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(2004) 08 AHC CK 0047

In the Allahabad High Court

Case No : C.M.W.P. No. 24764 of 2004

Triveni Glass Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 5, 5(3), 5(4)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 10A, 12, 16, 17(1)

Citation : (2004) 5 AWC 4924

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : J.N. Tiwari and C.B. Gupta, for the Appellant; K.P. Agrawal and Bushra Marium, S.C., for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri. J.N. Tiwari, senior advocate, assisted by Sri. C.B. Gupta, for the Petitioner and Sri. K.P. Agarwal, senior advocate, assisted by Miss. Bushra Marium for Respondent No. 5.

2. Counter and rejoinder-affidavits have been exchanged and with the consent of the counsel appearing for the contesting parties, the writ petition is being finally decided.

3. By this writ petition, the Petitioner has prayed for quashing the letters/orders dated 8th June, 2004, 26th June, 2004 and 1st July, 2004, passed by Assistant Labour Commissioner, U.P., Allahabad Region, Allahabad.

4. Facts of the case, giving rise to this writ petition, briefly stated, are: Petitioner is a company registered under the Indian Companies Act and has industrial establishment at Iradatganj, Ghoorpur, district Allahabad. The Petitioner had been running five industrial units for manufacturing glass of different kinds. One of its plant, namely Plant No. 1 caught fire on 14th May, 1998, due to which structure of plant including machinery and furnace was destroyed. The

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management agreed to adjust 250 workers of Plant No. 1 in other plants temporarily for some time. Notice for closure of PPG plant (Plant No. 1) was given to the workers. The Union objected the closure and conciliation proceedings started before the Industrial Labour Commissioner. During conciliation an agreement on 9th August, 2002, was entered that all 250 workers of the plant will be paid off fully and finally in phases. Settlement dated 9th August, 2002, is annexed as Annexure-2 to the writ petition. Acting on the settlement 44 workers were paid off. Again notice was given for 80 workers who were to be finally paid off, the said 80 workers refused to accept the payment. The matter came before the Labour Commissioner for discussion, no fruitful decision could be taken by the Labour Commissioner. Respondent No. 5 staged dharna and other forms of demonstration. The management approached the district administration and other labour authorities to intervene in the matter. The conciliation proceedings again started and on 20th February, 2004, two agreements took place between the management and the workers through their Union. The said settlement was with regard to payment of allowance from July, 2003, ad hoc increase in pay and increase in dearness allowance and other related matters. By another settlement it was decided that these 80 workers whose services were terminated by notice dated 23.1.2004 with effect from 24.1.2004 shall continue in service as earlier and the said dispute shall be referred to arbitration and one Sri. R.N. Ram, Additional Labour Commissioner was appointed as arbitrator who was required to give his award after hearing the parties within two months. It was also settled that the said 80 workers will not indulge in any unwanted activity in the factory and the agitation continuing on the main gate of the establishment shall be immediately terminated. The notices dated 16th February, 2004 and 19th February, 2004, given by the management for closure of Plants No. 3 and 4 were withdrawn. The case of the Petitioner further is that although the workers allowed entry of furnace oil but the furnace of Plant No. 5 which had been cooled down due to obstruction of oil by the Union, collapsed in the night of 23rd/24th February, 2004. The Petitioner decided to cancel the agreement dated 20th February, 2004 and informed the Union by letter dated 26th February, 2004, copy of which has been filed as Annexure-6 to the writ petition. Again a closure notice is said to have been given on 26th February, 2003. The Respondent-Union represented the matter to the Additional Labour Commissioner for enforcing the settlement dated 20th February, 2004. The letter dated 8th June, 2004, was written by the Additional Labour Commissioner directing the management to implement the agreement dated 20th February, 2004 and pay the workers arrears within a week. The management wrote to the Additional Labour Commissioner on 14th June, 2004, informing that unfortunate decision has to be taken by the management to cancel the agreement dated 20th February, 2004, hence there is no basis for implementing the agreement. It was stated in the letter that on account of agitation, indiscipline and strike of the workers, the management has suffered loss of crores of rupees due to which two plants had earlier been closed. The State Government vide its letter dated 22nd May, 2004, referred the dispute to

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the Industrial Tribunal as to whether termination of 80 workers vide notice dated 23rd January, 2004 with effect from 24th January, 2004 and termination of 122 workers vide notice dated 24th February, 2004 with effect from 1st March, 2004, is valid or not and if not to what relief the workers are entitled. The Additional Labour Commissioner again directed vide letter dated 26th June, 2004, to the Petitioner to implement the tripartite agreement dated 20th February, 2004. The Petitioner again tried to explain its stand by letter dated 2nd July, 2004 and ultimately by letter dated Ist July, 2004, which was received by the Petitioner on 3rd July, 2004, the Additional Labour Commissioner directed the Petitioner to make payment to the workers in accordance with the tripartite agreement dated 20th February, 2004. The writ petition has been filed challenging the aforesaid three letters issued by Respondent No. 2. A counter-affidavit has been filed by Respondent No. 5 in which power of Petitioner to unilaterally deny the implementation of agreement dated 20th February, 2004, has been challenged. The agitation and dharna made by the workers has been sought to be justified. It has been stated that settlement dated 20th February, 2004, has been lodged peacefully during conciliation proceedings. It has further been stated that closure of Plant No. 5 was without prior permission from the appropriate Government as required by Section 25-O of the Industrial Disputes Act, 1947 (Central Act). It has been stated that Respondent-Union correctly represented to Additional Labour Commissioner and requested him to see that settlement dated 20th February, 2004, be implemented. Reference by the State Government regarding dispute of 80 workers for adjudication to the Industrial Tribunal has not been denied. It has been contended that Tribunal is not functioning for more than three months. The Petitioner filed a rejoinder-affidavit reiterating its stand as taken in the writ petition justifying its actions. It has been reiterated that Additional Labour Commissioner has no power to issue directions as contained in the impugned orders. It has further been contended that reply submitted by the Petitioner has not been considered.

5. The dispute between the parties centres round the agreement dated 20th February, 2004, claim to have been entered during conciliation proceeding and enforceability of the said agreement.

6. Sri. J.N. Tiwari, senior advocate, appearing for the Petitioner has raised following submissions in support of the writ petition:

(i) the agreement dated 20th February, 2004, has been cancelled by the Petitioner vide its notice dated 26th February, 2004, hence it cannot be enforced against the Petitioner. The Petitioner has right to cancel the agreement at any point of time since enforcement of it had become impossible ;

(ii) agreement dated 20th February, 2004, is not enforceable in law since no orders have been passed by the State Government under Rule 5(4) of the U.P. Industrial Disputes Rules, 1957 (hereinafter referred to as the Rules) and the agreement not being enforceable, the Additional Labour Commissioner had no jurisdiction to issue any direction for implementation of the agreement ;

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(iii) the State Government having already referred the dispute pertaining to 80 workers vide reference order dated 22nd May, 2004, till the dispute is adjudicated by the Tribunal, no direction can be issued by the Additional Labour Commissioner for enforcement of agreement dated 20th February, 2004.

7. Sri. K.P. Agarwal, learned Counsel appearing for the Respondent No. 5, refuting the submissions of counsel for the Petitioner, has supported the directions issued by the Additional Labour Commissioner. Sri. Agarwal submitted that Petitioner had no right to cancel the agreement. There is no provision in U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act) or the Rules empowering the management to cancel the agreement. The submission of Sri. Agarwal is that in case management felt that circumstances have changed, there was no impediment in entering into fresh settlement with the Union which could have validly superseded the agreement dated 20th February, 2004 and without entering into any fresh settlement, it had no jurisdiction to cancel the agreement. Sri. Agarwal contended that the agreement entered between the parties is binding and no error has been committed by the Additional Labour Commissioner in directing for enforcement of the agreement. Sri. Agarwal further contended that district authorities including the officers of the labour department have every jurisdiction to mediate in any dispute and to issue any orders for maintaining industrial peace. Sri. Agarwal also contended that Petitioner has no jurisdiction to deny implementation of the agreement which was entered into during conciliation. He further contended that Petitioner is morally bound to stand by the agreement. It has further been contended that reference of dispute to the Industrial Tribunal by the State Government is not an impediment in enforcing the settlement dated 20th February, 2004 and merely because reference has been made, the authorities are not precluded from enforcing the settlement for industrial peace. Sri. Agarwal contended that enforceability of settlement is not must, his submission is that settlement becomes binding from the date it has been entered and liability is accrued u/s 6H of the Act.

8. I have given thoughtful consideration to the submissions of both the parties and have gone through the record.

9. Before coming to the submissions raised by the parties, it is necessary to have a look on the various provisions of the Act and the object and purpose underlying in various provisions.

10. The Act was enacted to provide powers to prevent strikes, lockouts, industrial disputes and other incidental matters. The Act provides various means and modes for settling industrial disputes. Adjudication by the Labour Court or Industrial Tribunal is one of the modes for settlement of industrial disputes. Reference of dispute to arbitrator is also one of the modes for settlement of dispute. Agreement between the parties and agreement during conciliation proceedings is also modes of settlement. The Conciliation Officer is appointed entrusting power and duty to enquire any existing or apprehended dispute. The Conciliation Officer is charged with the duty of mediating in, and promoting the

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settlement of, industrial disputes, in the manner prescribed. The object of entrusting the Conciliation Officer the duty and power of mediating and promoting settlement is obviously with the object of early settlement of dispute between the parties. The word "settlement" has been defined in Section 2(t) of the Act, which is extracted below:

''Settlement'' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such an agreement has been signed by the parties thereto in such a manner as may be prescribed and a copy thereof has been sent to the State Government and the Conciliation Officer.

11. Section 4F of the Act provides for appointment of Conciliation Officer and duties with which they are charged. Section 4F is extracted below:

4F. Conciliation Officer.-(1) The State Government may, by notification in the official Gazette, appoint such number of persons as it thinks fit, to be Conciliation Officers, charged with the duty of mediating in, and promoting the settlement of, industrial disputes, in the manner to be prescribed.

(2) A Conciliation Officer may be appointed for specified area or areas.

12. Section 6B of the Act is with regard to settlement outside conciliation proceedings. Section 6B is extracted below:

6B. Settlement outside conciliation proceedings.-(1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall except as provided in Sub-section (4), be binding on the parties to the agreement:

Provided that if the period for which a settlement shall remain in force has not been laid down in such settlement itself, it shall remain in force for one year from the date of its registration.

(2) As soon as settlement referred to in Sub-section (1) has been arrived at, the parties to the settlement or any one of them may apply to the Conciliation Officer of the area concerned in the prescribed manner for registration of the settlement.

(3) On receipt of application for registration under Sub-section (2) the Conciliation Officer or an authority notified by the State Government in this behalf, either:(i) register the settlement in the prescribed manner, or (ii) refuse registration if it considers it to be inexpedient to do so on public grounds affecting social justice, or if the settlement has been brought about as a result of collusion, fraud or misrepresentation.

(4) Where a settlement under Sub-section (1) has been refused registration, it shall not be binding under this Act.

13. The Rules have been framed. Rule 5 of the Rules provides for memorandum

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of settlement. Rule 5 of the Rules is extracted below:

5. Memorandum of Settlement. - (1) A settlement arrived at before a Conciliation Officer or otherwise outside the conciliation proceeding shall be in Form I.

(2) The settlement shall be signed:

(a) in the case of an employer, by the employer himself or by his authorised agent or when the employer is an incorporated company or other body corporate, by the agent, manager, or other principal officer of the corporation ; and

(b) in the case of a workman, either by the workman himself or by the President or the Secretary of the Union of Workmen, competent to represent the workman u/s 6-I, or of a Federation of such Unions, or by an Officer of such Union or Federation authorised in this behalf by the President of such Union or Federation, or where there is no such Union, by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

(3) Where a settlement is arrived at before a Conciliation Officer otherwise than in the course of conciliation proceedings before a Board, the Conciliation Officer shall send a report thereof to the Government with the copy to the Labour Commissioner, Uttar Pradesh.

(4) The State Government shall, subject to the provisions of Clause (ii) of Section 7, issue orders in Form III-A, for enforcing any settlement arrived at before a Conciliation Officer in the course of conciliation proceedings.

14. Rule 5(3) of the Rules is with regard to settlement arrived before the Conciliation Officer. The Sub-rule (3) of Rule 5 provides that Conciliation Officer shall send a report of settlement arrived at in the course of conciliation proceeding to the Government with a copy to the Labour Commissioner. Sub-rule (4) of Rule 5 provides that State Government shall subject to provisions of Clause (ii) of Section 7, issue orders in Form III-A for enforcing any settlement arrived at.

15. The Apex Court while considering the provisions of Industrial Disputes Act, 1947 (Central Act) in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , noted the object of the I.D. Act and various provisions providing for conciliation, adjudication and settlement. Paragraphs 22 and 23 of the said judgment are extracted below:

22. The I. D. Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infra-structure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. Industrial peace is a national need and, absent of law, order in any field will be absent. Chaos is the enemy of creativity sans which production will suffer. Thus, the great goal to which the I. D. Act is geared is

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legal mechanism for canalising conflicts along conciliatory or adjudicatory process. The objective of the legislation and the component of social justice it embodies were underscored in the Bangalore Water Supply and Sewerage Board v. Rajappa thus: SCC p. 232: SCC (L and S)P. 234 para 18]

To sum up, the personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperilled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between managements and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful coexistence, to the benefit of both-not a neutral position but restraints to laissez faire and concern for the welfare of the weaker lot. Empathy with the statute is necessary to understand not merely its spirit, but also its sense.

23. The I. D. Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of parties and the enforcement of awards and settlements. When a reference is made of a dispute u/s 10 or Section 10A, the legal process springs into action. u/s 16 an award is made after a regular hearing if a conciliation u/s 12 does not ripen into a settlement and a failure report is received. The award is published u/s 17(1) and acquires finality by virtue of Section 17(2) unless u/s 17A(1) the appropriate Government declares that the award shall not be enforceable. Section 17A(4) which is of significance reads thus:

(4) Subject to the provisions of Sub-section (1) and Sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under Sub-section (1) or Sub-section (3), as the case may be.

It is obvious from Section 18 that a settlement, like an award, is also binding. What I emphasise is that an award, adjudicatory or arbitral, and a settlement during conciliation or by agreement shall be binding because of statutory sanction. Section 19 relates to the period of operation of settlements and awards and here also it is clear that both settlements and awards, as is evident from a reading of Section 19 (2) and (6), stand on the same footing.

16. The first submission of counsel for the Petitioner is that agreement has been cancelled by the management on 26th February, 2004, hence very basis for issuing a directions impugned have been knocked out. The first question, thus, to be considered is as to whether the management or any of the parties to a settlement has right to cancel the settlement and if at all, then at what stage.

17. As noted above, the object of Legislature is to contain the industrial unrest as quickly as possible and to settle the dispute between the management and the

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workmen. The adjudicatory process which is long range as well as executive measures have also been provided to tackle with industrial unrest and for securing public safety, convenience and for maintaining employment. Section 3 of the Act gives power to the State Government to issue general or special orders to prevent strike, lock-out, etc. and to achieve several other objects for which the Statute has been framed. The settlement by agreement of the parties during the course of conciliation and outside the course of conciliation is also one of the accepted modes of settlement. As noted above, Section 6B of the Act provides for settlement outside conciliation proceeding. Section 6B(2) provides that as soon as the settlement has been arrived at, the parties to the settlement or any one of them may apply to the Conciliation Officer for registration of the settlement. Sub-section (3) of Section 6B also empowers the registering authority to refuse registration of settlement if it considers it to be inexpedient to do so on public grounds affecting social justice or if the settlement has been brought about as a result of collusion, fraud or misrepresentation. Section 6B of the Act specifically, thus, mentions the ground on which the registration can be refused. Rule 5 of the Rules is with regard to memorandum of settlement. Rule 5(3) and Rule 5(4) of the Rules provides regarding course of action where settlement is arrived at before a Conciliation Officer. Under Sub-rule (4) of Rule 5, the State Government is empowered to issue orders for enforcing any settlement subject to provisions of Clause (ii) of Section 7. Clause (ii) of Section 7 of the Act empowers the Government to enforce for such period as may be specified, the whole or any part of an agreement reached in conciliation proceeding between the parties to an industrial dispute. Section 7 of the Act is extracted below:

7. Power to continue order passed under other enactments.- Without prejudice to the generality of the powers vesting under (the provisions of this Act) the (State Government) may, by order, for the purposes contemplated in Section 3:

(i) continue, with such modifications as it may consider necessary, under such conditions and such period as may be specified in the order, any order which was previously passed under any other enactment in force, enforcing all or any of the decisions of an adjudicator or recommen-dations of a conciliator or any agreement reached in conciliation proceedings between the parties to an industrial dispute;

(ii) enforce (in the prescribed manner) for such period as may be specified, the whole or any part of an agreement reached in conciliation proceedings between the parties to an industrial dispute.

18. Section 7(ii) of the Act empowers the State Government to enforce the whole or any part of an agreement. Thus, even if the settlement is entered between the parties, the State Government is empowered to enforce either whole or any part of it. Thus, with regard to settlement arrived at during conciliation proceeding, the power is given to the State Government to implement the whole or any part of the settlement whereas power to such scrutiny has been given to the

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registering officer u/s 6B with regard to settlement which has been submitted for registration. From the scheme of the Act, it is clear that the settlement arrived at outside the conciliation proceedings becomes binding after its registration by the registering authority and with regard to settlement entered during conciliation proceeding, it becomes enforceable when an order is issued by the State Government under Rule 5(4) of the Rules. Thus, for the settlement arrived outside the conciliation proceeding, stage of scrutiny is provided and before settlement is enforced which has been arrived at during conciliation proceeding scrutiny at the level of the State Government has been provided which empowers it to enforce the whole or part. Thus, the scheme clearly suggest that settlement arrived during conciliation proceedings becomes enforceable only after the order has been passed by the State Government under Rule 5(4) of the Rules. In the present case, the settlement which has been arrived between the parties has been arrived during conciliation proceedings which is clear from the contents of the agreement dated 20th February, 2004, copy of which has been filed as Annexures-4 and 5 to the writ petition. Further even the letter dated 28th July, 2004, submitted by the Petitioner, copy of which has been filed as Annexure-S.A. 1 to the supplementary-affidavit, also admits that two sets of settlement were arrived at on 20th February, 2004, during conciliation proceeding. Admittedly, no orders have yet been passed by the State Government under Rule 5(4) of the Rules, hence the settlement cannot be treated to have become enforceable so as to empower the Additional Labour Commissioner to direct the Petitioner to enforce. It is, however, relevant to note that there is no impediment in both the parties acting upon the settlement after it has been arrived. The enforceability and the binding nature of settlement gives right to either of the parties to get it enforced according to the machinery provided under the Act but till the settlement arrived at outside the conciliation proceeding is registered or settlement arrived at during the conciliation proceeding is enforced, the settlement cannot be enforced under the provisions of the Act. The above discussion answers the second submission raised by counsel for the Petitioner.

19. In the scheme and procedure of entering into settlement during conciliation proceeding or outside the conciliation, there is no provision empowering either of the parties to cancel the settlement. The argument of Sri. J.N. Tiwari, senior advocate, that party entering into settlement has inherent right to cancel the settlement does not run in line of the scheme and object of the Act. The settlement is arrived outside conciliation proceeding or during conciliation to quickly restore the industrial peace so that Unit may function, functioning of which is beneficial to the persons connected with the factory as well as society in general. If it is held that either party has right to cancel the agreement at any time, the same will run counter to very purpose and object which is sought to be achieved by the settlement. The unilateral concellation of a settlement by either of the parties is not contemplated under the provisions of the Act nor such interpretation can be given to the provisions of the Act and the Rules. The submission of Sri. J.N. Tiwari that Petitioner had cancelled the agreement on

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26th February, 2004, thus cannot be accepted. The view I am taking also found support from the Division Bench judgment of Madras High Court in Tiruchirapalli Hirudayapuram Co-op. Bank Employees Union, etc. and Joint Registrar of Co-op Societies, Tiruchirapalli, etc. 1992 (1) LLJ 747. In the aforesaid case a settlement was arrived at in the course of conciliation proceeding. The settlement was between concerned co-operative societies on the one hand and their employees on the other. The settlement concerned the wage structures for the employees in the co-operative societies. Subsequently the Registrar Co-operative Societies issued a circular unilaterally setting at naught the settlement. The Division Bench observed following in paragraph 1:

1... We are only called upon to go into the legal propriety of the proceedings impugned in these cases whereby the settlements are sought to be nullified. Whatever be the nature of the factors alleged as vitiating the settlements, can the Respondent by the proceedings impugned, give an adjudication over the settlements and unilaterally nullify them, is the question that alone comes up for consideration by us. Suffice is to point out that what the Respondent have done is not only unorthodox, but also not fitting in with any precept of law. The Respondent cannot by issuing the proceedings impugned, adjudicates over the settlements and unilaterally set at naught the settlements apparently fitting in with the provisions of the Act. There is a total lack of jurisdiction and competency in law in this regard. This factor alone, in our view, should weigh with us for purposes of deciding these cases. There is no need for us to travel beyond this.

20. From the above discussion, it is thus found that Petitioner has no jurisdiction to unilaterally cancel the settlement and settlement dated 20th February, 2004, cannot be said to be cancelled or wiped out by the action of the management. It is further found that settlement dated 20th February, 2004, is yet to be enforced by the State Government and the provisions of the Act and the Rules cannot be utilised for enforcing the settlement in question at this stage.

21. This view is re-enforced by the scheme of the Act and the Rules. The award given by the Tribunal also does not become enforceable till it is published by the State Government. Section 6A of the Act deals with commencement of the award u/s 6 of the Act State Government is also entitled to remit the award for reconsideration. The arbitration award is also an award and the same also becomes enforceable after its publication. The same thread also move with regard to settlement arrived at outside conciliation proceeding and during conciliation.

22. The management''s action of not giving effect to the settlement could have been a subject matter of another conciliation in which the officials of the labour department could have impressed upon the management to follow the settlement but certainly no direction can be issued by the Additional Labour Commissioner for payment. However, from the tenor of the orders impugned, it is clear that the said letters were only recommendatory since the letters do not mention any action on failure thereof. It is, however, made clear that in the event

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State Government issues necessary orders as contemplated under Rule 5(4) for enforcing the settlement, the settlement will become enforceable under the Act.

23. The last submission of counsel for the Petitioner that since the State Government has referred the dispute regarding 80 workers for adjudication, the settlement in question cannot be enforced, also requires consideration. As noted above, the adjudication by Industrial Tribunal or by Labour Court is long drawn process whereas the settlement during conciliation is a quicker process for ending a dispute. Both the process are separate and independent process and it cannot be said that merely because dispute was referred by the State Government, the settlement arrived at earlier has become meaningless or should not be proceeded with for enforcement. Thus, mere pendency of reference before the Industrial Tribunal for adjudication cannot have any effect on the settlement or any future action on the said settlement. In this context, it is relevant to note a judgment of Apex Court in Sirsilk Ltd. and Anr. v. Government of Andhra Pradesh and Anr. 1963 (2) LLJ 647. In the said case the Apex Court was considering the provisions of I. D. Act (Central). In that case Tribunal sent its award to the Government in September, 1957, subsequent to which parties to the dispute came to settlement and on 1st October, 1957, a letter was written to the Government that dispute pending before the Tribunal had been settled and the award be not published. The Government, however, expressed its inability to withhold the publication of the award. A writ petition was filed praying that the Government be directed not to publish the award, the High Court dismissed the writ petition. Thereafter the matter was taken to the Apex Court. The Apex Court held that settlement has become binding u/s 18(1), it having come in force on the date it was signed. The Apex Court observed that although Section 17(1) of the I. D. Act was mandatory and Government was bound to publish the award but in the situation of the case only way to reconcile two provisions was to withhold the publication of the award. Following observation was made by the Apex Court in the said judgment:

... In such a case, in view of the possibility of conflict between the settlement in view of its binding nature u/s 18(1) and an award which might become binding on publication u/s 18(3), the proper course for the Government is to withhold the award from publication to avoid this conflict. If any dispute of the nature referred to above arises as to a settlement, that would be another industrial dispute, which the Government may refer for adjudication and if on such an adjudication the settlement is found not to be binding u/s 18(1) of the Act, it will always be open to the Government then to publish the award which it had withheld, though we do not think that such instances are likely to be anything extremely rare. We are, therefore, of the opinion that though Section 17(1) is mandatory and the Government is bound to publish the award received by if from an Industrial Tribunal, the situation arising in a case like the present is of an exceptional nature and requires reconciliation between Sections 18(1) and 18(3), and in such a situation the only way to reconcile the two provisions is to withhold the publication of the award, as a binding settlement has already come into force in

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order to avoid possible conflict between a binding settlement u/s 18(1) and a binding award u/s 18(3). In such a situation, we are of opinion that the Government ought not to publish the award u/s 17(1) and in cases where Government is going to publish it, it can be directed not to publish the award in view of the binding settlement arrived at between the parties u/s 18(1) with respect to the very matters which were the subject-matter of adjudication under the award. We, therefore, allow the appeals and direct the Government not to publish the awards sent to it by the Industrial Tribunal in these cases in view of the binding nature of the settlement arrived at between the parties u/s 18(1) of the Act. In the circumstances, we order the parties to bear their own costs.

24. In view of the aforesaid, the submission of counsel for the Petitioner that dispute having referred, no action can be taken in respect of the settlement dated 20th February, 2004, cannot be accepted.

25. In result, the writ petition is disposed of in following manner:

(i) The Petitioner is not liable to implement the settlement dated 20th February, 2004, in pursuance of the letters/orders dated 8th June, 2004, 26th June, 2004 and 1st July, 2004.

(ii) The settlement dated 20th February, 2004, shall become enforceable only when necessary orders under Rule 5(4) of the Rules are issued by the State Government.

26. Order accordingly.

27. Parties shall bear their own costs.

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