

(1999) 11 BOM CK 0016
In the Bombay High Court
Case No : O.O.C.J.W.P. No. 1705 of 1998

Mukand Ltd.

APPELLANT

Vs

Mukand Staff and Officers Association and Others

RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 1 LLJ 1583

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : P.K. Rele, H.D. Buch and Ms. A.B. Kapadia, instructed by Daphtary Ferreira and Diwan, for the Appellant; K.K. Singhvi and Sanjay Singhvi, instructed by Tanu Mehta, for the Respondent

Final Decision : Partly Allowed

Judgement

A.P. Shah, J.—This petition under Article 226 of the Constitution of India arises out of the award of the Industrial Tribunal, Mumbai in a dispute between Mukand Limited and its employees, delivered on March 26, 1998 in Reference (IT) No. 3 of 1993 under the provisions of the Industrial Disputes Act, 1947, hereinafter referred to as the Act. The petitioner Mukand Limited is a public limited company incorporated under the provisions of the Companies Act, 1956. The Respondent No. 1 is Mukand Staff and Officers Association (shortly the association) registered under the Trade Unions Act, 1926 representing the monthly rated employees in Kurla and Kalwe units of Mukand Limited.

2. By an order dated February 17, 1993 the Government of Maharashtra in exercise of its powers conferred by Section 10(1)(d) of the Act, referred an industrial dispute, which in its opinion, existed between the Mukand Limited and its monthly rated workmen abovementioned. The order of reference specified the heads of disputes mainly bearing upon the scales of pay, D.A. and other allowances and sundry matters connected with the conditions of services of the monthly rated employees. The reference was registered as Reference (IT) No. 3

of 1993. During the trial of the reference the association made an application for interim relief asking for lumpsum amount of Rs. 1000 per month to all monthly rated employees. The Tribunal by its Part I award dated January 19, 1994 directed ad hoc payment of Rs. 500 per month to all employees. The association thereafter moved second application before the Tribunal for further interim relief which came to be partly granted by the Tribunal vide order dated September 16 & 19, 1995 whereby the Tribunal directed payment to certain categories of employees as set out in the award on the basis of the basic pay slab ranging from Rs. 375 to 1050 per month. This Court by order dated February 27, 1996 passed in Writ Petition No. 342 of 1996 directed to credit the amount payable under the said award to the Provident Fund Account of the concerned employees. The final award was delivered on March 26, 1998. I shall now state the facts of the dispute in the reference from which this petition arises.

3. The petitioner is a public limited company engaged in steel making, manufacturing of industrial machineries and steel castings having two factories, one at Kurla and the other at Kalwe. The factory at Kurla is basically a foundry which manufactures steel castings. The company's foundry, which is the largest in the private sector, supplies bogies and couplers for the railways from Kurla Plant. The company also supplies castings to the sugar mills, cement industries etc. The factory at Kalwe has two divisions, steel plant and machine building division. The steel plant manufactures wide variety of special steels in India. The product range of steel plant comprises of ball bearing steel, stainless steel, high carbon wire rod, etc. The machine building division is engaged in design fabrication, erection and commissioning of EOT Cranes, rolling mills, chemical treatment plants, earth moving equipments. The company has employed around 1200 monthly rated employees at Kurla and Kalwe represented by the association in the present reference. This monthly rated staff and officers are classified in different grades starting with grade 12 at the lowest and going upto grade 01 and 00 at the highest (grade 10 was abolished 3 years ago). There are also daily rated workmen both at Kurla and Kalwe who are represented by the two separate unions and thus the total work force employed by the company is around 3400. The association representing the monthly rated staff and officers had entered into a number of settlements with the management the last being settlement dated February 24, 1989, which was effective till December 31, 1991. Before the expiry of the said settlement dated February 24, 1989 the association served a fresh charter of demand on the company on November 4, 1991 containing about 35 demands which was processed under the provisions of the Act and ultimately some of the demands relating to basic scales and increments, Dearness Allowances (DA), House Rent Allowance (HRA), Leave Travel Allowance (LTA), Gratuity, Education Allowance, Computer Allowance, Medical Scheme, Shift Allowance, Washing Allowance, were referred to the Tribunal in reference (IT) No. 3 of 1993.

4. This reference embraced as many as 15 items in respect of monthly rated employees at Kalwe and Kurla units of the company. Some of these were decided

in favour and some against the employees. The dispute now centres round the following demands the first being the demand for revision of basic salary and service increments. There exists a basic salary. In addition to this, monthly rated staff and officers are paid "additional basic salary" as also "special allowance". The grievance of the association is that since 1972 no revision has taken place apart from giving fixed "additional basic salary" and there is thus a need to rationalise it by merging all these components and converting into one basic salary, thereby lifting the starting point of basic scales. The association therefore demanded that the existing basic salary scheme applicable to the monthly rated staff and officers shall be revised as under after merging additional basic salary and special additional basic salary and special allowance with the existing scales of the "respective grades:

Grade Scale

09 340-35-445-40-565-50-715-60-895-75-1120-90-1390-105-1495
08 370-40-490-50-640-60-820-75-1045-90-1315-105-1630-120-1750
07 445-45-580-55-745-65-940-80-1180-95-1465-110-1795-125-1920
06 520-55-685-65-880-80-1120-95-1405-110-1735-125-2110-140-2250
05 590-60-770-70 (sic)-980-85-1235-100-1535-115-1880-130-2270-145-2415
04 690-70-900-86-1155-100-1455-115-1800-130-2190-145-2625-160-2785
03 810-80-1050-95-1335-110-1665-125 2040-140-2460-155-2925-170-3095
02 935-95-1220-110-1550-125-1925-140-2345-155-2810-170-3320-185-3505
01 1520-125-1895-140-2315-155-2780-170 3290-185-3845-200-4645
00 1820-140-2240-155-2705-170-3215-185-3770-200-5170

5. The association submitted that the basic scale revision being after a long time, it is always necessary and also as an accepted principle, that those who have put in long years of service should be given higher benefits. The association submitted that there are a number of employees who are stagnated because of their length of service. Although all the cases cannot be fully taken care of, the problem can be mitigated partly by granting service increments. The association demanded that all the staff and officers, after fitment in the new scales shall be given service increments as follows effective from November 1, 1992:

Service service increments

From 3 upto 6 years one

From 6 upto 9 years two

From 9 upto 12 years three

from 12 upto 15 years four

from 15 years & above five

6. The next demand pertains to D.A. which was very hotly contested. Presently the scheme of D.A. is as under for the monthly rated employees:

i) Fixed D.A. For first 1000 points index

For Basic Salary upto Amount of D. A.

Up to Rs. 200 Rs, 376

Rs. 201 to 300 Rs. 386

Rs. 301 to 400 Rs. 396

Rs. 401 and above Rs. 406

ii) Variable D.A. For increase or decrease of 5 points above 1000 points index, the D.A. increase or decrease by Rs. 1.72 per month. For those in grade 01 and 00:

Fixed D.A. For the first 1200 point index: Nil variable D.A.: For 25 points above index 1200: Rs. 10/-; index calculation is done on quarterly basis.

iii) Gradewise additional fixed D.A. is as follows:

Grade Amount (Rs/month)

12 240

11 250

09 270

08 290

07 310

06 320

05 350

04 380

03 410

02 420

01 480

00 480

7. The association submitted that the present rate of D.A. works to hardly 122% of revised Textile D.A. The textile rate of D.A. protects only the "starvation wage". The concept of wage has progressively changed and therefore it is the living wage that has to be protected especially in case of the petitioner company

which is making profits over a period of time. Many comparable concerns are paying far better and higher D.A. for the same or similar type of work. The Association made a demand that the existing D.A. scheme should be replaced by the following scheme:

Variable D.A.

Base CPI 1000 (1934) for grades 09-02 = Rs. 386/-

CPI 1200 (1934) for grades 01-00 = nil

Basic salary Neutralisation for variation of 5 points

upto Rs. 300 Rs. 3.00

Rs. 301 to 350 Rs. 3.05

Rs. 351 to 400 Rs. 3.10

Rs. 401 to 450 Rs. 3.15

Rs. 451 to 500 Rs. 3.20

Rs. 501 to 550 Rs. 3.25

Rs. 551 to 600 Rs. 3.30

Rs. 601 to 650 Rs. 3.35

Rs. 651 to 700 Rs. 3.40

Rs. 701 to 750 Rs. 3.45

Rs. 751 to 850 Rs. 3.50

Rs. 851 to 950 Rs. 3.55

Rs. 951 to 1050 Rs. 3.60

Rs. 1051 to 1150 Rs. 3.65

Rs. 1151 to 1250 Rs. 3.70

Rs. 1251 to 1350 Rs. 3.75

Rs. 1351 to 1450 Rs. 3.80

Rs. 1451 to 1550 Rs. 3.85

Rs. 1551 to 1650 Rs. 3.90

Rs. 1651 to 1750 Rs. 3.95

Rs. 1751 to 1900 Rs. 4.00

Rs. 1901 to 2050 Rs. 4.05

Rs. 2051 and above Rs. 4.10

Slab D.A.

Upto basic Rs. 300 100% of basic (A)

Rs. 301 to 350 A+ 87.5% of basic above Rs. 300 (B)

Rs. 351 to 400 B+ 75% of basic above Rs. 350 (C)

Rs, 401 to 450 C+ 50% of basic above- Rs. 400 (D)

Rs. 451 to 500 D+ 25% of basic above Rs. 451 (E)

Rs. 501 and above E+ 20% of basic above Rs. 500

The computation of DA in respect of graders 01 and 00 shall also be done on monthly basis.

8. The existing HRA/Subsidy paid to the monthly rated staff and officers is in the range of Rs. 230 to Rs. 450 from grade 12 to 02. For grades 01 and 00 the same is 15% basic salary plus Rs. 293/- The association demanded that the existing HRA/Subsidy paid to staff and officers shall be revised to 15% of revised basic and D.A.

9. Presently the Leave Travel Allowance paid to the monthly rated employees is as follows:

Grade Amount (Rs/month)

12 1840

11 1855

09 1865

08 2000

07 2020

06 2035

05 2170

04 2310

03 2335

02 2480

01 3800

00 4300

The association demanded revision in leave travel allowance as under:

Grades 09 to 02. Rs. 2500 lump sum plus respective monthly basic salary

Grades 01 and 00 Rs. 3500 lumpsum plus respective monthly basic salary

10. The association also demanded that the existing gratuity scheme should be revised in respect of all employees as under:

5 years 50% of gross salary

6 years 60% of gross salary

7 years 70% of gross salary

8 years 80% of gross salary

9 years 90% of gross salary

10 years 100% of gross salary for every completed year of service

11. The association further made a demand for revision of medical allowance and also demanded for the first time for computer allowance, education allowance and shift allowance. The claim for computer allowance and shift allowance having been rejected by the Tribunal there is no need to discuss those demands. As far as educational allowance is concerned the association demanded that all staff and officers should be paid Rs. 250 p.m. educational allowance as the same is paid to daily rated employees. As far as the medical allowance is concerned the association demanded that the existing allowance should be revised to 8.33% of revised basic and D.A. or Rs. 400 p.m. whichever is higher and the payment should be made every month. Lastly there is minor demand for washing allowance which is partially accepted by the Tribunal.

12. The association submitted that upward revision in service conditions of employees has become absolutely necessary. The service conditions of the employees employed by various other comparable concerns" have been revised during this period and they are substantially better than that prevailing in the petitioner company. Further, the service conditions of monthly rated employees are also substantially lower than the daily rated employees employed by the company. Thus the total emoluments of the employees lagged behind the comparable concerns in the industry. The association submitted that the financial position of the company is flourishing and therefore the demand of the association for revision of DA at the rates mentioned above also stands fully justified. The association referred to as many as 14 companies like Hindustan Lever, Larsen & Toubro, Mahindra and Mahindra and Tata Special Steel etc. wherein according to the association the wage scale is much higher than in the petitioner company.

13. The company resisted the claims made for revision of wage scale and D. A. scheme as well as various allowances sought for by the association. A preliminary objection was raised by the company to the very maintainability of the reference. The company submitted that barring few categories of the employees most of the members of the association are not workmen as defined u/s 2(s) of the Act, and therefore the Tribunal has no jurisdiction to grant any relief to the employees who are not workmen as defined under the Act. The

monthly rated staff and officers are placed in different grades of terms of service and basic salary from Grade 1 which is lowest going upto 700, and majority of the monthly rated employees except few categories like watchmen, drivers, typists, draftsmen, clerks are by the very nature of their duties and functions working in supervisory or managerial capacities, and empowered to allot work, to ensure that work is carried out as required to enforce discipline, approve leave of absence etc. and draw salaries exceeding Rs. 1600/- per month and are thus not workmen as defined u/s 2(s) of the Act. The company submitted that in Grade 01 and 00 numbering about 229 are also not workmen under the Act for the same reason and that bulk of these officers are graduate engineers who were confirmed in the cadre of Assistant General Foremen or in equivalent cadres, many of whom were later promoted to the cadre of General Foremen or in equivalent cadres. The company submitted that therefore the appropriate Government had no jurisdiction to refer the dispute to Industrial Tribunal and consequently the Industrial Tribunal had no jurisdiction to hear and deal with the reference. The company also filed copies of balance sheets and profit and loss accounts from 1991-92 to 1996-97 and various other charts in support of its plea that it will not be able to bear the additional financial burden that would result if the wage scales and D. A. are revised as per the demands made by the association. The company submitted that its financial position is not sound and it is in fact deteriorating. The company also opposed it being compared with the concerns relied on by the Union on the ground that they are not engaged in similar businesses and even otherwise they are not comparable with the petitioner company. The company submitted that it is basically engaged in manufacture of steel castings and steel plants and machine building whereas the so-called comparable concerns except Tata Special Steel Limited are engaged in totally different lines of business and are thus cannot be compared with the petitioner company. The company in turn relied upon the wage scales paid in other concerns like Tata Steel Limited in Tarapur and Mahindra Ugine Steels, Khopoli as being comparable with it. It was also contended by the company that the total wage packet of the comparable concerns should be considered while dealing with the demand of the association for change of the existing DA system keeping in mind that the present wages in the like companies are comparatively low. It was also contended that the existing DA scheme has stood the test of time and there is therefore no justification now to change the scheme.

14. The Tribunal after consideration of the rival contentions and the material placed before it ultimately held that the reference is valid and that the Tribunal had jurisdiction to grant reliefs to all the monthly rated employees involved in the reference. Relying upon the decision of the Supreme Court in the case of Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, the Tribunal held that more than 600 employees who are as per the company's admission covered by the reference, not only can agitate for their own conditions of service but they can also agitate the service conditions of others as there is community of interest. The Tribunal also recorded a finding that the conduct of

the company all along showed that it had treated all the monthly rated employees as workmen under the Act throughout. The company had entered into several settlements under the provisions of the Act, it had locked out the employees in the past, it had charge-sheeted the employees under the Model Standing Orders. The company cannot now turn around and take another position and is thus estopped from challenging the status of the employees as workmen u/s 2(s) of the Act. Regarding the financial incapacity pleaded by the company, the Tribunal, after an analysis of the balance sheets and profit and loss accounts, found that the financial condition of the company is quite sound. The Tribunal held that having regard to the financial position of the company and the principle of industry-cum-region and the fact that there is no upward revision of the basic wage scale, the demand of the association for basic pay scales and service increments is liable to be granted. However, the Tribunal modified the demand for service increments to certain extent as indicated in its award. With regard to the demand for revised D.A. the Tribunal after considering the DA Scheme prevalent in the comparable concern came to the conclusion that the existing DA scheme is not enough to protect the employees and having regard to the fact that the consumer price index has increased by more than 500 points, there should be revision of DA allowance. Accordingly the Tribunal accepted the demand of the employees for a revised D.A. in toto. The Tribunal also accepted the claim of the association for revision of HRA and LTA and fixed HRA at 12.5% of the revised basic scale and DA and LTA was fixed as per the demand of the association. As far as the gratuity is concerned the Tribunal directed that the gratuity will be calculated at the rate of 21 days wages for every completed year of service. As far as other allowances are concerned the Tribunal directed that all the monthly rated employees shall be paid Rs. 250/- per month as education allowance and medical allowance at the rate of Rs. 300 per month and claim for shift allowance and computer allowance was rejected and the washing allowance was fixed at Rs. 50 per month to the employees who are presently given uniform by the company and whose uniforms are not washed at the cost of the company. The correctness and legality of the award of the Tribunal is impugned in this petition under Article 226 of the Constitution.

15. Mr. Rele learned counsel for the company strenuously contended that the Tribunal has exceeded its jurisdiction in entertaining the dispute in respect of the non-workmen categories of employees. Mr. Rele submitted that even though by reason of community of interest the workmen might be entitled, having regard to the definition of "industrial disputes" to raise a dispute on behalf of others, they could not raise a dispute either for themselves or on behalf of others when the dispute would involve consideration of matters in relation to non- workmen. Mr. Rele also submitted that it would be even beyond the jurisdiction of the State Government to refer such a dispute under the Industrial Disputes Act. Mr. Rele submitted that even assuming that the reference is valid, as far as the employees belonging to workmen category are concerned, the workmen cannot raise a dispute in respect of class of employees, who are not workmen and in

whose terms of employment those workmen have no direct interest of their own. Mr. Rele urged that the Tribunal has also committed a serious error in holding that the company was estopped from challenging the status of the employees. Mr. Rele submitted that the plea of estoppel was not even pleaded by the association and therefore the Tribunal ought not to have permitted the association to raise such a contention. Mr. Rele submitted that settlements entered into between the company and the association were without prejudice and even under the settlement of 1995 parties have decided to keep the issue of status of the employees under the Act, open and the said settlements were concluded without prejudice to the rival contentions of the respective parties. He submitted that apart from the fact that lock-out declared by the company in the past was wholly irrelevant the same could not in any way affect the right of the company to raise the dispute regarding the status of the employees concerned, firstly because there could be no estoppel against statute, secondly, because estoppel is a rule of evidence and not only the same was not pleaded but no material was placed before the Tribunal that by virtue of the lock-out declared by the company the employees concerned had in any way altered or changed their position, and lastly the said circumstances could not in any event be invoked in the light of the settlement of 1989 and 1995 concluded several years after the said lock-out. He also referred to the decision of this Court in the case of Premier Automobiles Ltd. v. Premier Automobiles Employees Union, in 1988 1 CLR 257 wherein this Court has held that the reference to the Standing Orders in the charge-sheets is not relevant for deciding the issue as to whether the party is a workman u/s 2(s) of the Act.

16. The moot question which is required to be determined in this case is whether the 600 employees admittedly belonging to the workmen category, could raise an industrial dispute on behalf of the employees of non workmen category, working in the same establishment. The expression "industrial dispute" is defined u/s 2(k) in these terms :

(k) "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

It must be stated here that the expression "workman" is also defined in Section 2(s) of the Act and the definition of the workman reads as follows:

"Section 2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 or the Navy Act 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason, of the powers vested in him, functions mainly of a managerial nature."

Now, the question is whether a dispute in relation to a person who is not a workman within the meaning of the Act, still falls within the scope of the definition clause in Section 2(k). The definition of industrial dispute in Section 2(k) falls in three parts; first there should be a dispute or difference; second, the dispute or difference should be between the employers and employees, or between employers and workmen or between the workmen and workmen; third, the dispute or difference must be connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person. The first part thus refers to the factum of real and substantial dispute, the second part to the parties to the dispute and third to the subject matter of the dispute. On behalf of the respondents it is contended by Mr. Singhvi that there is undoubtedly a real and substantial dispute between the company and the respondents on the question of terms of employment of the monthly rated employees working in grades 12 to 00. Thus out of three ingredients of Section 2(k) the first is satisfied, the second also is satisfied because the dispute is between the company and its workmen. Accordingly to Mr. Singhvi even the third ingredient is satisfied as there is community of interest and the workmen as a class have a direct or substantial interest in the cause of the employees in the non-workmen category who are working in the same grades and with whom they have a community of interest. In this connection Mr. Singhvi drew my attention to the decision in the case of *Workmen, Dimakuchi Tea Estate v. Management Dimakuchi Tea Estate*, (supra) wherein the Supreme Court exhaustively considered the scope of Section 2(k) particularly in the context of a dispute pertaining to a non- workman.

17. In *Workmen v. Management of Dimakuchi Tea Estate*, (supra) the question for decision was whether the dispute raised by the workmen relating to a person who was not a workman could be an industrial dispute as defined in the I.D. Act and as the definition stood before the amendment of 1956. The appellants who were the workmen of the respondent company espoused the cause of one Dr. Banerjee, Assistant Medical Officer who had been dismissed without hearing, with a month's salary in lieu of notice, but who had accepted such payment and left the tea garden. The dispute raised was ultimately referred by the Government to the Tribunal. Both the Tribunal and the appellate Industrial

Tribunal took a view that as Dr. Banerjee was not a workman, dispute was not an industrial dispute as defined u/s 2(k) of the I.D. Act. In appeal from the said decision after analysing the provisions of Section 2(k), majority of the Court summarised the law on the subject as follows:

"To summarise: having regard to the scheme and objects of the Act and its other provisions, the expression, "any person" in Section 2(k) of the Act, must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are: (1) The dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other and (2) the person regarding whom the dispute is raised must be one in whose employment/non-employment, terms of the employment, or conditions of labour, (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest, the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a "workman" within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest:

In the case before us, Dr. K.P. Banerjee was not a "workman". He belonged to the medical or technical staff - a different category altogether from workmen. The appellants had neither direct, nor substantial interest in his employment or non-employment, and even assuming that he was a member of the same Trade Union, it cannot be said, on the tests laid down by us, that the dispute regarding his termination of service was an industrial dispute within the meaning of Section 2(k) of the Act".

Justice Sarkar, in his dissenting judgment however, held that I.D. Act did not make the interest of the workmen in the dispute a condition of the existence of an industrial dispute. Such an interest is incapable of definition and to make it a condition of an industrial dispute would defeat the object of the Act. The learned Judge further held that even assuming that the workman must be interested in order that there can be an industrial dispute present case satisfied that test and fell within the purview of Section 2(k) of the I.D. Act.

18. In *Standard Vacuum Refining Company of India Ltd. v. Its Workmen & Anr.*, 1960 II LLJ 233 after taking due note of the propositions of law laid down in *Dimakuchi* (supra), the Supreme Court has discussed the law on the subject elaborately. In that case question arose relating to the dispute arising out of the demand for abolition of contract system of employing labour for cleaning and maintenance work at the refinery including premises of the plant belonging to it and for absorbing the workmen employed through the contractors into regular service of the company. The company objected to reference on the ground that:

(1) it was incompetent in as much as there was no dispute between it and the respondents, and it was not open to them to raise a dispute with respect to the workmen of some other employer i.e., contractor; and (2) in any case it was for the company to decide what was the best method of carrying on its business and Tribunal could not interfere with the function of the management. The Tribunal held that the reference was competent and that the claim was justified. Following the decision in Dimakuchi's Tea Estate's case the Supreme Court held that the dispute in the present case was an industrial dispute because (1) the respondents had a community of interest with the workmen of the contractor; (2) they had also a substantial interest in the subject matter of the dispute in the sense that the class to which they belonged viz. workmen; was substantially affected thereby and (3) the company could give relief in the matter. The conclusion of the Tribunal that the contract system should be abolished was held to be just in the circumstances of the case and should not be interfered with.

19. A reference may be made to the decision of the Supreme Court in All India Reserve Bank Employees Association Vs. Reserve Bank of India, wherein Class II and Class III staff. of the RBI through their association and Class IV staff through their union raised an industrial dispute which was referred by the Central Government to the Tribunal. One of the items referred concerned scales of pay, allowance and sundry matters connected with the conditions of service of three classes, the most important ones being demand of Class II staff claiming scale commencing with Rs. 500/-. The Tribunal held that Class II staff worked in a supervisory capacity and this demand for a minimum salary of Rs. 500, if conceded would take the said staff out of the category of "workmen" as defined in Section 2(s) of the Act. Such an award and any award carrying wages beyond Rs. 500 at any stage, was, according to the Tribunal, beyond its jurisdiction to make. It also held that other workmen could not raise the dispute which would involve consideration of matters in relation to non-workmen and that it would be even beyond the jurisdiction of the Central Government to refer such a dispute under the Act. The Tribunal therefore made no award in regard to the supervisory staff in Class II. The Supreme Court held that the Tribunal was not justified in holding that if at a future time an incumbent would draw wages in the time scale in excess of Rs. 500 the matter must be taken to be withdrawn from the jurisdiction of the Central Government to make a reference in respect of him and the Tribunal to be ousted of the jurisdiction to decide the dispute, if referred. Supervisory staff drawing less than Rs. 500 per month cannot be debarred from claiming that they should draw more than Rs. 500 presently or at some future stage in their service. They can only be deprived of the benefits, if they are non-workmen at the time they seek the protection of the Industrial Disputes Act. It was further held that u/s 2(k) of the Act the word "person" has not been limited to "workmen" and must therefore receive a more general meaning. But it does not mean any person unconnected with the dispute in relation to whom the dispute is not of the kind described. It could not have been intended that though the dispute does not concern them in the least, workmen are entitled to fight it

out on behalf of the non-workmen. But if the dispute is regarding employment, non-employment, terms of employment or conditions of labour of non-workmen or in which workmen are themselves vitally interested the workmen may be able to raise an industrial dispute, Workmen can, for example, raise a dispute that a class of employees not within the definition of "workman" should be recruited by promotion from workmen. When they do so the workmen raise a dispute about the terms of their own employment though incidentally the terms of employment of those who are not workmen are involved. But workmen cannot take up a dispute in respect of a class of employees who are not workmen and in whose terms of employment those workmen have no direct interest of their own. What direct interest suffices is a question of fact but it must be a real and positive interest and not fanciful or remote. HIDYATULLAH, J. as he then was speaking for the Bench concluded as under:-

"It follows, therefore, that the National Tribunal was in error in not considering the claims of Class II employees whether at the instance of members drawing less than Rs. 500 as wages or at the instance of those lower down in the scale of employment. The National Tribunal was also in error in thinking that scale of wages in excess of Rs. 500 per month at any stage was not within the jurisdiction of the Tribunal or that the Government could not make a reference in such a contingency. We would have been required to consider the scales applicable to the employees in Class II but for the fact that the RBI has fixed scales which are admitted to be quite generous".

20. In *The Workmen Vs. Greaves Cotton and Co. Ltd. and Others*, , the Supreme Court again considered the question as to whether the workmen can raise a dispute about non-workmen as regards the terms of employment of non-workmen and in what circumstance. The controversy arose in that case on the question as to whether the Tribunal can fix the wage scale for the supervisors which will ultimately give them total wage, basic pay and dearness allowance of over Rs. 500 per mensem or fix the scale which has initial starting salary with dearness allowance in excess of Rs. 500 per mensem. The Supreme Court after considering its earlier decisions in

- (1) *Workmen Dimakuchi Tea Estate v. Management Dimakuchi Tea Estate*, (supra)
- (2) *All India Reserve Bank Employees Association and Anr. v. Reserve Bank of India and Anr.* (supra)
- (3) *Standard Vacuum Refining Company of India Ltd. v. Its Workmen and Ors.* (supra) held that the non-workmen and workmen can raise a dispute in respect of matters affecting their employment, conditions of service etc. where they have a community of interest, provided they are direct and are not remote. The Bench observed that as long as there are persons in the category and the workmen in respect of whom a dispute has been referred, it cannot be said the Tribunal has no jurisdiction notwithstanding the fact that some or many of them may become non-workmen during the pendency of the dispute. It was also observed that if

there are no workmen of the category with respect to whom a dispute has been referred, the Tribunal cannot be called upon to prescribe a wage structure for non-existing workmen nor does it have jurisdiction to do so. The dispute in such a case must be deemed to have lapsed.

21. Recently in the case of Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, , wherein the Supreme Court was concerned with the provisions of Contract Labour (Regulation and Abolition) Act, 1970 after following the Dimakuchi case (supra) and Standard Vacuum Refining Company's case (supra) it was held that since there is no relationship of employer-employee between the principal employer and the workmen of the contractor under the Industrial Disputes Act, no industrial dispute can be raised by the workmen of the contract or either before or after the contract labour is abolished by the appropriate Government u/s 10 of the Act. But this hurdle in raising the dispute will however disappear if it is raised by the direct workmen of the principal employer who have (i) community of interest with the contract labour, (ii) a substantial interest in the subject matter of the dispute, and (iii) when the employer can grant the relief.

22. It would therefore appear that the consistent view of the Supreme Court is that non-workmen can raise a dispute in respect of matters affecting their employment, its service conditions etc. where they have a community interest, provided they are direct and are not remote. We have, therefore, to see whether the respondent who have raised this dispute have a direct interest in the subject matter of the dispute or substantial interest therein in the sense that the class to which the respondents belong is substantially affected thereby and where there is a community of interest between the respondents and those whose cause they have espoused. There is no dispute that they belong to the same class and working in the same grades i.e., Grades 12 to 00 and it is possible for the company to give the reliefs which the respondents are claiming. In the past throughout the monthly rated employees of both the categories, workmen as well as non-workmen were represented by the respondent association. There have been as many as four settlements entered into between the company and the association representing all the monthly rated employees; the first being in 1974 which is still in vogue. Thereafter three settlements were signed in 1979, 1982 and 1989 covering all the monthly rated employees working in Kurla as well as Kalwe units of the company. Thus the respondent association has been the sole bargaining agency for the employees from Grades 12 to 00 and this fact has been admitted by the company in its written statement. The company has also admitted that it had held negotiations with the association on the charter of demands which is the subject matter of the present reference. The company's witness Mr. Nayar has also admitted in his evidence existence of community of interest between them. Under the circumstances the Tribunal has rightly come to the conclusion that the respondents have a substantial interest in the subject matter of the dispute and there is a community of interest between the respondents and those whose case they have espoused. It is therefore, not

possible to accept the argument of Mr. Rele that the appropriate Government had no jurisdiction to refer the dispute and consequently the Industrial Tribunal has no jurisdiction to hear and deal with the reference.

23. On the question of estoppel elaborate submissions were made by both Mr. Rele and Mr. Singhvi and the learned counsel referred to a catena of judgments on the issue of estoppel. However, as I am of the view that the workmen in the facts of this case could also espouse the cause of the non-workmen category falling in Grades 12 to 00 there is really no need to express any opinion on the issue as to whether the principle of estoppel could be invoked in the instant case and this issue is expressly kept open.

24. Mr. Rele also disputed the findings of the Tribunal that the financial position of the company is sound and it is capable of bearing the burden arising out of the demands placed by the workmen. He contended that the company is facing serious financial problems and any additional financial burden at this stage would adversely affect the company. The sales of the company have gone down and the company has suffered heavy losses as its operations are seriously affected by the severe reversionary conditions in the steel, engineering and textile industries in particular and economy in general. The financial registers of the company for the year 1997-98 bear out the deteriorating financial condition of the company and show steep fall in the gross profits to Rs. 8.14 crores in the year 1997-98 from Rs. 33.04 crores in the year 1991-92. He drew my attention to the latest balance sheet of the company showing loss of Rs. 30.31 crores for the year ending March 31, 1999. He submitted that the retrospective financial burden for 65 months on account of the impugned award of the Tribunal is Rs. 43.55 crores and even after considering the tax benefit as claimed by the association the burden would be Rs. 38.52 crores. He submitted that financial burden for the year 1999 works out to Rs. 10.77 crores and after taking into consideration the tax benefit the same is Rs. 9.53 crores. According to the learned counsel the picture is even more grim having regard to the award in Reference (IT) No. 70 of 1996 covering the daily rated employees in Kurla whereby an additional financial burden was imposed. He submitted that the total financial burden on account of the monthly rated staff and daily rated staff at Kurla unit comes to around Rs. 12 crores which covers only 55% of employees whereas the same works out to nearly 30% of the gross profits.

25. In deciding the financial capacity of an industry, the Supreme Court has laid down in *Ramphal Vs. State of Haryana and Others*, that "the industrial adjudication must take into account the problem of additional burden which such wage structure would impose upon the employer and whether the employer can reasonably be called upon to bear such burden It is a long range plan and in dealing with the problem which is difficult and delicate, the financial position of the employer and the future prospects of the industry and the additional burden which may be imposed on the consumer must be carefully examined". The Supreme Court after referring to Reserve Bank Bulletin about the financial

position of the industry and about cotton textile industry and other authorities on determining the financial capacity of an industry observed that "the industrial adjudication should not lean too heavily on such single purpose statements or adopt anyone of the tests evolved from such statements whilst it is attempting the task of deciding the financial capacity of the employer in the context of the wage problem." Thus in determining the financial capacity of an industry all relevant factors will have to be taken into account.

26. In *Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd. Vs. G.S. Barot*, Member, Industrial Court and Another, observed as under at P. 389:

"16. The wages due to a worker are in the nature of expenses just like payment for raw materials. In this sense the wages are expenses which have to be met whether the company works, makes profit or not. So far as the minimum wages due to a worker are concerned, the law requires that they should be paid first and if the industry cannot pay them it may as well close. The payment of dearness allowance as prescribed under the Minimum Wages Act should also be provided for in any event. It is settled law that in fixing fair wages or dearness allowance or for making contribution to provident fund or providing for gratuity the financial capacity of the industry to bear the additional burden will have to be taken into account. On principle of social justice with the development of industrial law it has now been accepted that when the industry can bear the burden provision should be made for provident fund and gratuity scheme. In determining the financial capacity of an industry all relevant facts will have to be taken into account. The principles followed in arriving at the profit and loss account for income tax and other purposes may not be conclusive. The claim of the employer to a reasonable profit, that of the shareholders for a fair dividend and the interest of consumer and other relevant facts and circumstances will have to be taken into account. It is necessary to take into account at all the facts and circumstances relating to the industry for determining the financial capacity of the industry to pay".

27. In the instant case the petitioner company is a core industry in steel. It had a modest beginning 50 years back when the Kurla plant was started. The factory at Kurla makes steel castings, major products for Railway bogies, chassis or under-carriages to the railway wagons. During the course of time, the company started its unit at Kalwe. At the Kalwe plant the company has heavy steel casting foundry to make castings upto 100 Mt a piece. Steel castings are exported to CIS (erstwhile USSR) and other countries. Apart from this the company supplies castings to sugar mills, cement industries, and public sector undertakings such as BHEL, BEML, BSP etc. The alloy steel foundry manufactures and supplies a variety of allied steel castings for oil refineries, petrochemical units, diesel, mining and construction and defence. The company has also been exporting its product to USA, Canada, Germany, Finland, United Kingdom. The export performance during the financial year 1988-89 was Rs. 2.76 crores, in 1989-90

Rs. 3.40 crores and in 1990-91 Rs. 5.01 crores. The company has declared 30% dividend for the years 1989-90, 1990-91 and 32.5% in 1991-92 on the enhanced capital for the bonus issue in 1988-89 @ 1:2 ratio. The company has launched two subsidiary companies recently i.e., Mukand Dravd Wellman Ltd. and Mukand Soviet Engineering Ltd. in association and equity participation with the Americans and the Russians.

28. During the year 1989-90 to 1996-97 the sales turnover has grown from 528 crores to 868.49 crores. The paid up capital of the company in 1991-92 was 14.73 crores. It has increased to 27.09 crores. The reserves were 105.13 crores. It has increased to 379.01 crores in 1996-97. The gross block including WIP was 239.43 crores in 1991-92 and has increased to 445.13 crores. The net worth of the company grew from 107.49 crores to Rs. 408.02 crores. The total assets have grown from Rs. 262.04 crores to Rs. 990.67 crores. Gross profit of the company for the period 1990-91 and 1996-97 is 34.22 crores. It is true that the company has been registering losses in the last year but that may be particularly due to the factor of recession which has affected the industries in general. If we examine the material on record it is seen that the company's business is consistently growing. Indeed the company is considered to be a biggest foundry in the private sector and it figures in the list of super-100 companies in India. The company has floated several subsidiary companies. It has also taken over certain other units through its wholly owned subsidiaries.

29. In the light of the material placed before me it is not possible to agree with Mr. Rele that the company's financial position is not sound and the company is doing badly. I may, however, hasten to add that Mr. Rele is right in criticising the Tribunal for not considering the total financial burden which is likely to be borne by the company as a result of the award passed by the Tribunal. Even according to the association the total burden on account of the award comes to Rs. 35.30 crores and the net burden for the year 1999 for the monthly rated employees and daily rated workmen rated at Kurla would be around Rs. 10 crores. The Tribunal has obviously committed an error in holding that the yearly burden on account of the award would be within the range of 3.3 crores to 3.7 crores and works out to mere 6 to 7 per cent of the total profits of the company, As a matter of fact the burden on account of the present award itself works out to about 25% of the gross profits and this fact will have to be borne in mind while fixing the wage structure of the concerned employees.

30. Mr. Rele strenuously submitted that the financial ability of a company to pay cannot by itself be a ground for awarding revision of service conditions. The learned counsel submitted that the real criterion should have been to look to the overall pay structure of the workmen in the light of standard prevailing in the similar industries in the same region.

Reference was made to the decisions of the Supreme Court in *Remington Rand of India Ltd. v. Workmen*, 1968 (19) FLR 46. *Polychem Limited Vs. R.D. Tulpule*, Industrial Tribunal, Bombay and Another, and *Hindustan Lever Ltd. v. B.N.*

Dongre and Ors. 1997 III LLJ (Suppl.) 949 (SC). Mr. Rele urged that the Tribunal went wrong when it took into account for comparison the industries concerned which were entirely dissimilar to the petitioner company. The association has referred to as many as 14 companies as comparable concerns viz Siemens Limited, Larsen and Toubro Ltd. Mahindra and Mahindra Ltd., Voltas Ltd., KEC International Ltd., Godrej & Boyce Ltd. Greaves Cotton Ltd., Crompton Greaves Ltd., Philips India Ltd., Goodlass Nerolac Ltd., NOCIL, Parke Davis Ltd., Ingersoll Rand Ltd., and Hindustan Lever Ltd. On a careful examination of the material placed on record it is seen that at least three out of 14 companies cannot be said to be comparable with Mukand Company. I have held in Writ Petition No. 1704 of 1998 (Re-Kurla daily rated employees) that Larsen & Toubro and Mahindra and Mahindra Ltd. are far bigger concerns and cannot be said to be comparable with Mukand Ltd., Hindustan Lever Ltd. is another giant company which deals in diversified-businesses in consumer products like soaps detergents, shampoo, toothpaste, chemicals, agricultural products etc. Considering the size of the Hindustan Lever Ltd. it is difficult to accept the plea of the association that the said company is a comparable concern. It is well-settled that the principle of industry-cum-region has to be applied by the Industrial Tribunal when it proceeds to consider the questions like the wage structure, D. A. and similar service conditions. In applying that principle the Industrial Tribunal has to compare the wage scales prevailing in the similar concerns with which it is dealing and generally speaking similar concerns would be those in the same line of business as a concern with respect to which the dispute is under consideration. In this regard a reference may be made to the decisions of the Supreme Court in *Williamsons (I) Pvt. Ltd. v. Their Workmen*, 1962 I LLJ 302 (SC), *French Motor Car Co., Limited Vs. Workmen*, , and *Workmen of Balmer Lawrie and Co. Vs. Balmer Lawrie and Co.*, . The Supreme Court has consistently held that the comparison should be made in the same line of business and similar concern cannot be compared even in the same line of business with a large concern. When there is large disparity in the two concerns in the same business, it would not be safe to fix same wage structure as in the large concern without any other consideration.

31. However, what if there is no concern of the same kind in a particular region or the number of similar concerns in the region is small and the company is paying highest wages in its own line of business? In *Greaves Cotton and Co. and Others Vs. Their Workmen*, , after referring to the decision in *French Motor Car Company Ltd. v. Its Workmen*, (supra), the Supreme Court held that the principle is that in applying the industry-cum-region formula for fixing the wage scales, the Tribunal should lay stress to the industry part of the formula if there were a large number of concerns in the same region carrying on same business but where the number of industries of the same kind in a particular region was small, it was a region part of the formula which assumes importance. In the former case in order that the production costs may not be unequal and there may be equal competition wages should generally be fixed on the basis of the same kind.

In the instant case Mukand Limited is the biggest foundry industry in the region and is paying highest wages in its own line of business. Under the circumstances the region part of the industry-cum-region formula would assume importance in the present case. The comparable industries referred by the petitioner company i.e. Tata Steel, Tarapur Unit and Mahindra UGINE Ltd., Khopoli are the units which are located in Thane and Raigad respectively and not in Mumbai. Moreover these units are much smaller in comparison to Mukand Limited. As noted earlier the association has referred to as many as 14 companies out of which in my opinion Larsen and Toubro, Mahindra and Mahindra Limited and Hindustan Lever Limited cannot be called comparable concerns having regard to the fact that they are far bigger concerns apart from the fact that they are carrying on their business in totally different lines. It is also doubtful whether a petrochemical company like NOCIL could be said to be comparable concern with the petitioner company. The data furnished by the association in respect of the comparable concerns is also not complete in many respects. It seems that the data furnished is mainly in respect of the posts of peons, clerks, telephone operators, watchmen, supervisors etc. and it seems that the data concerning the staff and officers working in Grade 00 to Grade 5 is rather incomplete and sketchy. The claim of the workers will have to be examined keeping in mind these aspects of the matter.

32. The first demand of the workers relates to the basic wages and wage increments. The revised basic wages are in the form of merging the existing basic wage with the existing additional basic and special allowance for each grade and by revising the increment structure. The association has attempted to rationalise the basic wage by merging all these and converting into one basic salary thereby lifting the starting point of the basic scales. The Tribunal has accepted the demand of the association in this behalf as referred to above and granted the service increments which are as under:

From 8 years to 12 years - 1 increment From 12 years to 18 years - 2 increments From 18 years to 24 years - 3 increments From 24 years and above - 4 increments.

The Association has contended that the very fact that the cost of living has gone up by around 600% indicates that the value of the increment as it existed in 1972 has substantially depreciated. To make good the depreciated cost of the rupee, unless the increments are increased at least by six times, the value of the increments cannot be protected. The association has also contended that there are number of employees who are stagnated because of their length of service which is as high as almost ten per cent of the total strength. The Tribunal after a careful analysis of the material produced before it granted the demand for revision in basic scales and service increments as mentioned above. The Tribunal has referred to the wages paid in similarly situated concerns and has also taken into account the fact, that number of settlements and awards have been arrived at and has granted the service increments. In my opinion no interference is

warranted with the revision of basic wages and service increments.

33. The issue of DA was hotly contested by the parties. Mr. Rele contended that the DA scheme has been varied by the Tribunal without reference to the total wages and salary existing in the comparable concerns in the region. He submitted that solely on account of the revision in the various components of dearness allowance, the impugned award casts a retrospective burden of Rs. 23.47 crores and an annual burden of Rs. 5.81 crores in 1999. He submitted that the revision of DA is not only highly exorbitant but would seriously undermine the viability of the company as a going concern. He submitted that the Tribunal failed to see that the DA pattern prevailing in the company took care of the rise in consumer price index through the variable dearness allowance and fixed dearness allowance which varies with grade as well as basic related D.A. which varies with basic pay, both of which have been revised under the various settlements. He submitted that the D.A. neutralisation granted by the award is the highest among the companies cited for comparison. The basic plus DA at the maximum level would be Rs. 14,144/- at the cost of living index of 10092 points which is the highest among these companies, barring Ingersoll Rand and NOCIL. The learned counsel submitted that the prevailing scheme of DA in the company stood the test of time and has been accepted through several settlements between the parties and that there was no justification now to change the scheme more so when there is no ceiling on the variable D.A. payable by the company under the present scheme. According to the learned counsel the most pernicious aspect of the award in so far as it relates to variable DA is the introduction for the first time in the petitioner company by the Tribunal the slab system of DA i. e., the system of giving different rates of neutralisation for increases in cost of living for specified slab of basic salary involving thereby a double linkage of DA with the consumer price index (CPI) on the one hand and with the specified slabs of basic salary. He submitted that in the judgments cited by the association the Courts have upheld the slab system in the companies where it already existed or extended the slab system already existing in respect of one section of employees to another section of employees in the same company; e.g. in Goodlass Nerolac Co. Ltd. where it was extended from workmen to staff. There is no justification, according to the learned counsel, for introducing for the first time such a system in the company.

34. Mr. Singhvi countered the submissions of Mr. Rele by pointing out that the present neutralisation works out to hardly 122% of revised textile D.A. Mr. Singhvi submitted that the textile rate of DA protects only the need based minimum wage. The concept of wage has progressively changed and therefore it is the living wage that has to be protected especially in the case of the petitioner company which is flourishing and making a good profit over a period of time. He drew my attention to the decision of the Supreme Court in the case of Workmen v. Management of Reptakos Brett and Co. Ltd. 1992 I LLJ 343. In Reptakos Brett the company of its own provided the slab system of Dearness Allowance (DA) to the workmen which means the DA paid to the workmen was linked to cost of

living index as well as the basic wage. The said double linked DA scheme was included in various settlements between the company and the workmen and remained operative for about thirty years. The company sought to abolish the existing slab system of DA and for linking the DA in the company only to the cost of living index at 33 paise per point over 100 points of the Madras City Cost of Living Index 1936 base. The question for consideration was whether the company could be allowed to restructure the DA scheme by abolishing the slab system which had stood the test of time for almost thirty years and had been approved by various settlements between the parties and substituting the same by the scheme which is prejudicial to the workers, on the ground that the slab system has resulted in over neutralisation thereby landing the workmen in the high wage island. The Supreme Court observed that broadly the wage structure was divided into three categories the basic "minimum wage" which provides bare subsistence and is at poverty line level, a little above is the "fair wage" and finally the "living wage" which comes at a comfort level. It is not possible to demarcate these levels of wage structure with any precision. There are, however, well accepted norms which broadly distinguish one category of pay structure from another. The Supreme Court referred to the report of the Fair Wages Committee published by the Government of India, Ministry of Labour in 1949 and observed as under:

"The concept of "minimum wage" is no longer the same as it was in 1936. Even 1957 is way behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry.

"(vi) Children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage."

The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry".

The Supreme Court also referred to the case in *Standard Vacuum's case* (supra) wherein it was held that the Textile Labour Committee's report of 1940 in its calculation did not proceed beyond the minimum level of the wage structure. It was further held that Rs. 50 to Rs. 55 was the need based minimum wage in the year 1940. The Supreme Court finally observed that the purchasing power of today's wage cannot be judged by making calculations which are solely based on 30/40 years old wage structure. The only reasonable way to determine

the category of wage structure is to evaluate each component of the category concerned in the light of the prevailing prices. The DA scheme which had stood the test of time for almost 30 years and had been approved by various settlements between the parties, has been unjustifiably abolished by the Court below and as such the award of the Tribunal and the High Court judgments are unsustainable.

35. Mr. Singhvi also drew my attention to the decision of the Supreme Court in Unichem Laboratories Ltd. Vs. The Workmen, wherein the Supreme Court has approved the scheme of DA fixed by the Tribunal providing for linkage to the cost of living index as well as basic salary. Mr. Singhvi therefore submitted that there is no need to disturb the revised D.A. Scheme fixed by the Tribunal.

36. I have given my anxious thought to the arguments advanced by Mr. Rele and Mr. Singhvi. It is undoubtedly true that the existing DA scheme works out hardly 132% of the revised textile D.A. Thus there is need to revise the present rate of DA keeping in mind the rate of DA in comparable concerns as well as rate of DA paid to daily rated employees. The company has furnished the charts to show that the revised DA scheme has the effect of revising the present scale of variable DA which works out to 132% to 213%. It is demonstrated by the following table:

(Existing as per settlement of 1989) For CPI Grade CPI 1000

Basic 1000 related sub-variable Total % of P.M. fixed DA fixed total DA RTDA

200	376	240	616	3128	3744	132.45
300	376	240	616	3128	3744	132.45
400	386	270	656	3128	3784	133.86
500	396	290	686	3128	3814	134.92
600	396	310	706	3128	3834	135.63
700	406	350	756	3128	3884	137.40
850	406	390	796	3128	3924	138.82
1050	406	420	826	3128	3954	139.88
1250	406	420	826	3128	3954	139.88
1450	406	420	826	3128	3954	139.88
1650	406	420	826	3128	3954	139.88
1900	406	420	826	3128	3954	139.88
2000	406	420	826	3128	3954	139.88
3000	406	420	826	3128	3954	139.88

3500 406 420 826 3128 3954 139.88

As per IT Award For CPI Basic CPT-1000% of 1000 related sub variable total RTDA

386 200 586 5455 6041 213.73

386 300 686 5455 6141 217.27

386 381 767 5637 6404 226.58

386 419 805 5819 6624 234.34

386 439 824 6001 6825 241.48

386 459 845 6183 7027 248.62

386 489 875 6364 7239 256.11

386 529 915 6546 7461 263.96

386 569 995 6728 7683 271.81

386 609 995 6910 7905 279.66

386 649 1035 7092 8127 287.51

386 699 1085 7274 8358 295.71

386 819 1205 7455 8660 306.39

386 919 1305 7455 8760 309.93

386 1019 1405 7455 8860 313.47

37. In Kalwe Unit of the company in respect of the daily rated workmen D. A. works out to 172% to 208% as per the recent settlement. As far as daily rated workers at Kurla are concerned D.A. is fixed as follows:

Workmen at Kurla

As per High Court Final Award

CPI related variable DA Neutralisation percentage

5088 180

5936 210

7066 250

7066 250

7066 250

7066 250

7066 250

38. Keeping in view the D.A. scheme prevalent in the company in respect of daily rated workmen at Kurla and Kalwe as well as the D. A. Schemes in the comparable concerns and also taking into consideration the fact that the revised basic wage and the increment structure is comparatively higher than the comparable concern and also the fact that the revised scheme has the effect of placing a very high financial burden on the company, I feel that there is no need to introduce variable D.A. having double linkage with the CPI and the specified slabs of salary. To my mind the D.A. Scheme fixed by the Tribunal requires to be modified and the modified scheme shall be as follows:

Variable DA

Base CPI 1000 (1934) for grades 09-02 = Rs. 386

CPI 1200 (1934) for grades 01-00 = NIL

For increase or decrease of 5 points above 1000 points index, the DA increases or decreases by Rs. 3 per 5 points.

Slabs DA

- (a) upto basic Rs. 300 - 100% of basic
- (b) Rs. 300 to Rs. 400 - A+60% of basic above Rs. 300/-
- (c) Rs. 400 to Rs. 500 - B+40% of basic above Rs. 300/-
- (d) Rs. 500 and above - C+20 of basic above Rs. 500/-

The computation of DA in respect of Grades 01 and 00 shall also be done on monthly basis.

39. The next item is the Leave Travelling Allowance (LTA). The Association has demanded LTA at the rate of Rs. 2500 lumpsum plus the basic salary of that month for the Grades 09 to 02 and Rs. 3500/- lumpsum plus respective monthly basic salary for the Grades 01 to 00. It is thus seen that the demand of LTA made by the association is at the minimum level, amounting to Rs. 2727/- per year, that at the higher level, amounts to Rs. 8700/-. In the statement of claim the Association has pointed out that existing amount of LTA is meagre. It has also been pointed out that the last 5 years all modes of travel have become costlier. Other rates of facilities such as hotel, accommodation etc. have increased substantially. The Tribunal has accepted the demand of the union in toto and I do not see any reason to interfere with the same.

40. As far as gratuity is concerned the Tribunal has directed that the workers covered by the reference will be entitled to gratuity of 21 days basic salary plus DA. It is an admitted position that the daily rated workmen at Kalwe are paid gratuity at the rate of 21 days of their basic wages plus DA as per the agreement dated February 15, 1994. At present the employees covered by this reference

are entitled to gratuity of 15 days of their basic wages and DA. Under the circumstances the finding of the Tribunal does not suffer from any infirmity.

41. As far as the House Rent Allowance (HRA) is concerned the demand of the union is for 15% of basic and DA. At present the HRA is paid varying from 7% to 12% and the Tribunal has fixed the HRA at flat rate of 12.5% of the revised basic scale plus D.A. The Tribunal has taken into account the fact that the Government has given directions for payment of HRA at the rate of 5% which is minimum amount required to be paid by the employer. I do not find any error in the award of the Tribunal as far as the HRA is concerned.

42. Lastly the Tribunal has accepted the demand of the union for medical allowance and education allowance. In comparable concerns also such allowance is paid at varying rates. In respect of the daily rated workmen at Kurla this Court has fixed the education allowance at the rate of Rs. 300/- per month. The award of the Tribunal does not require any change as far as these allowance are concerned.

43. In the result petition is partly allowed. Award of the Tribunal stands modified to the extent indicated hereinabove.

44. No order as to costs. Certified copy expedited.