1998 (1) G. L. H. 960

C. K. THAKKAR AND S. D. PANDIT, JJ

Ambalal Sarabhai Enterprises ...Appellant
Versus
Chemical Labour Union & Ors....Respondents

Letter Patent Appeal No. 1040 of 1996* (with Letters Patent Appeal Nos. 1071, 1072, 1073 & 1046 of 1996)

D/- 2-9-1997

*Arising out of a common judgment delivered by the Ld. single Judge on 19/30/31-7-1996 & 1-8-1996 in Special Civil Application Nos. 2111/1993, 12960/1994, 7318/1993 and 4478/1996

Industrial Disputes Act, 1949 - Ss. 2(p), 10(2) & 18 - Settlement - Binding nature of - Industrial Tribunal's consideration of reference as per terms of settlement by ignoring those very terms is not permissible - Plea of non-applicability of a settlement between recognised Unions and the Company to workers who were not members of such union on *[@page960]* **the ground of not being a party to such settlement rejected in absence of allegation of mala fide, fraud, corruption and as it could not be shown that it was unjust or unfair or not in the interest of workmen.**

. . . In our opinion, the consideration of reference, made to the Industrial Court as per the terms of settlement by ignoring the terms of the settlement is not only not possible but is also not permissible as the reference is in terms of the settlement. . . . (Para 16)

. . . When once it was found that the appellant has justified in not working the same, it had to decide the question as to what compensation was to be awarded to the discharged workmen. While considering that question it had to find out as to what is the number of discharged workmen. Therefore, the action of the learned Industrial Tribunal in stating in its final order that the appellant was permitted to close its unit and that 531 workmen stood discharged is quite in pursuance of the reference. (Para 21)

. . . Hence the settlement is between the representative unions and employer. Shri H. M. Jamdar has not pointed out any material to hold that that the settlement is not in the interest of workmen. The learned Industrial Tribunal has recorded a finding that it is in the interest of workmen for the reasons stated by him. Hence merely because Shri Jamdar and 110 other workmen have not signed the settlement it could not be said that it is not binding against them. . . .

. . . Therefore, in view of the above decisions when it is not the allegation of Shri H. M. Jamdar and 110 other workmen that the settlement is either mala fide or fraudulently obtained or on account of corruption and when they have also failed to show that it is not just and fair the settlement will be enforceable against them also. (Para 24)

Cases Referred :

1. Herbertsons Ltd. v. The Workmen of Herbertson Ltd. & Ors., AIR 1977 SC 322 (Para 24)
2. M/s Tata Engineering and Locomotive Co. Ltd. v. Their Workmen, AIR 1981 SC 2163 (Para 24)
3. Mrs. Kathleen Dias v. H. M. Goria & Sons, AIR 1951 Cal. 513 (Para 25.A)
4. Federation of Labour Co-operative Ltd. v. Baliath, AIR 1962 A. P. 69 (Para 25.A)
5. Calcutta Port Shramik Union v. B. R. T. Association, 1979 Lab. I. C. 714 (Para 25.A)
6. R. G. Kamdar Mandal v. Packart Press, 1995 (2) G.L.P. 117 (Para 25.A)
7. Vazir Glass Workers Ltd. v. Maharashtra General Kamgar Union, 1996(2) SCC 116 (Para 25.A)

Appearances :

Nanavati Associates for petitioner
Mr. K. S. Acharya for respondent No. 1

Nanavati Associates for petitioner
Mr. I. S. Supehia for respondent No. 1

Nanavati Associates for petitioners
Mr. B. H. Brahmbhatt for petitioners 2-13
Mr. K. S. Acharya for respondent No. 1

Nanavati Associates for petitioner

M/s. Thakkar Associate for petitioner

S. D. PANDIT, J. ;-

1.

M/s Sarabhai M. Chemicals a division of Ambalal Sarabhai Enterprises has preferred these four appeals against the common judgment delivered by the learned single Judge of this Court on 19/30/31 of July 1996/1st August 1996 in Special Civil Application Nos. 2111/1993, 12960/1994, 7318/1993 and 4478/1996. The learned *[@page961]* single Judge by his common judgment

has partly allowed the said writ petitions by setting aside the award passed by the Industrial Tribunal, Gujarat at Ahmedabad in REF (IT) No. 179/1968 on 29th January 1993 and remanding the matter to the learned Industrial Tribunal to reconsider the reference and to decide the same afresh as per the directions given and observations made by him in his judgment.

2. We have heard Mr. K. S. Nanavati senior advocate for the appellants Mr. Shahani, advocate for the original petitioner in Special Civil Application No. 2111/1993, Mr. I. A. Supheia, advocate for original petitioner in Special Civil Application No. 12960/1994. Mr. Acharya, advocate for the original petitioners in Special Civil Application No. 7318/1993, Mrs. Pawa advocate for original petitioners in Special Civil Application No. 4478/96 and Mr. R. M. Jamdar appellant in L. P. A. No. 1046/96 and one of the respondents in Special Civil Application No. 4478/96 as well as Special Civil Application No. 2111/1993 in person at length on merits of the whole matter. Therefore taking into consideration the nature of the proceedings and the fact that all the parties are heard at length by giving full opportunity of being heard and in the interest of all the parties as well as in the interest of justice, we dispose of these appeals finally by this common judgment.

3. Appellant Sarabhai M. Chemicals is a division of Ambalal Sarabhai Enterprises Ltd. and was running an undertaking at Gorwa Road, Baroda. In the said undertaking the appellant was running (1) Vitamin "C" plant., (2) Sorbital Plant, (3) Hydrozen plant, (4) Fine Chemical Plant, (5) (S. H. (Daksose) and (6) Cooline Cloride Plant. All these plants had common list of workmen and they had also common packing department, stores department, Engineering Department, Sales & Purchase department and other department. In all these 6 plants and departments of appellant's undertaking there were in all 1286 workmen. It is the case of the appellant that since other several big companies started producing and marketing the items which were being produced and marketed by the appellant and the Government's policy to sell vitamin "C" products at lower rate than even the manufacturing costs, appellant undertaking started suffering loss from the year 1979-80. Between 1979-80 to 1988-89 the appellant has suffered loss of more than Rs. 2100 lakhs. Appellant has sought consent of the respondents namely Chemical Labour Union and Chemical Mazdoor Sabha - two unions of its workmen which were given recognition by the appellant to close down the undertaking. But they refused to give such consent. Then the appellant had filed Special Civil Application No. 52/1988 contending that the provisions of Section 25(o) of the Industrial Disputes Act is violative of the provisions of the Constitution of India. Without prejudice to the said contention and by way of alternative remedy an application was also filed before the concerned authority under Section 25(o) of the Industrial Disputes Act before the Competent Authority seeking the permission to close down the unit. But during the pendency of those proceedings the appellant Sarabhai Chemicals had effected a lock-out in its undertaking on 9th February 1988 at 5.00 p.m. Thereby 1286 workmen were

denied job. Thus there was, according to the respondents, illegal discharge of 1286 workmen.

4. It seems that after the said lock-out on 9th February 1988 there were negotiations between the appellant and the two recognised Unions of its workmen and ultimately they arrived at a settlement. The settlement terms were reduced into writing. The appellant and the Chemical Labour Union had signed documents of settlement on 9th April 1988; whereas the appellant and Chemical Mazdoor Sabha signed the settlement terms on 10th April. But the *[@page962]* terms of both the settlements are one and the same. The third term of the said settlement between the parties is running as under :

"3. In respect of the remaining workmen those who would have opted for voluntary retirement as per Clause (1) aforesaid and those who would have been absorbed by the company as per Clause (2) aforesaid, the parties agree to make a joint application to the Commissioner of Labour on or before 18.4.1988 requesting to make a joint reference to the Industrial Tribunal under the provisions of Section 10(2) of the Industrial Disputes Act, 1945, for adjudication and the terms of Reference will be as under :

Whether the demand of Company not to work the Fine Chemicals Plant is justified ?

If yes, what relief the workmen would be entitled to on being discharged as a result of not working the Fine Chemical Plant ?"

5. In view of the said settlement the appellant and Chemical Labour Union and Chemical Mazdoor Sabha requested the Competent Authority who was dealing with closure application of the appellant to take on record the said settlement and requested to dispose of the said proceedings in view of the settlement and to make a reference to the Industrial Court as per the said settlement. Accordingly the Competent authority rejected the application of the appellant in view of the settlement and made the reference as per term No. 3 of the settlement to the Industrial Tribunal Gujarat at Ahmedabad. The Industrial Tribunal Gujarat at Ahmedabad registered the said reference as Ref. (IT) No. 179/88. The said Tribunal then issued notices to the appellant as well as Chemical Labour Union, Chemical Mazdoor Sabha and such workmen who are not members of either Chemical Labour Union or Chemical Mazdoor Sabha. Parties filed their statements. Parties also produced oral and documentary evidence. They had also argued their claims. On considering the materials on record and the submissions made before him the learned Industrial Tribunal passed an award on 29-1-1993 as under :

"Permission Application (IT) No. 30/91 is rejected. Reference is granted and Sarabhai M. Chemicals referred to as Company is granted permission to close Fine Chemicals Division of the Company. On such permission being granted

531 workmen who are surplus workmen are permitted to be discharged/terminated on the following conditions :

1. Every workman being terminated will be paid amount equivalent to retrenchment compensation as payable under law.
2. Gratuity payable as per the payment of Gratuity Act will be paid.
3. Rs. 20,000/- will be paid as lumpsum.
4. 15 days salary for every completed year of service will be paid as ex gratia compensation.
5. Leave salary as per credit will be paid.
6. Kit allowance, medical allowance, leave travel allowance and bonus will be paid, if outstanding and payable. 7. Outstanding wages if unpaid will be paid. In wages, D. A., H. C. Allowance, House Rent Allowance and Vehicle Allowance should be included.
8. Every terminated workman will be paid 33% of the total payable amount immediately on this Award becoming enforceable, 33% amount in 13th month thereafter and the balance 34% amount, i.e., the remaining amount will be paid in the 25th months of the becoming enforceable.
9. This award will become enforceable within one month from today.
10. No order as to cost for permission application.
11. In the reference, Company to pay costs of Rs. 2,500/- to each of the two *[@page963]* unions. Second party No. 3 to be paid cost of Rs. 501/-."

6. In the above order there is a reference of Permission Application (IT) No. 31/91. The said application was filed by the appellant before the Tribunal during the pendency of the reference and had sought a permission not to pay compensation to the discharged workmen by claiming that the appellant had paid to them without taking any work from them and such amount paid to them was double the amount of the benefit payable under Voluntary Retirement Scheme. That claim was considered by the Industrial Tribunal and has rejected the same.

7. After the Industrial Tribunal passed its award in Ref. (IT) No. 179/1989 on 29-1-1993 the workmen had felt being aggrieved. Hence, Chemical Labour Union filed Special Civil Application No. 2111/1993, Gujarat General Kamdar Panchayat filed Special Civil Application No. 7318/1993, M. C. Kanwilkar and 30 other workmen preferred Special Civil Application No. 12960/1194 and Shashikant Anandrao Shigvan and 13 other workmen preferred Special Civil Application No. 4478/1994 against the said award. They contended that the award is vague and without jurisdiction and also without nonapplication of mind and violative of provisions of I. D. Act. They further contended that the Tribunal was not justified in holding that the Company was justified in not working Fine Chemical Plant and that the Company was justified in discharging 531 workmen. They contended that the direction given by the Tribunal to discharge/terminate 531 workmen was beyond the scope of the reference and that the said directions were given without properly investigating

the claim of the Company and without following the provisions of the Industrial Disputes Act.

8. These four petitions were heard by the learned single Judge. He found that the Industrial Tribunal was justified in granting the permission for the closure of Fine Chemical Plant. But he held the finding of the Industrial Tribunal in arriving at the figure of 531 surplus staff was not sustainable. He, therefore, partly allowed these four petitions by passing the following order.

"Upshot of the aforesaid discussion is that these Special Civil Applications partly succeed. The finding and the decision of the Industrial Tribunal on the question that the closure of Fine Chemical Plant was justified does not warrant any interference. I also do not find any illegality in the 11 conditions, which have been imposed by the Industrial Tribunal for the purpose of effecting retrenchment. However, so far as the direction that as a result of the closure of Fine Chemical Plant it will be permissible for the Company to retrench 531 employees is concerned this part of the award is set aside and the matter is remanded back to the Industrial Tribunal at Baroda instead of Ahmedabad as per the consent and request of all the parties. The Industrial Tribunal at Baroda would consider afresh the question as to how many employees were required to be retrenched as a result of the closure of the Fine Chemical Plant and while considering this question, it will also be open for the Industrial Tribunal to record any evidence which either of the parties may be willing to produce by way of oral evidence or any documentary evidence and it shall also keep in view the observations, which have been made in this regard in this judgment. Looking to the fact that the dispute is pending since 1988 and is being remanded now, the Industrial Tribunal may consider the question of giving priority to it and may decide this controversy along with the appropriated consequential ancillary directions, keeping in view the fact that certain employees, who had accepted the amount at the time of retrenchment, may be willing to come back if they are found to be entitled and certain employees, who have not accepted *[@page964]* the amount, may be now interested to accept the amount or to continue in service, if they are found entitled. The Tribunal may decide the remanded proceedings at the earliest but in no case later than the period of six months from the date the certified copy of this order is served upon the Industrial Tribunal at Baroda from the Industrial Tribunal at Ahmedabad. The Industrial Tribunal, Ahmedabad is also directed to send the entire records of the Reference (IT) No. 179 of 1988 decided on 29-1-1996 to the Industrial Tribunal at Baroda. The Company shall prepare a common seniority list of 1,286 employees category wise by 26-8-1996 or before 2-9-1996 and copies of such list shall also be made available to the responsible office bearers of the respective Unions. The Company has also ostensibly agreed to supply a copy of such list of Mr. Jamdar and it will be open for the Union to file their objections, if any. It is agreed by the learned Counsel for the petitioners that it will not be necessary to supply the copy of such list to each and every employee. Of course one copy thereof will be placed

on the notice board at a conspicuous place in the premises of the Factory and it will be the responsibility of the Unions to inform its members to check the list in the notice board. All the parties in these petitions are agreeable to appear before the Industrial Tribunal at Baroda without waiting for the notice from the Industrial Tribunal, Baroda for the remanded proceedings on 2-9-1996. A copy of this order may be sent to the Industrial Tribunal at Baroda and also to the Industrial Tribunal at Ahmedabad so that the remanded proceedings may commence before the Industrial Tribunal at Baroda immediately after the receipt of the record of Reference (IT) No. 179 of 1988 (decided on 29-1-1993 by Industrial Tribunal, Ahmedabad) from the Industrial Tribunal at Ahmedabad."

9. Being felt aggrieved by the said order of the learned single Judge the Company has come in appeal before this Court. It is urged by Mr. Nanavati, senior counsel for the appellant that the learned single Judge has not taken into consideration the terms of settlement between the parties and that the Industrial Tribunal was considering the reference as per the terms of settlement. He further contended that the learned single Judge was wrong in holding that the appellant was not justified in rejecting some claims for Voluntary Retirement. He further submitted that the learned single Judge was not also right in holding that there was no justification for discharge of 531 workmen. He further contended that when the learned single Judge was pleased to uphold the finding of the learned Tribunal that the appellant was justified in not working the Fine Chemical Plant, the learned single Judge was not justified in rejecting the learned Tribunal's finding that 531 workmen were liable to be discharged. Thus it is contended that the order of the learned single Judge to remand of the matter to learned Tribunal for asserting as to how many workmen and which workmen are to be determined be set aside.

10. As against the said contentions of the appellant the learned Advocates for respondents Mr. Shahani, Mr. Supehia, Mrs. Paws and Mr. Acharya supported the judgment of the learned single Judge. It is contended by Mr. Shahani as well as Mrs. Paws that in view of the provisions of Section 25 (O), 25N of the Industrial Disputes Act the learned single Judge's order is just and proper. The respondents' Advocates also contended that the learned single Judge was right in holding that the learned Tribunal was not justified in holding that 531 workmen were surplus. Shri H. M. Jamdar-appellant in LPA 1046/96 and respondent No. 2 in L.P.A. No. 1040/96 argued before us that the Industrial Court at Ahmedabad had no jurisdiction to entertain the reference when the appellant-Company is situated at Baroda and their undertaking is situated at Baroda. He also argued *[@page965]* that there was no justification for closure of Fine Chemical Plant. He also joined the other respondents in contending that all the appeals deserves to be dismissed. Shri H. M. Jamdar also contended that the petitioners in Spl. C.A. No. 4478.96 and respondent No. 4 namely, R. M. Jamdar in Spl.C.A. No. 7318/93 are not parties to the settlement and therefore, the same is not binding against them.

11. Before dealing with the rival contentions we would like to mention that the Industrial Tribunal has held that the appellant was justified in closing down the Fine Chemical Plant. That finding of the Industrial Tribunal is upheld and confirmed by the learned single Judge. Neither the Chemical Labour Union nor the Chemical Mazdoor Sabha nor any of the workmen who are not members of either Chemical Labour Union or Chemical Mazdoor Sabha has filed any appeal to challenge the said finding that the appellant was justified in closing its Fine Chemical Plant. No doubt Mr. H. M. Jamdar has disputed that finding in his LPA No. 1046/96. But it is necessary to mention here that he had filed LPA No. 1046/96 without giving grounds. He has supplied the grounds to his appeal memo after arguments in all other appeals including his own arguments were over. Thus this contention is a clear case of after thought.

12. Now apart from this it is necessary to mention here that the learned Industrial Tribunal has discussed the material produced before him in details in paras Nos. 15 to 18 of his judgment for coming to conclusion that the appellant was justified is not working the Fine Chemical Plant. The learned Industrial Tribunal has concluded his discussion of the evidence and material in para 15 as under:

"As such for financial crisis, severe competition and the viability report that is presented, it appears that the report of company to close Fine Chemicals Division is proper.

In para No. 18 the learned Industrial Tribunal observed as under:

"Also the reasons for closure of Fine Chemical Division at this stage are stated by Dr. Mehta. He is also cross-examined. As per his evidence in Fine Chemical Division changes in Technology and production have been there. In addition severe competition also was started which has reached to climax. Some other small companies undertake processing upto a stage and thereafter good companies purchase the material process further them and sell under their brand name due to which the production cost, work out to be below and this fact he has elaborated with figures. The sale of Fine Chemicals Company in India at one time was 50% which has decreased to 1.25% in 1988. The union or Sabha has not brought on record any other fact challenging this fact."

Shri Lavjibhai Jethabhai Patel, Vice-President of Chemical Labour Union has clearly admitted that the reference in question is as per the settlement. In his cross-examination in para 3 he has admitted that the financial position of Sarabhai Chemicals was very much strained and hence it was unable to purchase raw-material for manufacturing in Fine Chemical Plant. Then in para No. 7 he has admitted that the machinery of Fine Chemicals Plant was pretty old and outdated and the same could not be sold even as scrap. Therefore, in view of all the above said reasons given by the Tribunal and the evidence of Shri Lavjibhai Patel it is not possible to hold that the finding of the Industrial

Tribunal that the appellant was justified in not working Fine Chemical Plant is perverse or illegal.

12.A. There is no dispute of the fact that the appellant had filed Special Civil Application *[@page966]* No. 82/1988 to challenge the Constitutional validity of the provisions of Section 25 (O) of Industrial Disputes Act, 1947. Appellant had also filed an application, without prejudice to its claim regarding virousness of Section 25 (O) of the Industrial Disputes Act before the competent authority to grant permission to close its undertaking. Appellant's undertaking consisted of six plants namely, (1) Vitamin C Plant, (2) Sorbital Plant, (3) Hydrogen Plant, (4) Fine Chemical Plant, (5) H. S. (Daksose) Plant. during the pendency of both these proceedings the appellant had closed its undertaking on 9th February at 5.00 p.m. rendering all its 1286 workmen discharged. Thereafter when the proceedings for granting permission for closure was going on before the competent authority, the appellant informed the competent authority its willingness to introduce "Voluntary Retirement Scheme" (VR Scheme for short). The competent authority had directed the appellant to make that offer of VR Scheme to two Unions. Accordingly that offer was made. Then there were negotiations between the appellant and the two Labour Unions (see page 508 order of competent authority of 19-4-88). Then in April 1988 the appellant and Chemical Labour Union reduced to writing the terms of settlement and signed the same. The appellant and Chemical Mazdoor Sabha signed the same terms of settlement on 10th April 1988. They then jointly applied to the competent authority to take the settlement on record and requested to make the reference to the Industrial Tribunal as per the terms of settlement. Therefore, it is necessary to remember the above background and situation of the parties when they had reduced to writing the terms of settlement.

13. It must be remembered that it was the claim of the appellant that it wanted to close its undertaking as appellant had suffered heavy loss of more than Rs. 2140 lakhs on account of cut-throat competition in the market and the Government policy. It had practically closed its undertaking on 9th February 1988 when the negotiation took place between the appellant and two labour unions representing its workmen. It seems that it had agreed to revive its only "Vitamin C Plant" and to introduce the "VR Scheme" and by reviving its "Vitamin C Plant" to accommodate as many as possible workmen and to pay the compensation to the remaining workmen who were discharged on account of the closure of the undertaking. It seems that the two labour unions were also feeling that the appellant was not justified in closing "Fine Chemical Plant". Hence the parties had agreed to certain terms and arrived at settlement as indicated by terms of settlement.

14. Therefore in view of the above-mentioned background and the circumstances it is necessary to go to the terms of the settlement arrived at between the parties and the controversy between the parties will have to

adjudicate by considering the terms of settlement. The said settlement is running as under:

"WHEREAS Sarabhai M. Chemicals, Baroda (hereinafter referred to as the 'Company') has filed a petition in the Hon'ble High Court of Gujarat being Special Civil Application No. 82 of 1988, challenging the provisions of Section 25-O of the Industrial Disputes Act, 1947 as ultra vires the Constitution of India.

AND WHEREAS in the meantime, the Company has also made an application to the Commissioner of Labour under the provisions of Section 25-O of the Industrial Disputes Act, 1947, seeking permission to close down the entire undertaking and discharge the workmen working therein.

AND WHEREAS negotiations took place between the parties. *[@page967]*

AND WHEREAS a settlement has been arrived by and between the parties concerned in terms hereunder:

This settlement records the terms thereof:

Terms of Settlement

1. (i) The company will display a revised Scheme of Voluntary retirement and invite applications from the workmen concerned.

(ii) The Voluntary Retirement scheme to be displayed by the company, will be as under:
(iii) Those of the workmen who would opt for retiring voluntarily, shall have to submit applications in the prescribed form for the purpose on or before 30th April 1988;
(iv) The workmen opting for retirement will be entitled to be paid the following dues;
(a) The amount equivalent to retrenchment compensation for the number of years service put in by the employee concerned;
(b) Gratuity as per the provisions of the payment of Gratuity Act;
(c) An *ex gratia* amount equivalent to 15 days wages for each completed year of service.

AND FURTHER

(d) Rs. 20,000/- as lumpsum amount;
(e) Wages in lieu of unavailed leave;
(f) Kit allowance, Medical Allowance, L.T.A. and due bonus.
(v) The Company will accept the resignations of the workmen gradually as per its convenience for making payment, till the resignation is accepted the workmen concerned will be entitled to full wages.

(vi) On the day of accepting resignation of the workmen concerned and on the day relieving him the company will pay to the workmen concerned a maximum of Rs. 50,000/- (Rupees fifty thousand only as lumpsum payment out of the total amount payable under the aforesaid Voluntary Retirement Scheme. If the total amount payable comes to less than Rs. 50,000/- the entire amount shall be paid.
(vii) The balance of the amount payable, if any, to the workmen concerned shall be paid by the Company during the period April 1989 to October 1989 as one time payment.

2. After the receipt of the applications for Voluntary Retirement as per clause (1) aforesaid, it would be possible to determine as to how many workmen desire to leave the services of the Company voluntarily. Therefore, by 15th May 1988, the Company will gradually start providing jobs to as many workmen as found necessary to start working Vitamin 'C' Plant and the ancillary Sections/Departments thereto provided the Company would have received at least 600 applications as per clause (1).

3. In respect of the remaining workmen after those who would have opted for Voluntary Retirement as per clause (1) aforesaid and those who would have been absorbed by the Company as per clause (2) aforesaid, the parties agree to make a joint application to the Commissioner of Labour on or before 18-4-1988 requesting to make a joint Reference to the Industrial Tribunal under the provisions of Section 10(2) of the Industrial Disputes Act, 1947, for adjudication and the terms of Reference will be as under:

"Whether the demand of the company not to work the Fine Chemical Plan is justified ? If yes, what relief the workmen would be entitled to on being discharged as a result of not working the Fine Chemical Plant."

4. Parties will co-operate to see that the Reference before the Tribunal is disposed of within six months of the date of Reference. *[@page968]*

5. This settlement shall be placed before Hon'ble High Court of Gujarat in Special Civil Application No. 82 of 1988 and before the Commissioner of Labour, respectively to dispose of the matters in terms of this settlement, with a right to the company to initiate such proceedings before the Hon'ble High Court of Gujarat/The Commissioner of Labour." (Emphasis are supplied by us.)

15. If the emphasised portion of term 1 and emphasised term 2 of the settlement are read together then it would be quite clear that there was agreement to start only Vitamin C Plant on getting at least 600 applications under the "VR Scheme" mentioned in the settlement. Then reading of clause No. 2 and 3 together shows that it was further agreed that the appellant would provide jobs in Vitamin C Plant to as many workmen as possible. The parties had further agreed to refer the question as to whether the appellant as justified

in not working the Fine Chemical Plant before discharging the other workmen who had remained without job after absorbing of the workmen and restarting Vitamin C Plant and ancillary Section/Department thereto and what compensation is to be paid to such workmen. The settlement nowhere lays down that the appellant was to give job only to the workmen working in Fine Chemical Plant. The terms of settlement clearly lays down that at least 600 applications under "VR Scheme" must be received by the appellant and if such 600 applications were received then there was no option for the employer - the appellant - than to accept them. The only liberty given as per the term No. V of clause (1) of the settlement was to accept the said application as per its financial convenience to make payment as per the scheme on condition to go on making payment of full wages to such workmen who had applied for voluntary retirement.

16. Thus the terms of settlement shows that out of 1286 workmen which were affected by the appellant's action in closing its undertaking on 9th February 1988, 600 workmen were to be discharged from the Company under "VR Scheme" the appellant was to restart Vitamin C Plant and in that plant and its ancillary section/departments, accommodate as many workmen as possible and to discharge all the remaining workmen if it is found that the appellant was justified in not working the Fine Chemical Plant. In our opinion, the consideration of reference, made to the Industrial Court as per the terms of settlement by ignoring the terms of the settlement is not only not possible but is also not permissible as the reference is in terms of the settlement. In our opinion the learned single Judge has proceeded by ignoring the terms of settlement and the background in which the settlement had taken place.

17. The original proceeding in which settlement took place was a proceeding for granting permission to close the undertaking and the settlement had taken place during the pendency of that proceeding. If the provisions of a closure proceedings are considered then it will be quite clear that the principle of "Last Come First Go" is not applicable. Because after all it is a case or question of closing an undertaking and it is not a case or question of retirement and/or retrenchment of some workmen in an undertaking. The Form No. XXVIII and Form No. XXX which are provided under Rule 80A and Rule 82B of the Industrial Dispute (Gujarat) Rules, 1966 make the position clear. In case of the retrenchment of some workmen under Form No. XXVII the employer has to give replies to the questionnaire annexed to the said form and the question No. 17 is running as under:

"17. Are seniority lists mentioned in respect of the categories of workmen proposed to be retrenched and if so the details and the position of workmen affected including *[@page969]* their length of service including between periods of service.

But Form No. XXX there is no question corresponding to above question. The provision of Section 25-G is laying down the procedure for retrenchment. It is not applicable to the case of closure. Therefore, in the above circumstances we are unable to accept the contention of Mr. Shahani learned Advocate for Chemical Labour Union that the learned Industrial Tribunal ought to have seen that the provisions of Section 25-G are followed. We are also of the view that as per the terms of settlement between the employer and the representatives of workmen it was agreed that 600 workmen were to apply for "VR Scheme" and the appellant was to restart Vitamin C Plant and its ancillary sections/departments and try to absorb as many as possible workmen and in case it is found that the appellant was justified in not working the Fine Chemical Plant then the remaining workmen were to be discharged. The Tribunal was only to determine as what relief is to be granted to the discharged workmen. The terms of settlement do not show that the appellant was to absorb the workmen only as per seniority. The terms of settlement also does not mention that only the junior workmen were to be discharged. It is very pertinent to note that when the appellant restarted its Vitamin C Plant and started absorbing the workmen, the two unions of the workmen as well as the workmen who were not members of either of two unions ever protested against the absorbing of a junior workmen or they had never informed the appellant that the appellant must start absorbing the workmen as per seniority. It must be remembered that at the time of settlement there was question of discharge of 1286 workmen on account of closure of the undertaking by the appellant and the appellant had claimed that on account of suffering of losses of more than Rs. 2100 lakhs it had no alternative than to close the undertaking. Therefore, on account of negotiations the appellant showed willingness to partially restart the undertaking by working Vitamin C Plant as it was agreed that at least six hundred workmen would apply for "VR Scheme" and to absorb as many as possible workmen in Vitamin C Plant and in case of their action of not to work Fine Chemicals Plant was found justified to discharge the remaining workmen. The workmen had, it seems, to have agreed to the same as the same was in the interest of workmen as 1286 workmen stood discharged on 9-2-88 on account of closure of undertaking.

18. Admittedly the appellant had introduced the "VR Scheme". But the appellant had not received 600 applications as expected by the parties when they entered into the settlement under Section 2(p). But it had actually received 306 applications for voluntary retirement and out of it the appellant had accepted only 141 applications. The learned single Judge has held that the appellant was not justified in rejecting 165 applications as it had no authority to do so. But in our opinion the learned single Judge has come to the said conclusion by not considering the terms of settlement recorded under Section 2(p) of the Industrial Disputes Act, 1947. The relevant term of settlement is as under :

"After the receipt of the applications for Voluntary Retirement as per clause (1) aforesaid, it would be possible to determine as to how many workman decide to leave the service of the Company voluntarily. Therefore, by 15th May 1988, the Company will gradually start providing the jobs to as many workmen as found necessary to start working Vitamin C Plant and the ancillary sections/departments thereto *provided the company would receive at least 600 applications as per clause (1).* (Emphasis are supplied by us.)

In our opinion the emphasised portion of the clause shows that there ought to have *[@page970]* been at least 600 applications for voluntary retirement. Consequently if there were less than 600 applications the option was left with the company to accept or not to accept them. The learned Tribunal has observed in para 17 in this respect as under :

"304 applications were received for Voluntary Retirement out of which 141 workmen relieved. The remaining who were not relieved are stated to be those who had withdrawn the applications, some of them were near to retirement and some were necessary for special and essential services and because their applications were rejected."

Then in para No. 22 of its judgment the Industrial Tribunal has observed as under :

"The applications which were received for voluntary retirement, the reasons for not accepting some of those have been provided by the company are just and sufficient."

(The judgment of Industrial Tribunal and the above quotation is a translation of the relevant portion.)

The above reasoning of the learned Tribunal regarding the justification for not accepting all 304 applications could not be said to be unreasonable or perverse. It is also very pertinent to note that it is not the claim of any of the respondents that in 531 discharged workmen there are many workmen whose applications for Voluntary Retirement are rejected by the appellant. Therefore, in view of all above consideration it could not be said that the appellant has not abide by the term of settlement by not accepting all 304 applications and that the appellant was not justified in not accepting all those 304 applications.

19. The learned Industrial Tribunal has made detailed discussion of all the material produced before him and has also considered all the submissions made before him in detail in para Nos. 17 to 23 of his judgment and has recorded a finding that the appellant has fulfilled all its obligations and points of settlement and has given proper and sufficient reasons for not fulfilling certain terms. There is no material to hold that following finding recorded by the Industrial Tribunal in para 23 is either manifestly erroneous or perverse.

"Further as compared to the benefit available legally from closure, the benefit available under the scheme (Voluntary Retirement Scheme) are better and as such the demand of closure if Fine Chemical Plant can be said to be proper and just. In this regard the cut- throat competition prevalent in market is necessary to be considered. . . . Further starting Vitamin C Plant and closure of Fine Chemical Plant is proper reasonable and adequate disposal and both unions have accepted the settlement also stipulates the issue as to whether closing of Fine Chemicals Plant is just or not should be got decided by Tribunal. When both the Unions have accepted this by settlement, to call it unreasonable or illegal or not fair. As such having regard to facts and all aspects, it is proper, just and reasonable to close Fine Chemicals division and the Company has disclosed all facts necessary to be known and when in 1980-81 it was necessary to close Vitamin C Plant, it has stated so and in 1988, the present situation, Fine Chemicals division is necessary to be closed and if that is permitted out of 1286 workmen, only 531 workmen would be terminated and the rest could be saved from unemployment and this fact shows the bona fide of the company."

20. Admittedly out of original 1286 workmen 87 workman had either retired on attaining the age of superannuation or on account of resignation or on account of death. Applicant had accepted applications of 141 workmen under Voluntary Retirement Scheme. Appellant had absorbed 527 workmen in restarted Vitamin C Plant and *[@page971]* its ancillary sections/departments. Thus 87 workmen either retired or resigned or died plus 141 workmen accepted Voluntary Retirement Scheme and plus 527 workmen absorbed in Vitamin C Plant together come to figure of 755. If this figure of 755 is substracted from figure of 1286, then the reminder is 531.

21. Thus the learned Industrial Tribunal has considered the question as to whether the appellant was justified in not working its Fine Chemical Plant as per the reference made to him. The learned Tribunal has considered the oral and documentary evidence produced before him and came to the conclusion that the appellant was justified in not working its Fine Chemical Plant. That was a finding of fact recorded on appreciation of evidence. It has been also affirmed by the learned single Judge. When once it was found that the appellant has justified in not working the same, it had to decide the question as to what compensation was to be awarded to the discharged workman. While considering that question it had to find out as to what is the number of discharged workmen. Therefore, the action of the learned Industrial Tribunal in stating in its final order that the appellant was permitted to close its unit and that 531 workmen stood discharged is quite in pursuance of the reference.

22. In our opinion the learned single Judge as well as the learned Advocates for the respondents are ignoring the fact that the reference made to the Industrial Tribunal is one of the terms of the settlement recorded under Section 2(p) of the Industrial Disputes Act. Because of the same the learned single

Judge has not taken into consideration the remaining terms of settlement. This approach has resulted into holding that the provisions of Sections 25-G and 25-N are applicable while deciding the issues/questions referred to the Tribunal. We are of the view that learned single Judge has erred in not considering and interpreting the material on record in the background of the terms of settlement and has come to a wrong conclusion. In our opinion the findings recorded by the learned Tribunal are just and proper and there are no grounds to interfere with the same.

23. Mr. Jamdar contended that the Industrial Tribunal at Ahmedabad had no jurisdiction to entertain and decide the reference. The learned single Judge has dealt with it in para No. 5 and has rightly rejected the same on the ground that no contention was raised before the Tribunal that it has no jurisdiction - Territorial Jurisdiction - to entertain and decide the reference. The proceedings between the parties to settlement were pending before the Labour Commissioner at Ahmedabad and before the Labour Commissioner the settlement was filed and he was requested to make reference and he referred it to Industrial Tribunal of Gujarat at Ahmedabad and that action was not only not disputed before the Labour Commissioner but it was also not disputed before the Industrial Tribunal. On the contrary the parties had acquiesced to his jurisdiction by conducting the proceedings. It must be further mentioned that though Shri Jamdar was served in the Reference Proceedings before the Industrial Tribunal he had not filed any statement raising that objection. Not only that he himself had not filed any Special Civil Application in that connection. Therefore, in view of the above consideration we are unable to uphold his contention regarding want of jurisdiction. Mr. H. M. Jamdar has raised a ground in his appeal memo that one workman Babubhai B. Patel had raised contention regarding jurisdiction by application dated 11-2-92 at Exh. 39. But if said application is read then it is quite clear that he has not raised the question of jurisdiction of Industrial Court. He had sought a direct/order from the Industrial Court to direct the Company-appellant to pay him costs for attending the court by coming from Baroda. *[@page972]*

24. The next contention raised is that respondent Shri H. B. Jamdar and 110 other workmen are not members of either Chemical Labour Union or Chemical Mazdoor Sabha and hence the settlement under Section 29(p) is not binding against them and therefore, the same should not be accepted and should not be acted upon. There is no dispute of the fact that Shri H. M. Jamdar and about 110 other workmen are not members of two unions who are parties to settlement. But both the unions namely Chemical Labour Union and Chemical Mazdoor Sabha are the recognised by the appellant. Hence the settlement is between the representative unions and employer. Shri H. M. Jamdar has not pointed out any material to hold that that the settlement is not in the interest of workmen. The learned Industrial Tribunal has recorded a finding that it is in the interest of workmen for the reasons stated by him. Hence merely because Shri Jamdar and 110 other workmen have not signed the settlement it could

not be said that it is not binding against them. In the case of *Herbertsons Ltd.* v. *The workmen of Herbertson Ltd. & Ors.* AIR 1977 SC 322 it has been held as under :

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union which is expected to protect the legitimate interests of labour enters into settlement in the best interest of labour. This would be normal rule. There may be exceptional cases where there may be allegations of mala fides found or even corruption or other inducements. But in the absence of such allegations a settlement in the course of collective bargaining is entitled due to weight and consideration.

When therefore, negotiations take place which have to be encouraged, particularly between labour and well being, there is always give and take.

Following the above decision of three Judges Bench the later Bench of three Judges in the case of *M/s Tata Engineering and Locomotive Co. Ltd.* v. *Their Workmen* AIR 1981 S.C. 2163 has observed as under :

"If the settlement had been arrived at between the company and the union of workers by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal was of the opinion that the workers deserve marginally higher emoluments than they themselves thought they did. A settlement cannot be neglected in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication.

Therefore, in view of the above decisions when it is not the allegation of Shri H. M. Jamdar and 110 other workmen that the settlement is either mala fide or fraudulently obtained or on account of corruption and when they have also failed to show that it is not just and fair the settlement will be enforceable against them also.

25. Mr. H. M. Jamdar has further contended that the Chemical Mazdoor Sabha had filed transfer application before the President of Industrial Tribunal and the copy of the same was filed before the Tribunal (Mr. V. T. Parikh) but in spite of the same he proceeded to decide the same. But though such a transfer application was filed by Chemical Mazdoor Sabha the said Chemical Mazdoor Sabha had withdrawn it and not pressed. Hence there is no commission *[@page973]* of any illegality by the Tribunal in deciding the matter on merits. When there was neither a stay order nor a transfer order the Tribunal was

justified in deciding the matter on merits. It must be also mentioned that in view of Section 33-B of Industrial Disputes Act the order of transfer of reference is to be passed by appropriate Government authority. We, therefore, do not find any force in the said contention.

25-A . Mr. H. M. Jamdar has cited before us the cases of Mrs. Kathleen Dias v. H. M. Goria & Sons AIR 1951 Cal. 513, Federation of Labour Co-operative Ltd. v. Baliath AIR 1962 Andhra Pradesh 69, Calcutta Port Shramik Union v. B. R. T. Association 1979 LAB. I. C. 714, R. G. Kamdar Mandal v. Packart Press 1995(2) G.L.R. 117 and Vazir Glass Workers Ltd. v. Maharashtra General Kamgar Union 1996(2) S.C. C. 116. Out of these cases of Mrs. Kathleen Dias (supra) AIR 1951 (All) 513 and Federation of Labour Co-operation (supra) [AIR 1962 (A.P.) 69] are pertaining to claims under Workmen's Compensation Act, 1923 and they have no bearing to the case before us. In the case of Calcutta Port Shramik Union (supra) (1979 Lab. I. C. 714) there is consideration of provision of Section 15 of I. D. Act. In that case Central Government has referred to National Industrial Tribunal, Calcutta the following issue for adjudication.

"Whether the recommendations of the Central Wage Board for Port and Dock Workers as accepted by Central Government in their resolution No. WB-21(7) 69 dated 28th March 1970 are applicable to the bargemen in the matter of wages and allowance ? If not to what other reliefs with regard to Wages and other reliefs with regard to wages and allowances are they entitled ?

The Tribunal had come to conclusion that bargemen were excluded by the Wage Board from the benefits of their recommendations. But in spite of it, it went on in holding that those recommendations are applicable to the bargemen by holding that bargemen were included on definition of dock worker. That finding was held by Division Bench of Calcutta High Court invalid and beyond scope of reference. Thus 1979 Lab. I. C. 714 is also not applicable to facts before us. In the case of R. G. Kamdar Mandal (supra) [1995(2) G.L.R. 1116) the Division Bench of this Court has considered the provisions of sub-section (5) of Section 25-O of I. D. Act and has held that the word "May" appearing in the sub-section will have to be read as "Shall". Thus this case has also no bearing on the case before us. In the case of Vazir Glass Works (supra) [1996 (2) SCC 118] there was consideration of time limit for making a review application under Section 25-) (5).

Thus all the cases cited by Mr. Jamdar are not applicable to the facts of the case before us.

26. In view of all the above considerations we hold that the view taken by the learned single Judge in the matter is erroneous and unjust as well as improper. We are of the view that there is no justification for interfering with the order passed by the learned Industrial Tribunal. We, therefore, allow all the

four appeals and set aside the judgment and order passed by the learned single Judge in Special Applications Nos. 2111/93, 7318/93, 12960/93 and 4478/96 on 19/30/31-7-1996 and restore the order passed by the Industrial Tribunal in Ref. (IT) No. 179/1988 on 29th January 1993 and dismiss the Special Civil Applications Nos. 2113/93, 7318/93, 12960/94 and 4478/96. We dismiss L. P. A. No. 1046/96. We direct the parties to bear their respective costs of these appeals. A copy of this judgment be kept in each of L.P.A. Nos. 1071/96, 1072/96, 1073/96 and LPA No. 1046/96.

27. After pronouncement of this judgment, *[@page974]* Mr. Sahani, learned Advocate for the original petitioner submitted before us that in view of the pendency of the appeal about 53 workers had not accepted the amount which was offered to them as per award passed by the Industrial Tribunal. He submitted that in view of the judgment delivered to day, the appellants M/s Sarabhai M. Chemicals be directed to pay the amount payable to the workmen as per the award passed by the Industrial Court within two weeks from today. We, therefore, hereby direct the appellants before us in L.P.A. No. 1040 of 1996 to pay the amount payable to the workmen as per the award passed by the Industrial Tribunal within two weeks from today, i.e. on or before 17th September 1997.

28. Mr. Sahani, learned Advocate for the respondent-original petitioner herein submitted before us orally that we may be pleased to grant certificate under Article 133(1)(a) and (b) read with Article 134-A of the Constitution of India. In our opinion, there is no involvement of any substantial question of law of general importance in this case which could be said to be considered and decided by the Apex Court. Our decision is based on the interpretation of the facts - undisputed facts. Therefore, in the circumstances, we do not think that this is a fit case to issue a certificate under Article 133(a) or (b). We, therefore, refuse the oral prayer to issue such certificate.

(VSM) Appeals allowed.