
(2000) 09 BOM CK 0049

In the Bombay High Court

Case No : Letters Patent Appeal No. 64 of 2000

Johnson and Johnson Ltd.

APPELLANT

Vs

Gautam Hari Vedi and Others

RESPONDENT

Date of Decision : 16-09-2000

Acts Referred:

Industrial Disputes (Bombay) Rules, 1957 — Rule 62
Industrial Disputes Act, 1947 — Section 10(1), 12(3), 17A, 18(1), 2
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 59

Citation : (2001) 1 BomCR 335 : (2001) 1 BOMLR 155 : (2001) 89 FLR 95 : (2000) 4 MhLj 326

Hon'ble Judges : D.S. Zoting, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : K.K. Singhvi and R.V. Ghuge, for the Appellant; T.K. Prabhakaran, for the Respondent

Judgement

B. H. Marlapalle, J.—The appellant/petitioner has assailed the order dated 28th April, 2000 passed by the learned Single Judge in Writ Petition No. 1602 of 2000 to the extent of refusal to grant interim relief to the appellant/petitioner. The said order passed by the learned Single Judge, reads as under :

"Rule. No interim relief."

2. We have heard Shri K. K. Singhvi, the learned senior counsel with Shri Naik and Shri Ghuge, for the appellant/petitioner and Shri T. K. Prabhakaran, learned counsel for the respondent Nos. 1 and 2. Respondent No. 3 is not a necessary party and he is, therefore, directed to be deleted forthwith.

3. By the consent of the parties the Appeal was taken up for final hearing on 31st August, 2000. The factual matrix leading to this Letters Patent Appeal is required to be briefly stated, as under :

4. The appellant is a Public Limited Company with its registered office at Tardeo,

Mumbai and has a factory in the M.I.D.C. Industrial Area at Waluj, near Aurangabad. The employees of the said factory are the members of Johnson and Johnson Employees Union. The factory operation started sometimes in 1991 and there are 100 employees who are the members of the said union. The union has also obtained a certificate of recognition under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Act for short). A settlement regarding service conditions was arrived at between the appellant Management and the recognised union on 16th December, 1993 and it expired on 30th September, 1996. The respondent Nos. 1 and 2 were the General Secretary and President, respectively, of the said recognised union and they had submitted a charter of demands on 19th August, 1996 for revision in wages and the demand in terms of monetary increase came to Rs. 20,000/- per month. The respondent Nos. 1 and 2 submitted a strike notice dated 23rd August, 1997 proposing a strike commencing from 7th September, 1997. However, in the meanwhile, the charter of demand was referred for adjudication to the Tribunal by the State Government vide its order dated 29th August, 1997 under the provisions of the Industrial Disputes Act, 1947 (I.D. Act for short). The strike had commenced from 7th September, 1997 and the employees, lead by the respondent Nos. 1 and 2 allegedly indulged in acts of in discipline, violence and intimidation etc. during the period of strike. This resulted in termination of service of respondent Nos. 1 and 2 by order dated 8th September, 1997.

5. As the reference on charter of demand was pending (reference (IT) No. 1 of 1997) the appellant Management filed applications for approval u/s 33(2)(b) of the I.D. Act before the Industrial Tribunal on 8th September, 1997 itself. A fresh notice of strike dated 15th September, 1997 was submitted by the union regarding the dispute of termination of service of respondent Nos. 1 and 2 along with other demands and these demands also came to be referred for adjudication to the Industrial Tribunal vide order dated 9th October, 1997 passed by the State Government. This notice was signed by respondent Nos. 1 and 2. The strike continued for about four months and, in the meanwhile, fresh elections to the office-bearers of the recognised union were held and the respondent Nos. 1 and 2 were not in the new body of the office-bearers. The new office-bearers negotiated with the management and ultimately it was agreed that an increase of Rs. 1,700/- per month, for each worker, over and above the prevailing emoluments would be just and proper. The parties accordingly signed a settlement on 11th February, 1998 and the workers had withdrawn the strike and resumed work on 8th January, 1998 i.e. prior to the signing of settlement.

6. It is contended that a joint pursis came to be filed before the Industrial Tribunal in Reference (IT) No. 1 of 1999 on 17th March, 1998 praying for disposal of the reference as not surviving and/or not pressed for. On 24th December, 1999 the learned Member of the Industrial Tribunal at Aurangabad was pleased to pass an Award in the said reference and the operative part of the Award reads as under :

The Reference is decided in terms of the settlement dated 17th March, 1998 which is annexed herewith. The reference is returned to the Government of Maharashtra for publication in the Official Gazette."

7. After the settlement was signed between the management and the recognised union on 17th March, 1998, the respondent Nos. 1 and 2 approached the Labour Court against the order of termination by filing Complaint (ULP) Nos. 33 and 34 of 1998 on 20th March, 1998 alleging that the orders of termination amounted to unfair labour practice under Item I of Schedule IV of the Act. The Applications for interim relief filed u/s 30(2) of the said Act came to be rejected by the Labour Court by an order dated 11th November, 1998 and the said orders were challenged in Revision Application (ULP) Nos. 85 and 86 of 1999 before the Industrial Court at Aurangabad. Both the revisions came to be dismissed by a common order dated 19th March, 1999. Writ Petition No. 4075 of 1999, challenging the orders passed by the Labour Court and the Industrial Court, has been admitted. The prayer for interim relief was rejected by this Court by directing the Labour Court to decide the complaints preferably within a period of six months. In the pending complaints, before the Labour Court, the appellant Management has raised a preliminary objection regarding the maintainability of these complaints in view of the bar of section 59 of the Act. By consent, both the parties agreed that the preliminary issue as well as the issues on merits be decided together. By an order dated 23rd March, 2000, the learned Judge of the Labour Court held that (a) the complaints were tenable and the bar of section 59 of the Act did not operate; (b) the alleged termination of the complainants was in violation of the Model Standing Orders in respect of disciplinary action and also in utter disregard to the principles of natural justice. The learned Judge further directed the management to justify their action of termination of service of respondent Nos. 1 and 2 before the Labour Court. Being aggrieved by the said order passed by the Labour Court the petitioner management approached this Court in Writ Petition No. 1602 of 2000 which has been admitted and the prayer to stay was declined. This Letters Patent Appeal has been filed on 2nd May, 2000 and by our order dated 5th May, 2000 it came to be admitted. By a separate order in Civil Application No. 2207 of 2000 the order passed by the Labour Court on 23rd March, 2000, was stayed by way of ad interim relief and subsequently it was continued until further orders.

8. Civil Application No. 3650 of 2000 has been filed by the respondents praying for dismissal of the appeal as having become infructuous in view of the Full Bench judgment of this Court in the case of C. S. Dixit v. Bajaj Tempo Ltd., This Civil Application was heard on 11th August, 2000 and we agreed to hear the appeal itself finally and dispose it of on merits.

9. Shri K. K. Singhvi, learned Senior Counsel, at the outset, submitted that the judgment of the Full Bench in the case of C. S. Dixit (supra) does not make the appeal infructuous and the ratio laid down by the Full Bench has not, in any way, decided the issues raised by the appellant in the pending writ petition as well as

in the instant appeal. This Court, from time to time, has held that unless the remedy of revision u/s 44 of the Act, by approaching the Industrial Court against the order of the Labour Court, is exhausted a writ petition, challenging the order of the Labour Court, is not tenable. In support of its direct approach to this Court, by filing the writ petition, without availing the remedy of revision as provided u/s 44 of the Act, the learned senior counsel has relied upon a judgment of the Constitutional Bench of the Supreme Court in the case of "State of Uttar Pradesh v. Mohammad Nooh, wherein it was, inter alia, held:

: In the next place it must be borne in mind that there is no rule with regard to certiorari, as there is with mandamus, that it will lie only when there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by the statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the Superior Courts in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of Inferior Courts subordinate to it and ordinarily the Superior Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies if any. But this rule, requiring the exhaustion of statutory remedies before a writ will be granted, is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

10. It is, no doubt, true that between the parties inter se, two more writ petitions are pending before this Court and the appellant, therefore, chose to directly approach this Court against the order passed by the Labour Court on 23rd March, 2000 instead of resorting to the remedy of revision before the Industrial Court. The learned senior counsel also submitted that the issues regarding the bar of section 59, which were raised before the Labour Court, are required to be decided by this Court as the learned Judge of the Labour Court has finally decided the same issues by relying upon the decisions of this Court and, approaching the Revision Court in such circumstances would not serve the ends of justice.

11. The appellant/management contends that the demand notice dated 15th September, 1997 included a demand regarding the reinstatement of the respondents and the said demand, along with other demands referred to the Tribunal for adjudication, by reference order dated 9th October, 1997, came to be settled as per the settlement dated 11th February, 1998 entered between the management and the recognised union under the provisions of section 2(p) read with section 18(1) of the I.D. Act and Rule 62 of the I.D. (Bom.) Rules, 1957. Pursuant to the said settlement the Industrial Court has passed an Award on 24th December, 1999 in terms of the said settlement and the pursis dated 17th March, 1998. In these circumstances, the dispute regarding the termination of service of the respondents is finally adjudicated by the award 24th December,

1999 in terms of the settlement dated 11th February, 1998 and the joint pursis dated 17th March, 1998 and, therefore, the bar of section 59 will operate against the complaints instituted by the respondents u/s 28 of the Act challenging the orders of termination. A number of decisions of the Supreme Court have been cited by the learned senior counsel for the appellant in support of its challenge to the order passed by the Labour Court on 23rd March, 2000 as well as the order passed by the learned Single Judge of this Court refusing stay to the order passed by the Labour Court.

12. Shri Prabhakaran, the learned counsel appearing for the respondents, on the other hand has, at the first instance, challenged the maintainability of the Letters Patent Appeal on the ground that the order passed by the learned Single Judge, refusing to grant interim relief, does not amount to a judgment under clause 15 of the Letters Patent of our High Court. This preliminary issue need not detain us any further as it is no more *res integra* in view of our judgment in the case of *Sambhaji Ramaji Patil v. District Supply Officer, Nanded and others*, Shri Prabhakaran has further supported the order passed by the Labour Court holding that the bar of section 59 of the Act is not attracted in the complaints filed by the respondents challenging the orders of termination. He has relied upon the judgment of the Full Bench in the case of *C. S. Dixit (supra)*. In addition, it is urged before us that if the contentions of the appellant/management are accepted, the respondents would become remediless against the order of termination and such an eventuality is never contemplated by the legislature by incorporating the bar of section 59 of the Act inasmuch as the right to challenge the termination order individually cannot be taken away by invoking the bar under the Act simply because the award passed by the Industrial Tribunal in terms of the settlement and more so when the said settlement as well as the award did not adjudicate on the demand regarding the reinstatement in service, of the respondents.

13. The Full Bench of this Court in *C. S. Dixit's case (supra)* held that the bar of section 59 of the Act will not operate on the basis that in a pending matter before the Industrial Court under the Act an attempt to get the pending application amended had failed. Similarly, the bar of limitation having the effect of shutting out the remedy even if the question is decided at the end of the trial, would have the effect of shutting the doors of the Court, on account of non-maintainability and the proceedings having been rejected on account of limitation, would not operate as a bar as contemplated u/s 59 of the Act. This Court also held that the question of bar u/s 59 of the Act would not arise when the matter, sought to be agitated, is based on a new cause of action and similarly if before any effective steps are taken by the Industrial Court under the Act and the matter is withdrawn, the bar u/s 59 of the Act would not apply. None of the eventualities, as set out by the Full Bench of this Court in the abovesaid case, have occurred in the case at hand. The Reference has been answered by an award dated 24th December, 1999 and the Award is the final settlement on the demands submitted by the union and referred to, for adjudication by the

Tribunal, as per the order dated 9th October, 1997 passed by the State Government. We therefore, have no hesitation to hold that the decision of the Full Bench, as relied upon by the respondents, is not attracted in the instant case.

14. We are conscience of the legal position that when the issues framed in the Writ Petition are pending for consideration before the learned Single Judge, ordinarily the said issues should not be decided by us. However, the learned counsel for the respective parties urged before us that the issues raised in the Petition have been raised in the instant appeal and it would be in the interest of justice that they are decided by us so as to set at rest the controversy in those issues. It is, under these circumstances, that we have proceeded to frame and decide the following issues :

(i) Whether the bar of section 59 of the Act will oust the complaints filed by the respondents before the Labour Court in view of the Award passed by the Industrial Court on 24th December, 1999 in Reference (IT) No. 1 of 1999 ?

(ii) Whether the pendency of approval applications filed u/s 33(2)(b) of the I.D. Act operates as a bar u/s 59 of the Act against the complaints filed by the respondents?

(iii) Whether the respondents are remediless if it is held that the bar of section 59 of the Act operates against the complaints filed by them before the Labour Court, challenging the termination orders ?

15. From the record in Reference (IT) No. 1 of 1999 it is clear that the Commissioner of Labour has passed an order on 9th October, 1997 and referred the disputes for adjudication to the Industrial Tribunal at Aurangabad u/s 10(1) (d) of the I.D. Act. The demands referred for adjudication appear in the notice dated 23rd August, 1997 and 15 September, 1997 as submitted by the recognised union and there are three demands from the first notice and three demands from the second notice, thus, making in all six demands in the schedule attached to the order dated 9th October, 1997 referred for adjudication by the Industrial Tribunal. This order was received by the Industrial Tribunal on 10th October, 1997. It would be appropriate to list out the three demands referred for adjudication from the notice dated 15th September, 1997.

(i) Whether the management has terminated the services of Shri S. P. Bagul, President and Shri C. K. Bedi, General Secretary of Johnson & Johnson Employees Union, Aurangabad by way of victimisation as they are actively taking part in day-to-day union activities. If yes, what relief are they entitled to?

(ii) Whether the management has indulged in unfair labour practice of threatening the committee members with discharge, dismissal or termination. If so, what relief are the committee members entitled to?

(iii) Whether the management has indulged in unfair labour practices by threatening the workmen with discharge, dismissal or termination. If so, what relief are the workers entitled to?

16. Admittedly, the respondents were the committee members of the recognised union when these demands were referred for adjudication by the Labour Commissioner and, therefore, all the above referred three issues included the case of termination of their service. The management submitted an application before the Tribunal on 8th December, 1999 along with joint pursis dated 17th March, 1998 praying for award being passed in terms of the said pursis. The application has been marked as Exhibit 2 and the joint pursis has been marked as Exhibit 3. As stated above, the learned Member of the Tribunal has passed the award on 24th December, 1999. After the said award was published, it appears that the respondents have submitted an application on 1st February, 1999 before the Secretary, Ministry of Labour, Government of Maharashtra with a prayer to return the reference to the Tribunal after adding the applicants as party to the said reference on the grounds that the same relates to their dismissal from service. There is a further prayer to direct the Tribunal to dispose of the same in accordance with law. The said application is purportedly filed u/s 17A of the I.D. Act and it is not necessary to deal with that application regarding its merits or tenability. However, it needs to be mentioned that the restoration applications purportedly filed on 6th January, 2000 are not on record and so is the case with the settlement dated 11th February, 1998 signed between the petitioner management and the recognised union u/s 2(p) read with section 18(1) of the I.D. Act. Nevertheless, there is no dispute regarding the factum of the said settlement entered between the parties and the said settlement has culminated into resumption of work by withdrawing the strike.

17. Under the scheme of the I.D. Act, there are two types of settlement viz., a settlement signed in conciliation u/s 12(3) read with section 18(3) of the I.D. Act which is popularly known as a Tripartite settlement and the other settlement is a Bipartite settlement signed u/s 2(p) read with section 18(1) of the said Act. Legal status of the settlements has been dealt with by the Apex Court time and again and it would be useful to refer to the following enunciations in that respect.

(a) In the case of *Herbertsons Limited v. The Workmen of Herbertsons Limited and others*. It was, inter alia, held (i) when a recognised union negotiates with an employer, the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlements since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interest of labour. This would be the normal rule. There may be exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements but in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and considerations; (ii) there may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and the labour in arriving at a settlement, which operates well for the period that it is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding

friction and unhealthy litigation. This is the quintessence of settlement which Courts and Tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardsticks adopted in scrutinising an award in adjudication: (iii) It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will disallow to hold the settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole."

(b) In the case of *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corporation Limited*, the Supreme Court held that a bipartite settlement has limited application in that it merely binds the parties to the settlement but a tripartite settlement has an extended application since it is binding on all parties to the industrial disputes; to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment and to all others who join the establishment thereafter;

(c) In the case of *M/s. Tata Engineering and Locomotive Company Ltd. v. Their Workman*, the Apex Court held :

"A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication."

(d) In the case of *Balmer Lawrie Workers Union, Bombay and another v. Balmer Lawrie & Co. Ltd. and others*, clause 17 of the settlement entered into between the management and the recognised union came to be challenged and as per the said clause the Company was to collect, from each workman, an amount equivalent to 15 percent of the gross arrears payable to each employee under the settlement as contribution to the union fund and it was, in turn, to be paid to the union within three days of the payment of arrears. It was inter alia contended by the petitioner union that the said clause was in breach of the provisions of the Payment of Wages Act and while negating the challenge the Supreme Court, observed :

"It is well known that no deduction could be made from the wages and salary payable to a workman governed by the Payment of Wages Act unless authorised by that Act. A settlement arrived at on consent of parties can however permit a deduction as it is the outcome of understanding between the parties even though such deduction may not be authorised or legally permissible under the Payment of Wages Act.

(e) In the case of *The K.C.P. Limited v. The Presiding Officer and others*, a somewhat similar situation, as in the instant case, was before the Supreme Court in respect of the settlement entered into between the employer and the union representing the employees. The issue of dismissal of 29 workmen, by way of punishment, was pending for adjudication and during such pendency, the recognised union entered into a settlement with the management regarding

these 29 dismissed workmen as well and it was agreed that an option would be given to them either to accept reinstatement without back wages or a lump sum amount of Rs. 75,000/- with other monetary benefits may be accepted by the concerned workmen in lieu of reinstatement. 17 workmen accepted the settlement and remaining 12 challenged the said settlement and pressed for adjudication being continued by the Labour Court. The contesting workmen contended before the Supreme Court that the settlement regarding their interest as entered between the management and recognised union during the pendency of adjudication of the dispute was illegal and was not binding on them. It was also submitted that they were not parties to the settlement and hence it did not bind them. The Supreme Court held that the settlement arrived at by direct negotiation between the management and union was valid and legal and the recognised union had represented 29 dismissed workmen. The Court further observed that the union was Justified in signing the said settlement in respect of all these workmen out of whom 17 had accepted it and in its view such a package deal entered into between the parties was in the best interest and it cannot be said to be unfair or unjust from any angle.

(f) More recently, in the case of National Engineering Industries Ltd. v. State of Rajasthan and others, the Supreme Court observed :

"Industrial Tribunal is a creation of statute and it gets jurisdiction on the basis of reference. It cannot go into the question on the validity of the reference. Question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived among the management. Labour Union and the Staff Union. When such a settlement is arrived at it is a package deal. In such a deal some demands may be left out. It is not those demands, which are left out should be specifically mentioned in the settlement."

18. The learned counsel for the respondents has brought on record the settlement dated 11th February, 1998. Clause 33 of the said settlement stipulates that it is valid for the period from 1st October, 1996 to 31st March, 2000 and it shall apply to all the permanent workmen who are presently engaged or will be engaged in future at the Company's Waluj factory; whereas clause 34 reads, as under :

"It is agreed between the parties that this settlement is in full and final settlement of all their demands spelt out in the Charter of demands in Annexure A (collectively) to this memorandum of settlement and issues raised with the Company during negotiations preceding the execution of this memorandum of settlement. All such demands and issues, which are not covered under this memorandum of settlement, are not pressed, stand withdrawn and no dispute or difference exists."

The provisions of section 18(1) of the I.D. Act so far as they relate to the State of Maharashtra, read as under :

"A settlement arrived at by agreement between the employer and workman

otherwise than in the course of conciliation proceedings 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, then 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."

19. It is contended by the learned counsel for the respondents that the settlement between the management and the recognised union, which culminated in an award, passed by the Industrial Tribunal, is not binding on the respondents in view of the proviso to section 18(1) of the I.D. Act. The submissions do not appeal us. Pursuant to the bipartite settlement dated 11th February, 1998 the parties signed a joint pursis on 17th March, 1998 and an application was submitted before the Industrial Tribunal praying for award in terms of the joint pursis. We may also, in this regard, refer to the provisions of section 20 of the Act which give certain rights to the recognised unions and state (1) that the office-bearers of the recognised union have a right, for the purpose of prevention or settlement of an Industrial Dispute, to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of the employees employed in his undertaking. Whereas sub-section (2)(b) states that no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration, except through the recognised union and the decision arrived at or order made in such proceedings shall be binding on all the employees in such undertaking. In the order passed by the Labour Commissioner there were specific issues referred for adjudication at the instance of the recognised union and, therefore, if regards be had to the provision of section 20 of the Act read with the provisions of section 18(1) of the I.D. Act, the settlement arrived at between the recognised union has a status of binding nature and it is applicable to all the workmen, irrespective of individual disadvantages to some or few of them. In the case of *M/s. Hari Fertilizers v. State of U.P. and Ors.*, the Supreme Court held:

"It would only mean that settlement in the course of conciliation reached with the union or the unions representing the much larger interest of the workmen would ordinarily be binding on majority of the unions. Undoubtedly, even a dispute not espoused by a union, but deemed to be a dispute u/s 2A of the Act, a union can enter into settlement, in the larger interests of the workmen and the Industry."

Any settlement between the employer and the employees is placed on a higher pedestal than an award passed after adjudication. The machinery under the I.D. Act envisages resolution of industrial disputes and conflicts at the grassroots level

by conciliation by which settlement can be arrived at between the employer and the workmen and industrial peace can be achieved by putting industrial strife to an end. In view of section 2(p) a settlement which is based on a written agreement between the parties can be arrived at either in conciliation proceedings or even outside conciliation proceedings between the representatives of the workmen on the one hand and the management on the other. Written agreements would become settlements contemplated by section 2(p) read with section 12(3) of the Act when arrived at during conciliation proceedings or even outside conciliation proceedings. The I.D. Act is based on the principles of collective bargaining for resolving industrial disputes and for maintaining industrial peace. In all these negotiations based on collective bargaining, the individual workman necessarily recedes to the background.

20. It must be emphasised that the recognised union issued two notices (i) on 23rd August, 1997 and (ii) on 15th September, 1997 listing out the demands in support of the strike to be commenced from 30th September, 1997, conciliation proceedings were conducted in respect of the said demands as contemplated u/s 12 of the I.D. Act, the Labour Commissioner invoked his powers u/s 10(1)(d) of the said Act and passed an order referring the demands the adjudication to the Industrial Tribunal, the parties arrived at a settlement, signed a joint pursis and an application came to be filed before the Industrial Tribunal praying for award in terms of the said joint pursis and, thereafter, the Tribunal has passed an award on 24th December, 1999. It is not a case that the proceedings under the I.D. Act in respect of the issues regarding the termination of the service of respondents were only instituted and pending under the scheme of the I.D. Act and, in fact, the issues referred for adjudication to the Tribunal had finally culminated in an award and the reference was, thus, answered in terms of the said award. Under these circumstances, the submission that the bar of section 59 of the Act will not operate against the respondents in respect of their complaints filed before the Labour Court under the said Act, is fallacious. The reasoning given by the learned Judge of the Labour Court, in support of his finding that the bar of section 59 does not operate is manifestly erroneous. It appears that the learned Judge of the Labour Court was under an erroneous impression that the reference was still pending before the Industrial Tribunal. Once the award was passed by the Tribunal on 24th December, 1999 the reference was finally disposed of in terms of the said Award and the proceedings instituted under the I.D. Act, right from the stage of submission of demands, stood concluded and, therefore, the ouster of jurisdiction of the Labour Court u/s 59 would certainly be attracted. The observations of the learned Judge that in his view no proceeding was instituted against their dismissal before any Competent Court by the complainants which operate bar u/s 59 of the said Act is grossly erroneous. There is no provision that the proceedings should be instituted by the complainants only and the learned Judge lost sight of the fact that the charter of demands, in terms of the above referred notices, was submitted under the signatures of the respondents alone on two different occasions and they had prayed for adjudication in respect of

those issues. Including the issue of termination of their services. It is another matter that in the course of time they were not re-elected as office-bearers but that by itself will not imply that the respondents were not a party to the proceedings under the I.D. Act. The record clearly shows that the demand regarding the alleged illegal termination of their service and reinstatement consequently was referred to adjudication to the Tribunal by the Commissioner of Labour.

21. We, therefore, hold that in the instant case the bar of section 59 of the Act will operate against the complaints filed by the respondents u/s 28 of the said Act challenging the orders of termination, in view of the Award passed by the Industrial Tribunal in Reference (IT) No. 1 of 1999 on 24th December, 1999. In view of this affirmative finding on issue No. 1 framed by us in the foregoing paragraph, we need not answer the issue regarding the bar u/s 59 of the Act against the complaints filed by the respondents on account of the pendency of the approval applications filed by the management u/s 33(2)(b) of the I.D. Act and we leave the said issue open for the time being.

22. In the proceedings of an application for approval u/s 33(2)(b) of the I.D. Act filed by the management the respondents have the remedy of contesting the said applications and even if the reference has been decided or disposed, the applications are required to be adjudicated by the Industrial Tribunal before whom they are pending. It is well established in law that the present respondents are entitled to lead evidence in their support to contest the approval applications and this Court in the case of Shashikant Shrikrishna Sompurkar v. Tata Memorial Hospital and others, has held that the proceedings in approval application filed u/s 33(2)(b) of the I.D. Act are full fledged adjudication proceedings and they are required to be adjudicated on the same lines as a dispute regarding termination of service is adjudicated by the concerned forum viz. the Conciliation Officer, the Labour Court or the Industrial Court and not merely on prima facie basis. The Tribunal is first required to decide the legality of the inquiry and if the inquiry is found defective, the Tribunal has to direct the parties to lead evidence and decide the preliminary issue regarding the legality of the domestic inquiry. While deciding such application, the authority has to decide the procedural aspect namely the compliance of mandatory requirements while filing the application and the dismissal order being supported on merits. If the authority is not satisfied on any of these grounds the application for approval fails and the employee concerned shall be deemed to be in continuous service and shall be entitled for all the consequential benefits like back wages etc. In the case of Strawboard Manufacturing Co. v. Govind, and Tata Iron & Steel Co. Ltd. v. S. N. Modak, it has been held that if the approval application is not granted u/s 33(2)(b) of the I.D. Act the order of dismissal becomes ineffective from the date it was passed and, therefore, the employee becomes entitled to wages from the date of dismissal to the date of disapproval of the application. No doubt, another Bench of three Judges in the case of Punjab Beverages (P) Ltd., Chandigarh v. Suresh Chand, and S. Ganapathy v. Air India, has taken a different view in some

respects and therefore, the Supreme Court was pleased to refer the issues to a Larger Bench of five Judges in the case of Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and another. It is also equally well settled that even if the approval applications are allowed, the respondents workmen are not estopped from raising an industrial dispute under the provisions of the I.D. Act agitating the issue of illegal termination and the Appropriate Authority has the powers to refer such a dispute for adjudication either by the Labour Court or by the Industrial Tribunal, as the case may be. It is, therefore, clear that the bar of section 59 of the Act against the complaints filed u/s 28 of the said Act in view of the Award passed by the Industrial Court does not make the respondents remediless and the doors for seeking Justice against the alleged illegal termination orders are not shut. Nevertheless it is necessary that the pending approval applications are decided by the Industrial Tribunal expeditiously and preferably within a fixed period.

23. In the result the appeal is allowed and complaint (ULP) No. 33 of 1998 and 34 of 1998 filed by the respondents before the Labour Court are hereby dismissed as not tenable in view of the bar u/s 59 of the Act. The Industrial Court at Aurangabad is directed to hear and decide the pending approval applications filed in Reference (IT) No. 1 of 1997 as expeditiously as possible and in any case within a period of six months from today. Parties are directed to appear before the learned Single Judge for disposal of Writ Petition No. 1602 of 2000 in view of this judgment.