power of the workers is maintained to the extent possible and necessary. Since it is not possible to have cent percent neutralization of the price of cost of living so as to have a check on the inflationary trends. Hence to make up for the ever widening gap between wages and cost of living, an upward revision of wages becomes imperative. Therefore, it cannot be said that merely because there is neutralization of the cost of living even may be to the extent of 100% there should be No. upward revision of wages, in any event the parties in the instant case are at the interim stage and the said aspects would be gone into at the final adjudication of the Reference.

vii) In so far as the present case is concerned, it is required to be noted that the last agreement signed between the parties was on 04/06/2004 and the said agreement has come to an end in the year 2008. The price of the essential commodities has increased manifold, at the time of the settlement in the year 2004, the Consumer Price Index was at 508 while the Consumer Price Index in

August, 2008 was 730 and the Consumer Price Index in the year 2010 is 978. Therefore, between the period April 2004 to November, 2010 the cost of living index has jumped from 508 to 978 resulting in the erosion of the real wages to a staggering 92.58%, which means that for the employee at the minimum of the lowest grade has lost purchasing power to the extent of a huge sum of Rs. 5862/ per month and the employee at the minimum of the highest grade has lost purchasing power to the extent of Rs. 9189/per 2807wp2157.11. odt 30/35 month. It is in the said context that the grant of interim relief has to be considered.

viii) As regards the submission of the learned senior counsel that the report of the Omam Consultants has not been taken into consideration by the Tribunal and the Tribunal erred in leaving it for being considered at the time of the final Award. In my view, No. fault can be found with the said part of the order passed by the Tribunal as the Tribunal at the interim stage was only required to consider whether case for interim relief was made out and, therefore, at the final hearing of the said Reference, it would have to be seen whether the said report of the Omam Consultants is in terms of the tests laid down in the French Motor Car's case and Shivraj Fine Arts Litho Works" case supra for a comparison to be drawn with the companies covered by the said report. In so far as the reliance placed by the HUL for comparison with Vardhan Syntext is concerned, the Tribunal was right in refusing to make the said comparison, as there is a total mismatch between the HUL and the said Vardhan Syntext. In so far as the Vardhan Syntext is concerned, its total turnover is Rs. 85.07 crores whereas the turnover of HUL is shown at Rs. 14757.42 crores. The gross profit of HUL is Rs. 2184.53 crores, whereas the gross profit of Vardhan Syntext is shown as Rs. 5.82 crores. The said Vardhan Syntext is therefore a small company in comparison to HUL and, therefore, No. comparison could be drawn between the wages of the workmen working in Vardhan Syntext and the HUL. As regards the contention of the learned senior counsel Shri Cama that the Tribunal in deciding the said interim application has not considered the material placed on record. In my view, there is No. merit in the said contention, as the Tribunal has adverted to each and every document/charts etc. placed by the parties before it. The learned Counsel for the Respondent Union was right in submitting that though the Union has specifically referred to the case of NESTLE in its interim application as well as in its written arguments, the said case of the Union has not been specifically dealt with by the HUL and only a general reply has been given. It was for the Petitioner to deal with the said case of NESTLE with whom the Union wanted to draw a comparison in the matter of fixation of wages. A perusal of the impugned order passed by the Tribunal discloses that the Tribunal has considered the issue of the grant of interim reliefs by adhering to the principles which have been laid down in the various judgments of the Apex Court, which have been cited by the parties and which find a mention in the impugned order. Moreover, at the stage of considering the application for interim relief, the Tribunal was only required to see whether a prima facie case for grant of interim relief has been made out. The

Tribunal on the basis of the material on record as also considering the fact that there has been an unprecedented inflation since the last settlement has come to a conclusion that the interim relief to the extent sought by the Respondent Union i.e. Rs. 3,500/per month was required to be granted so as to mitigate the difficulties faced by the workmen.

ix) Now coming to the contention of the learned senior counsel for the Petitioner that the Tribunal has erred in proceeding mainly on the basis of the paying capacity of the HUL and has therefore given a go by to the tests laid down by the various pronouncements of the Apex Court in the matter of wage revision. In so far as the said contention is concerned, No. doubt the Tribunal considered the paying capacity as well as the financial status of the HUL, this the Tribunal was bound to do with a view to ascertain as to what would be the impact on the HUL if the interim relief was granted. The Tribunal has on the said basis reached a conclusion that even if the interim relief was granted, the same would be 12% (point twelve percent) of the gross profit of the company. It is not as if the Tribunal has relied upon the said aspect only, the impugned order as can be seen ex facie discloses that the Tribunal has considered the relevant material on record and thereafter has come to a conclusion that the grant of interim relief at the rate of Rs. 3,500/per month was required to be granted and as observed by the Tribunal the said interim relief sought for was not to make the employees wealthy men, but to satisfy their optimum needs to maintain a modest and dignified way of life.

(x). In so far as the contention of the learned senior counsel for the Petitioner HUL that the Khamgaon Unit ought to have been treated as separate unit is concerned, in my view, the said submission cannot be countenanced. The reliance placed by the learned senior counsel on the judgment in Hindustan Steel's case (supra) is misplaced as in that case the reference to a Unit was to a separate company and not to a unit of a company. Therefore, the Tribunal did not commit any error in treating the HUL as a whole for considering the grant of interim relief.

In so far as the amount of Rs. 3,500/per month is concerned, the T.I. Workman who is at the lowest rung and who draws wages around Rs. 10,715/for restoration of the erosion in wages to the extent of 43% the amount for such restoration comes to Rs. 4,607/per month and, therefore, the amount of Rs. 3,500/granted to every workman by way of interim relief, irrespective of grade, in my view, appears to be reasonable. One cannot lose sight of the fact that the order impugned is an interim order and the issue of the wage rise which is sought by the Union in terms of its demand in the statement of claim would be adjudicated by the Tribunal and therefore the amount granted by way of interim relief would ultimately have to be adjusted at the time of the final award. The parties would therefore at the stage of final adjudication be entitled to raise all contentions as are available to them in law in respect of the wage increase which is sought.

10. Having considered the impugned order passed by the Tribunal granting the interim relief of Rs. 3,500/per month w.e.f. 162008 in the context of the facts and circumstances of the present case, the same cannot be faulted with, there is No. illegality or infirmity in the order passed by the Tribunal. In that view of the matter, No. case for interference is made out. The Writ Petition is accordingly dismissed. Rule discharged with No. order as to costs. However in the facts and circumstance of the case the Reference proceedings being Reference (BIR) No. 1 of 2008 are expedited and are directed to be disposed of latest by 31st August 2012.

After Pronouncement:

At this stage, the learned Counsel for the Petitioner HUL applies for continuation of the statement made on behalf of the Union by learned Counsel Shri S D Thakur, as recorded in the order dated 15th June 2011 and continued by order dated 7th July 2011, for a period of four weeks from date. The learned Counsel for the Union Shri S.D. Thakur opposes the same and submits that the same may at the highest be continued for two weeks. Hence the statement as recorded in the order dated 15th June 2011 is continued for a period of two weeks from date.