(2014) 01 AHC CK 0097

In the Allahabad High Court

Case No : Special Appeal No. 1699 of 2010

M/s. L.M.L. Limited — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 23
Industrial Disputes Act, 1947 — Section 18 18(3)(d) 33(C-2) 6(B)
Trade Unions Act, 1926 — Section 4

Citation : (2014) 01 AHC CK 0097

Hon'ble Judges : Sunil Ambwani, J;Dinesh Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri Shashi Nandan, Senior Advocate assisted by Shri Vijay Sinha, learned counsel appearing for M/s. L.M.L. Limited-the appellant. Ms. Bushra Maryam appears for L.M.L. Mazdoor Ekta Sangathan, Kanpur. Learned Standing Counsel appears for the State respondents. M/s. L.M.L. Limited ? a public limited company registered under the Companies Act has preferred this intra-court Special Appeal under Chapter VIII Rule 5 of the Rules of the High Court against the judgement of learned Single Judge dated 17.9.2010 by which he dismissed the writ petition challenging the reference made by the State Government vide Government Order dated 21.5.2008, suo moto, to the Industrial Tribunal relating to the issue of propriety and legality of the lay off declared on 15.4.2007 and its consequences.

2. Learned Single Judge did not agree with the grounds of challenge to the reference, namely that, LML Mazdoor Ekta Sangathan, Kanpur is a small splinter group of workmen, who have received all the benefits under the agreement providing lay-off dated 13.4.2007. They have tried to disturb the peaceful functioning of the company by getting themselves registered under the Trade Union Act, which was successfully challenged by the company in Writ Petition No.

5903 of 2008. The writ petition was allowed by this Court on 23.4.2008 quashing the registration certificate in favour of LML Mazadoor Ekta Sangathan, Kanpur. The agreement dated 13.4.2007 providing for lay off of some of the workmen was entered into during the conciliation proceedings with the workmen through their union-Lohiya Machines and LML Karamchari Sangh and was signed by the representatives of the employer and employees and the Additional Labour Commissioner & Conciliation Officer, Kanpur Region, Kanpur. The agreement provided for withdrawing the strike with immediate effect on which the company lifted the lock out w.e.f. 15.4.2007, provided for taking such number of workmen depending upon the market requirements and orders of work, and employment in phases on departmental seniority basis and for lay off of all other workmen. It was valid and binding on all the workmen u/s 18 of the Industrial Disputes Act, 1947. The agreement was acted upon, on which the manufacturing in the petitioner-company has started and that there existed no industrial disputes whatsoever to refer the matter to the Industrial Tribunal. With a view to disturb the industrial peace, the members of the respondent No. 3, which is an unregistered and unrecognised union, tried to raise an industrial dispute u/s 4-K of the Industrial Disputes Act, on which the impugned order was passed on 21.5.2008 by the State Government making a suo moto reference to Industrial Tribunal without application of mind. The petitioner also challenged the notice dated 28.5.2008 issued by the Industrial Tribunal, U.P. requiring the company to file its statement and other evidences in support of its contention.

3. Learned Single Judge, accepting the contention of Ms Bushra Maryam appearing for LML Mazadoor Ekta Sangathan, Kanpur, held that for the purposes of settlement or agreement to be binding it is required to be registered u/s 6-B of the Industrial Disputes Act. The settlement dated 13.4.2007 was not registered and is thus not binding upon the workmen of the petitioner-company. He held that only those workmen of the company, who are members of the pocket union with which the settlement was entered into and were re-employed while the majority of workmen have been deprived of re-employment. Consequently it cannot be said that there is no disputes existing in the company between the workmen and the employer when the reference was made.

4. Before proceeding to consider the grounds of challenge to the opinion of learned Single Judge, we find it appropriate to refer to the observations of the Supreme Court in National Engineering Industries Ltd. Vs. State of Rajasthan and Others, in which the jurisdiction of the High Court to entertain the writ petition against the reference for adjudication to the Industrial Tribunal u/s 10 of the Industrial Tribunal Act, in view of the settlement reached in conciliation proceedings and outside the conciliation proceeding, was examined. Hon''ble Mr. Justice D.P. Wadhwa, J. in the landmark judgment summed up the legal position in paragraphs 25 and 26, as follows:--

25. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none

apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial dispute which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended, appropriate government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of Section 18 divides settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the 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, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which has objected to the same. Recognised union having majority of members is expected to protect the legitimate interest of labour and enter into a settlement in the best interest of labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an Individual employee or minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Workers'' Union as laid down by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement u/s 12(3) of the Act. Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act", as pointed out in the case of P. Virudhachalam v. Management of Lotus Mills. In all these negotiations based on collective bargaining individual workman necessarily recedes to the background.

Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out.

26. There can be many splinter groups each forming a separate trade union. u/s 4 of the Trade Unions Act, 1926 any seven or more members of a trade union can get the trade union registered under that Act. If every trade union having few members is to go on raising a dispute and the State Government making reference again and again the very purpose of settlement is defeated. Once there is a representative union, which in the present case, is the Labour Union, it is difficult to see the role of the Workers'' Union. If there are number of trade unions registered under the Trade Unions Act, 1926 not entitled to be registered as representative unions and they raise disputes, industrial peace would be a far cry. u/s 2(oooo) of the Rajasthan Act ''representative union'' means a union for the time being registered as a representative union under the Rajasthan Act (Rajasthan Act XXXIV of 1950). u/s 9-D of the aforesaid Rajasthan Act any Union which has for the whole of the period of at least three months during the period of six months immediately preceding the calendar month in which it so applies under this section a membership of not less than fifteen percent of the total number of workmen employed in unit of an industry may apply in the prescribed form to the Registrar for registration as a Representative Union. Then u/s 9-F registration of a representative union can be cancelled on various grounds mentioned therein and one of such grounds is if, after holding such an inquiry, if any, as the Registrar deems fit he is satisfied that the registered union is being conducted not bona fide in the interest of the workmen but in the interest of the employers to the prejudice of the interest of the workmen. We have already quoted Section 9-E as to how a representative union is to be registered. Proviso to that Section makes it clear that if there are two or more unions fulfilling the criteria laid down in Section 9-D and apply for registration then the union having the largest membership of the employees has to be registered. As to what is representative union is not defined in the Act but in common parlance it would mean that it represents all the workers. It is not the case of the Workers'' Union that registration of the Labour Union is liable to be cancelled on any ground whatsoever. Notice given by Workers'' Union under Sub-section (2) of Section 19 of the Act is obviously invalid as it did not represent majority of the persons bound by the settlement nor it is a representative union. In this view of the matter it is not necessary for us to consider what were the demands raised by the Workers'' Union in its charter which were not covered by the tripartite settlement.

5. Before considering the arguments raised on behalf of the employer, it is necessary to give brief facts giving rise to the reference made by the State Government on 21.5.2008 for the adjudication by the Industrial Tribunal.

6. The petitioner-company is a Public Limited Company engaged in the business of manufacturing of geared scooters and for that purpose it had employed more than six thousand employees including staff and workers. In the late 1990''s on

account of change in consumer preference from geared scooters to motorcycles the petitioner-company set up a nominal capacity for motorcycles. Its financial performance, however, suffered due to inadequate capacity and range of motorcycles and the declining market of geared scooters resulting into substantial losses and constrained liquidity. The company achieved partial financial restructuring in the year 2005. It could not obtain fresh working capital facilities causing heavy losses alleged to be to the tune of more than Rs. 468 crores as on 31.3.2008 as a consequence to the recurring financial losses. The company was declared as a Relief Undertaking under the U.P. Industrial Undertaking (Special Provisions for Prevention of Unemployment) Act 1966 for a limited period, which was extended on 14.6.2005 and thereafter on 23.6.2006. As a result of huge losses the company''s net worth was eroded on which the company filed a reference before the Board for Industrial and Financial Reconstruction (hereinafter referred to as BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act 1985 (SICA). The BIFR declared the company as a Sick Industrial Company in its proceeding held on 8.5.2007 w.e.f. 31.8.2006 in terms of Section 3(m)(o) of SICA and appointed the IDBI as the Operating Agency (OA) with directions to prepare a revival scheme in view of the provisions of Section 18 of SICA and the guidelines prepared by BIFR.

7. The proceedings are still pending in BIFR and in which it is stated that a draft rehabilitation scheme is under preparation.

8. In the meantime the workmen of the company resorted to strikes, demonstration and struck work w.e.f. 27.2.2006 on which the company''s working was paralysed. In order to protect the life and property, the management of the company declared lock out w.e.f. 7.3.2006. It is stated that protracted discussions were held between the management and its workmen which ultimately resulted into a tripartite meeting, which took place on 13.4.2007 before the Additional Labour Commissioner, Kanpur Region, Kanpur and the Additional Labour Commissioner (IR) UP, with its head office at Kanpur wherein an agreement on various issues were arrived at between the parties. It is alleged that at the time of agreement there were only one union of workmen namely Lohia Machines Limited Karamchari Sangh, which represented all the workmen of the company.

9. In the tripartite discussion before the Additional Labour Commissioner and Conciliation Officer, Kanpur Region, Kanpur and the Additional Labour Commissioner (IR) U.P. Kanpur, the parties arrived at a settlement, which was recorded as ''Memorandum of Settlement'' u/s 4-F of U.P. Industrial Disputes Act and Rule 5(1) of the Rules and which recorded as follows:--

Terms of Settlement

1. That it has been discussed and decided that the workman shall withdraw the strike with immediate effect and accordingly the Company shall lift the lockout with effect from 15th April, 2007. The Company, shall first start cleaning and

carry out maintenance work of the plant & machinery which will take 7 to 10 days time and only thereafter normal production activity can be gradually restarted.

2. That since work and production of scooters is to be started in a phased manner depending on the market requirement and orders, it has been agreed and decided that only such number of workmen shall be taken on work and employment, in phases, as per requirement of work and production and as far as departmental seniority basis. That all other workmen, save and except those who are required to resume work and production and whose names those who are required to resume work and production and whose names shall be displayed at the notice board of the company from time to time, shall stand Laid Off. The workmen so Laid Off shall be entitled to receive Lay Off Compensation (LOC) in terms of the U.P. Industrial Disputes Act, 1947 in the manner as discussed and decided hereunder.

a) That the workmen and the union agree that looking to the precarious financial condition of the Company, the LOC payable to the eligible laid off workmen will be paid in the following manner:--

i) That only 50% of the LOC shall be paid to the laid off eligible workmen and remaining 50% shall be payable to them after the Revival Package of the company has been approved by Hon''ble BIFR and the necessary funds foreseen under the Revival Package has been received by the company in the manner as would be set out under the said Revival Package.

ii) That the above LOC amount of 50% shall be paid to the Laid Off Workmen by crediting the same to the workmen''s respective bank accounts in Indian Overseas Bank, LML Extension Counter, Panki, Kanpur on every 25th of the subsequent month.

b) That all the workmen so Laid Off shall have to present themselves every day for marking attendance at the Company''s registered office at C-3, Panki Industrial Area, Kanpur at 10 a.m. and 3 p.m. as per the attendance schedule which will be displayed on the Notice Board. All those workmen who do not present themselves to punch their attendance on the above appointed time and place shall not be entitled for any LOC.

c) That, since large number of workmen have lost their cards for marking their attendance, the Management has, on the request of the Union and workmen, agreed to make arrangement of the issue of new cards for marking attendance to all the workmen. It is, therefore, agreed that all workmen including those who are Laid Off shall first receive the new cards from the Time Office at C-3, Panki Industrial Estate, Kanpur and then mark their attendance accordingly.

d) That those Laid Off workmen who refuse to accept any alternative employment/job, offered by the Company shall not be entitled for any LOC whatsoever.

e) That any Laid Off workmen remaining absent for more than 15 consecutive days shall lose his lien on employment and shall be treated as having left the employment of the company on his own accord as per the provisions of certified Standing Orders of the company and accordingly his name shall be struck off from the muster rolls of the company.

3. That the workmen and their union agree that looking to the precarious financial condition of the company and for its revival, there will be moratorium on revision of salary/wages as on February 2006 of the employees for a period of three years from the date of lifting of the Lockout.

4. That the workmen and their union agree that the Canteen will be run on "No Profit No Loss basis" by a contractor as per Factories Act. Management shall not give any subsidy whatsoever.

5. That in terms of the agreement dated 24.7.2006 with regard to pending ACO lying in the name of workmen till December, 2005, it is agreed that the ACO amount shall be adjusted from the workmen''s earned monthly wages @ Rs. 1000/- per month, effective from the date of the lifting of the lockout. It is however, clarified that no adjustment of ACO will be made from the amount paid to the Laid Off workmen from their LOC.

6. That workmen and the union agree that while making full & final payment at the time of severance for any reason whatsoever of any workman, the company shall make adjustment of all advances including ACO in terms of the agreement dated 24.7.2006, PROVIDED that such payment shall only be made to the workmen after the Revival Package of the Company has been approved by the Hon''ble BIFR and the necessary funds foreseen under the Revival Package including for making of severance payment has been received by the company in the manner as would be set out under the said Revival Package.

7. That as regards the payment of balance 50% Bonus for the year 2003-2005, it has now been finally decided that it shall be paid to the workmen in three equal installments as under:--

a. First installment by end of June, 2007

b. Second installment by end of August, 2007

c. Third instalment by end of October, 2007

8. With regard to the workmen, who are rendered surplus including but not limited to the scaling down, suspension of Motorcycle operations and/or any other operations and activities in the plant and/or for any reason whatsoever and/or should their services be not required shall be governed as per the law.

9. That all parties agree that management shall outsource/non-core activities which it deems expedient to vendors and/or by or through contractors.

10. That it has been discussed and agreed between the parties that the workmen

shall not be entitled for any wage and or salary and or any benefit for the strike/ lockout period on "no work no pay" basis and as a result of this settlement, all the issues pertaining to the strike/lockout stand fully and finally resolved.

11. That the workmen and the union assure the Management that they would extend their full cooperation for restoring normalcy in work and production to ensure the survival and revival of the company and to make it viable.

10. It is submitted that the workmen on their part had ratified the settlement and have accepted the benefits accruing out of the settlement dated 13.4.2007. The company is making serious efforts to revive itself under the rehabilitation package/scheme, which is being prepared by BIFR. In the meantime a small splinter group of workmen describing themselves as LML Mazadoor union, which is neither recognised union nor a registered union filed a Writ Petition No. 445 of 2007. While dismissing the writ petition this Court on 25.5.2007 observed that it is apparent that the settlement is for the benefit of majority of workmen and that the petitioner-union is only trying to create obstacles for reasons best known to it. The petitioner has not given the exact number of workmen represented by it. The Court declined to interfere in view of the ultimate benefits, which the workmen are getting from the settlement.

11. It is stated that LML Mazadoor Ekta Sangthan, Kanpur-respondent No. 3 tried to get themselves registered as a Trade Union. The registration was granted inspite of the objection made by the petitioner-company. The certificate of registration was challenged by the Company in a Writ Petition No. 5903 of 2008. The High Court by its order dated 23.4.2008 allowed the writ petition and quashed the registration on the ground that after a laid off employee becomes unemployed the bond of master and servant is snapped, though temporarily and the newly added proviso comes into play and thus the registration could not be said to be in accordance with the requirements of the Act. Learned Single Judge, however, observed in the judgment that non-registration of the union will not deprive the workmen to take proceedings even under the Industrial Disputes Act and allied laws. The observations of the Court in paragraph-35 and its conclusion in paragraphs 36 and 37 are quoted as below:--

35. The nature of the requirements placed in the Act, especially by the amending Act No. 31 of 2001 do not impinge upon the right of the workmen to form one or more Unions, but it only regulates it so far as its registration is concerned. Even without registration under the Act, the Union is entitled to work for the benefit of its members and take proceedings even under the Industrial Disputes Act and allied laws. Therefore, it cannot be said that imposing certain conditions for registration, which have a avowed purpose, the right to form a union is rendered illusory or that those provisions are ultra vires.

36. It is, therefore, clear that when an employee is laid-off he becomes unemployed and the bond of master and servant is snapped though temporarily and the newly added proviso comes into play and thus the registration could not

be said to be in accordance with the requirements of the Act. Since nearly all the members of the respondent Union are laid-off employees, therefore, the registration was granted dehors the Statute.

37. For the reasons above, this petition succeeds and is allowed and the impugned registration certificate dated 18.1.2008 is hereby quashed. In the circumstances of the case, no order as to costs.

12. The Special Appeal Nos. 834 of 2008 and 833 of 2008 against the judgment were dismissed on 1.2.2013.

13. The LML Mazadoor Union-respondent No. 3 filed a Writ Petition No. 25445 of 2007 for payment of wages under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978. Since the earlier Writ Petition No. 34554 of 2006 challenging the order dated 2.6.2002 passed by the Additional Labour Commissioner, Kanpur Region, Kanpur was withdrawn, the Court upheld the preliminary objection that the documents produced by the union are not sufficient to establish the claim of wages; the wages of January and February, 2006 were to be paid in instalments; the settlement was for the benefit of majority of the workmen and that the petitioner-union is only trying to create obstacles for the reason best known to it. The writ petition was dismissed on 25.5.2007.

14. The application of respondent No. 3-workmen to participate in the proceedings of the preparation of draft rehabilitation scheme by Operating Agency, was rejected by the BIFR on which they filed a Writ Petition No. 4403 of 2013, which was dismissed with following observations:--

15. In view of the aforesaid discussion, we are of the view that the petitioner is a union of minority workers, of which registration has been refused. It therefore, did not have any right to participate in the proceedings pending in BIFR. This, however, does not mean that the BIFR, at the time of framing of rehabilitation scheme, will not consider the legitimate interest and claims of the laid off workmen, whether they were part of the settlement to continue or nor and who have been laid off provided they have valid surviving interest or claims for any benefits left to be given by the Company. The BIFR is an expert body for rehabilitation and is fully competent to adopt a holistic approach considering the entire circumstances including the interest of those who are not before it, and that would include the legitimate interest of the laid off workers also.

With aforesaid observation, the writ petition is dismissed.

15. In these circumstances the State Government, considering the continuing agitation of the workmen against the lay-off of majority and the emerging circumstances of industrial unrest, made a suo moto reference to the Industrial Tribunal, Kanpur on 21.5.2008, giving rise to the writ petition, which was dismissed on 17.9.2010 giving rise to the Special Appeal.

16. On 25.10.2010 this Court passed following orders:--

The issue is, as to whether after a settlement which was arrived at, and prima facie the workmen are being paid lay off compensation in terms of the settlement, it was open to the State Government to make a reference as presently involved.

Considering this aspect of the matter, we are of the opinion that the matter requires consideration. Hence the special appeal is admitted.

The workmen are being paid lay off compensation @ 25%. The settlement provides for lay off compensation. The only issue as raised on behalf of the workmen is whether the settlement which provides for 25% lay off compensation, is in violation of the provisions for lay off compensation as contained in the U.P. Industrial Disputes Act, 1947. Apart from that, there is no other dispute amounting to "Industrial Dispute".

Therefore, the impugned judgment and order dated 17.09.2010 and the proceedings in reference before the Industrial Tribunal are stayed. Considering the controversy that a large number of workmen are involved, the present special appeal be expedited and be heard along with the Special Appeal No. 834 of 2008, which has been filed with regard to the cancellation of registration of the present respondent-Union. List the matter accordingly.

17. On the queries raised by us regarding the number of workmen, who have been laid off and whether the workmen, who are out of employment are being paid laid off compensation regularly, the counsel appearing for the company produced the details of the conciliation proceedings enclosing therewith correspondence between the Labour Commissioner and the Secretary, Government of UP, Labour Department-I, Bapu Bhawan, Lucknow. In one of the letter dated 22.5.2007 written by the Additional Labour Commissioner, U.P. it is stated that on a report received from the Regional Additional Labour Commissioner, Kanpur that on the date of lockout on 7.3.2006 the total number of workmen were 3009. In terms of the settlement dated 13.4.2007 the lockout was lifted on 15.4.2007. On that date 400 workmen were taken on work. For the remaining workmen the meetings were held in which the employer informed that according to its requirement the workers are being taken for work and that they are being paid wages.

18. During the course of hearing, we are informed that about 100 more workers have been taken for about 10% production, which is being carried on in the factory since the lifting of the lockout in April, 2007.

19. Shri Shashi Nandan, appearing for the appellant submits that learned Single Judge has grossly erred in law in dismissing the writ petition. He submits that with the settlement dated 13.4.2007 during conciliation proceedings, and the proceedings for framing the draft rehabilitation scheme for revival of the company, there is no existing or intended industrial dispute between the workmen and the employer. The settlement arrived at during the conciliation proceeding is binding on all the workmen. Learned Single Judge committed gross

mistake in law in holding that in order to be binding the settlement is required to be registered u/s 6(B) of the Industrial Disputes Act. He failed to notice that a settlement arrived at during the conciliation proceeding is also binding on all the workmen. He has relied upon Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, and the judgment in National Engineering Industries Ltd. v. State of Rajasthan (supra) to support his submission on the binding effect of the settlement on all the workmen.

20. Shri Shashi Nandan submits that a reference can be made only if there is genuine and bonafide industrial dispute in existence or in apprehended. The appropriate Government lacks powers to make a reference, if there is a settlement, which is likely to lead to more lasting peace than an award. When there is a dispute that the settlement is not bonafide in nature and that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducement, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication. He submits that in the present case the settlement arrived at with the help of Conciliation Officer is fair and reasonable and is for the benefit of all the workmen. A splinter group of workmen may not be allowed to upset the settlement and to disturb the industrial peace. The State Government ought to have considered the effect of the settlement and the judgment of this Court before making a reference.

21. Ms. Bushra Maryam, on the other hand, submits that even an unregistered association of workmen can raise an industrial dispute. She relies upon The Manager, Hotel Imperial Vs. The Chief Commissioner and Others, and Newspapers Ltd., Allahabad Vs. U.P. State Industrial Tribunal and Others, in support of her submission. She submits that the settlement allegedly arrived at during conciliation proceedings does not bear any IR number. There was no industrial dispute pending, nor any dispute was raised in which the settlement was arrived at. The Conciliation Officer appears to have acted on his own, at the instance and in collusion with the management of the company to enter into an unfair, unreasonable and unconscionable settlement in which the number of workmen to be taken back in employment was left entirely at the discretion of the employer. The remaining workmen were to wait indefinitely on payment of 50% of the lay off compensation, out of which only 50% was payable and remaining 50% was payable after the revival of the company was approved by BIFR and necessary funds foreseen under the revival package were received by the company in the manner as would be set out under the revival package. For last seven years there is no hope of any revival as the efforts are only confined to prepare draft settlement plan. She submits that the agreement was wholly one-sided and is not binding upon all the workmen of the company. Only 400 workmen were taken back leaving 2609 workmen unemployed waiting for employment. The lay off compensation is worked out at 50% of wages, of only 50% i.e. 25% of the wages were payable. The management has not paid even half the agreed lay-off compensation for which applications are being regularly

filed by the starving and cheated workmen u/s 33(C-2) of the Industrial Disputes Act. There was no assurance to the remaining workmen to be taken back in employment and that they had to and are still waiting indefinitely with no light at the end of the tunnel for re-employment. She submits that the very fact, that seven years have passed since the settlement had taken place and there is no sign of any financial revival of the company, makes the entire settlement unfair and unconscionable and amounts to a fraud played by the management on majority of workmen with the collusion of the then Additional Labour Commissioner.

22. It is submitted by Ms. Bushra Maryam that for a settlement to be valid and binding on all the workmen it must be a valid contract u/s 23 of the Indian Contract Act. A settlement, which provides for indeterminate number of workmen to be taken back in employment and for the rest in majority the lay off compensation to be paid in future for which no date is fixed, is against public policy. Such a settlement cannot be made binding on the majority of the workmen, who are still waiting for the promises to be fulfilled.

23. She submits that even if for argument sake the settlement is valid, there is no bar that a fresh settlement may not take place for the benefit of all the workmen with the intervention of Industrial Tribunal in which the Tribunal may ensure the payment of entire lay off compensation to be paid to all the workmen, who were on the working on the date the lockout was declared.

24. Ms. Bushra Maryam submits that deferment of the lay off compensation to future without any fixed date, and further of which the promises has not seen the light of the day for last seven years, is a settlement which was arrived at with a union representing minority of workmen with intention not to take back in employment or to pay lay-off compensation. The settlement is thus against public policy, which cannot be enforced against all the workmen. In the circumstances, she submits that the State Government has made a suo moto reference as there is an existing industrial dispute, which is likely to affect the industrial peace. She submits that the Court should not interfere against the reference except in rare cases in which the Court may be satisfied that there is no bonafide industrial dispute existing between the employer and workmen. In the present case, it is submitted that the bonafide industrial dispute is writ large on the face of record and thus learned Single Judge was justified in refusing to interfere in the matter.

25. We find that though learned Single Judge has committed an error in law in holding that the settlement or agreement to be binding must be registered u/s 6-B of the Industrial Disputes Act and has ignored the ratio of the judgment in Herbertsons Limited v. The Workmen of Herbertsons Limited (supra) as well as the judgment of Supreme Court in National Engineering Industries Ltd. v. State of Rajasthan (supra), in respect of the validity and effect of the settlement arrived at during the course of conciliation proceedings, he did not commit any mistake on the other count namely that in the circumstances of the case the

settlement is not binding on all the workmen of the petitioner-company. From the facts and documents available on record we find that the question, whether the agreement is valid, fair and reasonable and whether at such a distance of time, the open ended provisions in the settlement giving the option to the management-employer to take some of the employees at its discretion leaving the remaining employees with only 50% of lay off compensation and which has also not been paid in full or even in part awaiting finalisation of draft resettlement plan before BIFR, is a question, which requires to be considered by the Industrial Tribunal.

26. The reference made by the State Government, as to whether the lay off was legal and valid and if it is held to be illegal and invalid, the benefits to which the laid off workmen are entitled, is a question, which will also require adjudication of the validity of the settlement.

27. The argument, that the settlement is binding upon all the workmen, does not meet the question raised by Ms. Bushra Maryam that the settlement is not valid in law inasmuch as it is unfair, unconscionable and thus against public policy. In the circumstances, even if the settlement, which did not resolve the dispute with all or even majority of workmen and was not conclusive as it provided for only part payment of lay off compensation, when it was entered into on 13.4.2007, treated to be binding on all the workmen, the question whether the circumstances existing today, after seven years still justify its terms to be binding on more than 2500 workmen, which is about 80% of the total number of workmen which were employed on the date of lock-out requires to be examined by the Industrial Tribunal. In case the settlement is not found to be illegal as it left an unguided discretion to the employer to take back a group of workmen in employment leaving the majority of workmen to be laid off for an indefinite period providing payment of only 50% of the laid of compensation, is not found to be legal and valid, its binding effect on all the workmen would not make the settlement valid for all the workmen for denying a reference.

28. The legal position, that even the workmen of unregistered union may make a reference, is not disputed and thus even if the LML Mazadoor Ekta Sangathan, Kanpur is not a registered union, it could have raised an industrial dispute. In the present case, the industrial dispute has been referred suo moto by the State Government, which makes the case of the petitioner still weaker inasmuch as the satisfaction of the State Government cannot be lightly interfered with by the High Court under Article 226 of Constitution of India, nor the settlement could be said to binding on the State Government for all times to come, if it is satisfied that there exists an industrial dispute which needs to be adjudicated and resolved. The settlement in any case on the face of its terms was inconclusive and was entered into to bring temporary industrial peace on 13.4.2007. It did not end the relationship of employer and employee.

29. We further find that even if the settlement dated 13.4.2007 for arguments sake was valid and binding on all the workmen, its effect and consequence on all

the workmen cannot be considered to be valid for all times to come and that at this distance of time, when the settlement has not worked out to benefit all the workmen inasmuch majority of workmen being more than 80% of the employees at the time of lock out have not been paid the full laid off compensation and are still waiting for the settlement of such lay off compensation, it cannot be said that there is no bonafide or genuine industrial dispute, which requires to be decided by the Industrial Tribunal.

30. For the aforesaid reasons we do not find any good ground to interfere with the judgement of learned Single Judge by which he has dismissed the writ petition against the reference. The Special Appeal is dismissed.

