

(2012) 03 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 8508 of 2011

J.D. Orgochem Limited Formerly known as Jaysynth Dyechem
Ltd. 301, Sumer Kendra, P.B. Marg, Worli, Mumbai - 400018

APPELLANT

Vs

Dyes and Chemical Workers Union

RESPONDENT

Date of Decision : 31-03-2012

Acts Referred:

Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 17, 17A, 18(3), 19, 19(2)
Industrial Disputes (Central) Rules, 1957 — Rule 58
Industrial Disputes Act, 1947 — Section 10, 10A, 12, 12(3), 18(3)

Citation : (2013) 1 ALLMR 627 : (2013) 1 LLJ 285

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

Bench : Single Bench

Final Decision : Allowed

Judgement

A.V. Nirgude, J.—By consent of the learned counsels for the parties, the writ petition is taken up and heard for final disposal. Rule made returnable forthwith.

2. The only question that arises in this writ petition is "Whether the petitioner company had liberty to implement the notice of change issued u/s 9A of Industrial Dispute Act, unilaterally, without reaching a settlement with the respondent Union or without getting an award from a competent court on the subject?" The facts leading to the litigation in short can be stated as under :

3. The petitioner is a limited company engaged in business of manufacturing chemicals etc. They have a factory in which there were several employees earlier working. The respondent is the only registered Trade Union representing the employees of the petitioner's factory.

There existed a settlement dated 30th September, 1994, u/s 12(3) read with Section 18(3) of the Industrial Dispute Act, 1947, between the parties for regulating the service conditions of the employees. As per this settlement, the petitioner company agreed to give variable Dearness Allowance at certain rate based on the consumer price index and also agreed to allow to the employees to

have two additional "paid of" days". The term of the settlement was for four years. After expiry of four years, the respondent Union gave a notice for terminating the settlement and sent a new set of demands. But the Union admittedly did not pursue this and so, nothing happened between the parties and so the new set of demands fizzled out.

4. On 21st May 1999, and 24th June, 1999, the Company gave three notices of change u/s 9A suggesting substantial deduction in the amount of variable dearness allowance payable to the employees, the substantial deduction in the additional "paid of" days" and gratuity. The Union objected to this change and the parties went before the Conciliation Officer u/s 12 of the Industrial Disputes Act. The Conciliation Officer ultimately failed to bring about a settlement between the parties and sent his failure report to the government. The government sent a reference pursuant to only one notice dated 21.5.1999 in respect of reduction of gratuity amount. The government did not send any reference in respect of the remaining two notices of change and even the parties did not take further action on the notices. Neither the respondent union took the matter to High Court by filing writ petition etc. seeking action on the part of the government, nor the petitioner objected to this inaction on the part of the government. Thereafter, for one year nothing happened between the parties. But apparently the Company's financial condition worsened and in June 2000, the Company declared a "lockout". It continued for about three years. On 26th May, 2003 the Company lifted it. However, by that time the number of workers fell from 300 to 16. At this point of time, they started implementing the change contemplated by above mentioned two notices of change.

5. Aggrieved by this implementation of change, the present litigation started by the respondent Union through their complaint filed under MRTU & PULP Act, alleging that the petitioner Company had indulged into Unfair Labour Practice (Item No.6, Schedule No.4). The respondent Union in the complaint simply said that the proposed changes were made without giving "notice of change" u/s 9A. However, the petitioner Company pleaded and proved that they had given notices of change on 21st May, 1999 and 24th June, 1999. The Company even pleaded and proved that on account of these notices of change, the case was taken to Conciliation Officer and that upon his failure to bring about settlement, the Officer sent a failure report to the Government. They further pleaded and proved that the Government did not make reference to the Industrial Court in respect of the above mentioned two notices of change. In view of this, they asserted that they could implement the changes contemplated in the notices of change because there is no conciliation proceeding or reference pending. They further asserted that they have complied with the procedure contemplated u/s 9A for implementing the change. The Learned Member of the Industrial Court rejected this defence/plea holding that the notice of change was not lawfully implemented and therefore the implementation was unfair labour practice. Against this finding, the present writ petition is filed.

6. The question therefore is whether the Company committed illegality in implementing the notice of change? In order to appreciate the submissions made at bar, one must first read the relevant provisions of Industrial Disputes Act. Section 9A 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 workman 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 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 Office Gazette, apply, or,

(c) where the change is effected due to updating or replacing of the existing machinery, computerisation or increase in the immovable property and increase in production and that-

(i) such change shall not affect the total wages of the workmen and their hours of work; and

(ii) the employer provides all the legitimate and required facilities such as training etc. to the workmen to acquire the skill of new job.

Section 12 reads as under :

12. Duties of conciliation officers :-

(1) Where an industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government or an officer authorized in this behalf by the appropriate Government together with a memorandum of the

settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, sent to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. When the appropriate government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

Section 19 reads as under :

19. Period of operation of settlements and awards - (1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(2-A) Notwithstanding anything contained in this section, where a union has been recognized under any law for the time being in force, where any other union is recognized in its place under such law, then notwithstanding anything contained in sub-section (2), it shall be lawful to any such recognized union to terminate the settlement after giving two months written notice to the employer in that behalf.

(3) An award shall subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17A.

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year

at a time as it thinks fit, so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour court, if the award was that of a Labour court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be, on such reference shall be final.

(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any containing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) No notice under sub-section (2) or subavk section(6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be, and where there is a recognized union for any undertaking under any law for the time being in force by such recognized union.

Section 20 reads as under :

20. Commencement and conclusion of proceedings - (1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock out u/s 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded -

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board, is published u/s 17, as the case may be; or

(c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal, u/s 10 during the pendency of conciliation proceedings.

(3) Proceedings before an arbitrator u/s 10A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the

reference of the dispute for arbitration or adjudication, as the case may be, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable u/s 17A.

Section 33 reads as follows :

33. Conditions of service, etc. to remain unchanged under certain circumstances during

pendency of proceedings - During the pendency of any conciliation proceedings before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,

(a) in regard to any matter connected with dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority, before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman; Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in subsection (2) no employer shall during the pendency of any such proceeding in respect of any industrial dispute, take any action against any protected workman concerned in such dispute avk

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether by dismissal or otherwise such protected workman, save with the express permission in writing of the authority

before which the proceeding is pending.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workman and a maximum number of one hundred protected workman and for this aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application such order in relation thereto as it deems fit:

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

7. Section 9A lays down a rule that an employer cannot effect any change in the conditions of service applicable to any worker in any manner specified in Fourth Schedule to the Act without giving the workman a prescribed notice and within 21 days of giving such notice. In this case the facts indicate that such notices were given to the respondent Union and the parties went before Conciliation Officer. As per Section 12 of the Act, the Conciliation Officer pursuant to the duties cast on him u/s 12 initiated proceeding for conciliation but sent a failure report.

8. The learned Member of the Industrial Court on this point held that since there is no pleading or documentary evidence, he would not give a finding in favour of the petitioner that the proceeding before the Conciliation officer got concluded. This observation in my view is incorrect because the evidence clearly established that failure report was forwarded to the government and that there is no challenge in cross examination to this evidence. The Learned Member ought to have held on facts that the conciliation proceeding had concluded. There is little dispute between the parties as to whether the Conciliation Officer sent failure report, but on going through the evidence, I noticed that the evidence clearly establishes the fact that the Conciliation Officer had sent/forwarded his failure report to the Government. The question still remains, atleast in this case, as to whether the forwarding of the report concluded the proceedings of conciliation. The learned counsel for the respondent Union asserted that merely forwarding

the report would not amount to conclusion of the proceeding. As provided u/s 20, she pointed out that until the failure report is received by the appropriate Government, the conciliation proceeding would continue and in this case, she said, on facts, since there is no evidence on record to show that the conciliation report had reached the government, one cannot say that the conciliation proceeding was concluded. I am unable to accept this submission mainly because, the respondent Union virtually did not challenge the evidence of the petitioner on the fact that Conciliation Officer had forwarded the report to the government. In absence of any challenge to this fact, one must presume that the forwarded report had reached the government and so one must presume that the government had received the report. Such technical plea thus is not available to the respondent on this point. The Learned Member of the Industrial court did not discuss this issue at all in his judgment because probably this was not agitated before him. I am also not inclined to discuss it at length because I have held above that sending of the report in this case atleast virtually amounted to receiving of the report by the government.

9. Section 19 contemplates the period of operation of settlement and awards. In this case, there was a settlement arrived at between the parties in the year 1994 and the same was effective till 31.12.1997. As stated earlier, admittedly the respondent Union sent a notice terminating it, as contemplated under subsection (2) of Section 19, and thereafter, the conciliation continued for sometime and it got concluded on 22.11.1999, when the report was forwarded. Section 33 is the relevant provision for keeping the effect of proposed change stayed, till the proceedings before the Conciliation Officer is pending. In this case, the petitioner company was unable to effect the change till 22.11.1999 i.e. till the conclusion of the conciliation proceedings. Section 33 does not indicate that it would prevent an employer from implementing the change during the time when the Government considers the report and takes its decision. Section 33 also does not indicate as to whether an employer is prevented from implementing change till the government takes its decision either to make a reference or not to make it. It however takes care of the situation that arises after a reference is made. It clearly says that during the proceedings before a Labour court or Tribunal etc. the employer would not be able to effect the change. The peculiarity of the facts of this case is that though apparently the government received the failure report in respect of the two notices of change, it did not take any action whatsoever on them. Neither the parties went further before any authority over this issue. The question therefore is whether the petitioner was at liberty to give effect to the change? The answer appears to be in affirmative.

The learned counsel appearing for the petitioner rightly placed reliance on Section 9A and Section 33 which prohibit an employer to implement the change notice to the extent of the provisions made therein. He pointed out that there is no provision in the Act preventing an employer from implementing change pursuant to the notice issued u/s 9A after expiry of statutory period. In other words, he suggested that if the government did not take any action on the failure

report, it was incumbent on the respondent Union to either persuade the Government to seek a reference to the Industrial Tribunal or ought to have obtained a writ of mandamus of this court compelling the government to sent a reference to the Industrial Tribunal. He said, if this was not done, the petitioner company was free to give effect to the notices of change. Having regard to the provisions of the Act, this submission looks very attractive and to counter the same, the learned counsel for the respondent placed reliance on the law laid down in two judgments in following cases :

1) Haribhau Shinde and Another Vs. F.H. Lala Industrial Tribunal, Bombay and Another, , and

2) Life Insurance Corporation of India Vs. D.J. Bahadur and Others, .

She asserted that the ratio of both these judgments clearly lays down the law that despite of the above mentioned technical plea of the petitioner based on Section 9A read with 33, the petitioner is still not entitled to implement change, because, the right of the petitioner arising from the provisions of Section 9A is not a "substantial right" and that the petitioner ought to have secured a settlement or obtained an award from a competent court to effect change in the service conditions of the employees. In order to appreciate this submissions, with the help of the learned counsels appearing for both the parties, I went through both the above mentioned judgments.

The first judgment in Haribhau's case, is delivered by a Division Bench of this court. The facts leading to the litigation were: there was an award made in 1959 between the parties to the litigation governing the service conditions. The award directed the employer to pay dearness allowance in accordance with certain scale fixed by the award. On 20.3.1961 the employees' union by issuance of notice for demanding increase in dearness allowance terminated the earlier award and demanded increase in allowance etc. The industrial dispute relating to such demands was referred to Industrial court in July 1963. Again in 1965, the employees' union made one more demand for increase in dearness allowance and even this time, a second reference was made to the Industrial Tribunal. In this background, what happened thereafter is required to be seen. The employer on 8.9.1967 issued a notice u/s 9A of Industrial Disputes Act, indicating that they intended to reduce the prevailing dearness allowance by 40% and would bring about such change with effect from 1.10.1967 i.e. after expiry of 21 days. The Union objected to this saying that during the pendency of the reference referred to above, no change would be implemented. Over this notice of change, for sometime the parties were before the Labour Commissioner, but he failed to bring about any conciliation between the parties and he closed the case. Upon this, the employer sent a letter to the Government on 30.10.1967 saying that they have right to effect the change and requested the Government to refer this matter to the Industrial Tribunal. The Government however refused to do so and accordingly informed this decision to the employer vide their letter dated 29.1.1968. The employer thereafter made an application before the Industrial

Tribunal u/s 33(1) for permission of the Tribunal for effecting the change. The Union opposed this application and asserted that it was not maintainable but the tribunal held that the application was maintainable by interpreting the provisions of Section 33(1) in a peculiar manner. The tribunal however held that to reduce dearness allowance by removing the ban imposed on the rights of the employer would create complications and accordingly adjourned the application and directed that it would be heard with the main reference. The Union challenged this order by filing a writ petition on which the reported judgment was delivered. The Union inter alia contended that service conditions settled by an award can only be altered by either an agreement or by settlement or by an award of Industrial Tribunal. It was further contended on behalf of the Union that there was nothing in Section 9A and 33 that conferred a right on an employer to alter the conditions of service once settled by giving notice u/s 9A and by making application u/s 33 for granting of permission. This contention was upheld by the Division Bench and it held as under :

13. Having regard to the law as pronounced by these authorities, it is clear that in the case of the present parties, as regards the right to recover dearness allowance and the obligation to pay the same, the terms and conditions of service that were operative and binding were those fixed by the Baxi award dated December 31, 1959, made in I. T. No.411 of 1958. As has been observed in the case of *Shree Yamuna Mills Co. Ltd. Vs. Majoor Mahajan Mandal and Others*, , upon the award having been terminated under the provisions of section 19(6), this very award governed the relations between the employer and the employees. The workmen desired to alter the rate of the benefit of dearness allowance that was fixed by that award and raised a demand in respect thereof. That demand was the dispute referred to the Tribunal under Reference No.216 of 1965. It is apparent that as there was liberty in the workmen to demand alteration there must be corresponding liberty in the Company to demand alteration and revision of the percentage of dearness allowance to the prejudice of the workmen. The question that is raised and requires to be decided is about whether, because such a demand for revision of the rate of dearness allowance could be raised, the employer had liberty unilaterally to bring into force and implement that demand and reduce unilaterally the dearness allowance by 40 percent as was stated in the notice of change tendered under S. 9A. Now the scheme of the Industrial Disputes Act as observed by the Supreme Court in the cases of *South Indian Bank Ltd. Vs. A.R. Chacko*, and *The Punjab National Bank Ltd. Vs. Its Workmen*, which we have just noticed was to maintain status quo as regards the terms and conditions of service between the parties until the terms and conditions were by a contract or a settlement or an adjudication award altered. Needless to state that the question of alteration of the terms and conditions by adjudication in an award must depend upon the reference that may be made by the Government u/s 10 of the Act. Apparently, the position is that in cases in which the Government for the reasons which may be germane and relevant refuses to make a reference of a demand for alteration of terms and

conditions of service, the employer must be left without any remedy whatsoever. The scheme of the Industrial Disputes Act thus appears to us to have deprived both the employer and the workmen of the liberty to have the terms and conditions of service altered by unilateral action on either side. The employer was not left with liberty to make his own contract regarding the terms of employment i.e. regarding the right to alter the terms and conditions of service fixed by an award to the prejudice of the workmen without securing a reference u/s 10 of the Act. Similarly, the workman in spite of his right to agitate in that connection was not left with the liberty to insist upon the revision of the terms and conditions of service in his favour unless he secured the revision by a reference made u/s 10 and the consequent adjudication of demand for revision by an award.

One must keep in mind that these observations were made in the peculiar facts situation of that case. As stated above, the references made by the government were still pending before the Industrial Tribunal and during the pendency of such references, Section 33 clearly prevented the employer from implementing the changes contemplated in the references. Section 33 does not apparently have any application beyond the pendency of the proceeding, either before Conciliation Officer or before court or Tribunal etc. Section 33 thus appears to be a provision made for providing interim protection to the employees. In this background the action on the part of the employer was wholly untenable. The notice of change which they gave, culminated the government's refusal to make reference. The provision refused to make a reference giving reasons. What was incumbent in such situation upon the employer was they ought to have challenged the government's decision about not making reference. In view of this, what is stated in this judgment is certainly not applicable to the situation that is arising in the present case.

10. The facts of LIC's judgment in short can be narrated as under :

LIC is a government owned Corporation. LIC was formulated after after nationalisation of insurance industry. The private companies were amalgamated and for implementing homogeneous policy regarding conditions of service for their personnel coming from various private companies and such other exigencies, the Life Insurance Corporation Act, 1956, was passed. The Corporation from time to time with clear approval of Central Government reached settlements with the employees in 1959 and agreed to pay cash bonus to them. This was done under the provisions of Industrial Disputes Act and not under the provisions of LIC Act. Thereafter, in 1960, "LIC of India Staff Regulations" were framed and they inter alia provided that the Corporation could issue non profit sharing bonus to its employees etc. and conditions of eligibility for bonus should be regularized by instructions of LIC from time to time. However, the Corporation continued to have good relations with its employees and the settlement of 1959 was followed by few more settlements i.e. in 1963, 1970 and 1972, providing for bonus for workman in service of Corporation. After sometime, the workman

raised dispute for bonus and other improved conditions and another settlement was arrived at between the parties in 1974. In this settlement, certain clauses were introduced in respect of no profit sharing bonus and its eligibility etc. Thereafter the Central Government in 1975 brought into force certain ordinance to extinguish the effect of 1974 settlement and thus tried to annul the workers' claim for bonus. The Supreme Court in the case of Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, struck down the said ordinance and directed the Corporation to pay its Class III and IV bonus for the year 1975 to 1977. Thereafter, the Corporation on 26.5.1978 issued notice terminating the settlement of 1974 and to bring about change u/s 9A of the Act. This was a clear step for stopping the payment of bonus to the workmen. This was challenged before the Allahabad High Court and the Lucknow Bench of Allahabad High Court held that the actions on the part of the Corporation were illegal in view of the provisions of Industrial Dispute Act and also held that the provisions of Industrial Dispute Act would prevail over the provisions of LIC Act. The Corporation then went to Supreme Court and the Supreme Court in this factual background delivered this judgment. The relevant portion of this judgment is as under :

33.The core question that first falls for consideration is as to whether the Settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become nonest but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given u/s 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has suspended the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, law abhors a vacuum and even on the notice of termination under S. 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distill from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the Section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end - order in society - can it commit functional harakiri by leaving a conflict situation to lawless void ?

34. Now we will move on to the precedents on the point which have been summed up by Malhotra thus (1) : (3) Effect of termination of award u/s 19(6) on rights and obligations of parties. Termination of an award by either party u/s 19(6) does not have the effect of extinguishing the rights flowing therefrom. The effect of termination of an award is only to prevent thereafter the enforcement of the obligation under it in the manner prescribed, but the rights and obligations which flow from it are not wiped out. Evidently, by the termination of an award, the contract of employment is not terminated. The obligations created by the award or contract could be altered by a fresh adjudication or fresh contract.

35. In *Judhisthir Chandra Adak and Another Vs. P.R. Mukherjee and Another*, the position as stated above was accepted as correct by the High Court. A Division Bench of the Bombay High Court in *Mangaldas Narandas v. Payment of Wages Authority etc.*, (1957) 2 LabLJ 256 (Shah and Gokhale JJ.) came to the same conclusion and neatly summed up the sequence of triple stages and the difference in legal consequences, and upholding the contention that even after termination of an award u/s 19 (6) the terms incorporated in the award continued as a contract between the parties. So much so, no reversion to the preaward position was permissible on the part of the employer. The headnote which is sufficiently lucid and luminous, sums up the ratio thus :

Where an award is delivered by the industrial tribunal it has the effect of imposing a statutory contract governing the relations of the employer and the employee. It is true that statutory contract may be terminated in the manner prescribed by Section 19(6) of the Industrial Disputes Act. After the statutory contract is terminated by notice, the employer by failing to abide by the terms of the award does not incur the penalties provided by the Industrial Disputes Act, nor could the award be enforced in the manner, prescribed by Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950. But the termination of the award has not the effect of extinguishing the rights flowing therefrom. Evidently by the termination of the award the contract of employment is not terminated. The employer and employee remain master and servant in the industry in which they are employed, unless by notice the employer has also simultaneously with the termination of the award terminated the employment of the employee. If the employment is not terminated, it is difficult to hold that the rights which had been granted under the award automatically cease to be effective from the date on which notice of termination of the award becomes effective. The effect of termination of the award is only to prevent enforcement of the obligations under the award in the manner prescribed, but the rights and obligations which flow from the award are not wiped out. Termination of the award or lapsing of the award has not the effect of wiping out the liabilities flowing under the award.

An award has the effect of imposing fresh terms upon the contract of employment between the employer and the employee to which they have been assented. The termination of such award does not terminate the contract.

Even after the award is terminated in the manner provided by Section 19(6) of

the Industrial Disputes Act, the obligation created by the award could be altered by a fresh contract or a fresh adjudication under the Industrial Disputes Act, "and not otherwise". "

The Industrial Disputes Act has been enacted with the object of securing harmonious relations in the working of the Industry," between the employer and the employees by providing a machinery for adjudication of disputes between them; "and the object of the legislature would be frustrated if after every few months by unilateral action the employer or the employees may be entitled to reopen the dispute and ignore the obligations" declared to be binding by the process of adjudication. (emphasis hereinto " " added).

The law laid down in this case is clearly not applicable to the fact situation of the present case. In the LIC case the settlement of 1974 was terminated by the Corporation employer by issuing notice u/s 19(2) and by giving notice of change to the employees. In this context alone, the paragraphs quoted are required to be read. The observations of the Supreme Court at nowhere considered the situation that the conciliation proceeding initiated pursuant to Section 9A notice was concluded finally and no further proceeding was pending.

11. The Supreme Court further held that the law does not allow lawless void and that a contract of service created by an award or settlement would live on so long as the new lawful contract is got into being. One should ask if this ratio is required to be applied to the present scenario, one should ask the petitioner company as to whether because of their action u/s 9A etc., a void is created and whether the contract of service created by the settlement of 1994 is lawfully terminated and is lawfully replaced by another contract. The answer to this is in affirmative because the company apparently followed the procedure contemplated u/s 9A and that Section 33 does not prohibit the company from implementing the change. In my view, these two judgments therefore would not support the submissions of the respondent. The learned counsel for the respondent also place reliance on some more judgments. First is judgment in All India Labour Union and M/S. Jeewanlal (1929) Ltd. and Another reported in 1986 (53) Bom. 483. In this case, this Court was considering an interim order passed by the Industrial court. The employer gave notice of change intending reduction in salary of the employees. The Union objected to the proposed change and the matter went to Conciliation Officer. The officer recorded his inability to bring about the settlement and informed the parties that he has sent a letter to that effect to the Government. Thereafter the employer gave effect to the change and so the Union came to Industrial court alleging unfair labour practice. At interim stage this court said that there is a prima facie case in favour of the Union and directed the employer not to give effect to the change. In this judgment the Learned Single Judge of this court placed reliance on certain paragraphs of HARIBHAU case (supra) and LIC case (supra). But I think this judgment will not prevent me from taking a different view because it is a judgment passed at interim stage. Besides, in this judgment, there is no discussion on Section 33 and

its effect. Reliance of the learned counsel of the respondent on the judgments of Supreme Court in the case of M/s.Fabril Gasosa and Labour Commissioner and others reported in 1997 (75) (Supreme Court) 715 is not quite appropriate. It is a judgment on the question arising from provisions of Section 33C read with Rule 58 of the Industrial Disputes Act. Even the judgment of this court in the case of Apar (Pvt.) Limited Vs. S.R. Samant and others, . is not helpful to the respondent Union because in the said case the employer's proposal before implementation was held to be invoked. The High Court held that the proposed change would amount to unfair labour practice since the proposed change was avk 26 WP-8508-2011-J unilateral and that the employer cannot resort to Section 9A even though they asserted that the step was taken because the employees were not disciplined etc.

As against this the learned counsel appearing for the petitioner placed reliance on judgment of this court in the case of The Dyes and Chemical Workers Union Vs. Bombay Oil Industries Ltd. and Another, The argument of the employer in this case mentioned in paragraph 4 is quoted below :

4. Shri Singh has also submitted that it was for the Union to have approached the Conciliation Officer u/s 33 of the Industrial Disputes Act to oppose the proposed price rise in the Canteen. It was for the Union to have raised an Industrial Dispute against the decision of the Company to alter or modify the service condition agreed in the settlements. The Union having not resorted to the legal provisions cannot be allowed to oppose the change in the canteen prices. Shri Singh has pointed out that u/s 9A of the I.D.Act, the bar on the employer before effecting any desired change is a prior notice of 21 days to be given to the workmen / union and the proposed change should not be effected within the said notice period of 21 days. The learned counsel pointed out that these are the only two conditions required to be observed by the employer and there is absolutely no prohibition to effect any change after the expiry of 21 days notice period unless the adjudicating machinery if resorted to by the Union injuncts or prohibits the employer to effect the change.

The argument on behalf of the employees is mentioned in paragraph six and I quote the same below :

The settlement of 1978 being binding and valid the only way for the company to change the terms of a settlement is by raising a dispute and having the dispute adjudicated. Only the adjudicating body under the I.D. Act can decide whether the clause should be modified and it is not open for the Court under the M.R.T.U. & P.U.L.P. Act to look into the justification for an alteration in the condition of services.

The Learned Single Judge of this court then expressed his view on this particular subject in paragraph 10 and I would quote the same as under :

The petitioner have given a notice of proposed change in the food prices on 30.4.1992 and have given effect to such proposed changes only after the expiry

of 30 days, though Section 9A of the I.D. Act prescribes a period of notice as 21 days. There is no other bar u/s 9A to give effect and it was for the respondent Union to have raised an industrial dispute to challenge the proposed change. It cannot be argued that the employer who passes an order of dismissal himself has to approach the adjudicating machinery for declaration that his action is legal and proper. In the similar circumstances, it cannot be argued that the petitioner company having proposed a change has to approach the conciliation officer to seek a permission to effect change. There is no such provisions which is pointed out to me. The petitioner company has displayed the notice intending to change in the food prices sold in the canteen and it was for the respondent Union, on getting aggrieved to have approached the adjudicating machinery. In my opinion after expiry of 21 days it was open to the petitioner company to have given effect to the intended or proposed change. In my opinion there was no illegality in the decision and action of the company to effect the change proposed in its notice dated 30.4.1999.

The petitioner thus succeeds in this writ petition. The petition is allowed. The impugned order passed by the Industrial court dated 17.8.2011 stands set aside. The effect of this order is stayed for eight weeks and the interim order passed in the petition shall stand continued till then.