

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8122 OF 2016

Hindustan Lever Employees Union .. Petitioner.

Vs.

Hindustan Unilever Limited .. Respondent.

WITH

WRIT PETITION NO.11595 OF 2016

Hindustan Unilever Limited .. Petitioner

Vs.

Hindustan Lever Employees Union .. Respondent.

Mr. Sanjay Singhvi, Senior Advocate i/b Mr.Bennet D'Costa for the petitioner in WP No.8122/2016 and for the respondent in WP No.11595/2016.

Mr. K. M. Naik, Senior Advocate with Mr.R.M. Shah, Mr.S.P. Solkar i/b M/s.Haresh Mehta and Co. for the petitioner in WP No.11595/2016 and for the respondent in WP No.8122/2016.

CORAM : A.K. MENON, J.

**RESERVED ON : 20TH DECEMBER, 2017
PRONOUNCED ON : 24TH FEBRUARY, 2018**

JUDGMENT :

1. Rule. Rule returnable forthwith. By consent of parties taken up for final hearing. Respondents waive service.

2. By this common order the above two writ petitions are being disposed of pursuant to the order dated 12th December, 2017 whereby both parties agreed that the two petitions can be disposed of finally at the stage of admission. The first petition is filed by the Employees' Union and the second by the company.
3. It would be appropriate to set out few basic facts which are undisputed. The company is engaged in the business of manufacturing and marketing of soaps, detergent, cosmetics, personal care and various other products at its factories across the country. It is believed to have 40 factories and establishments and one such factory is at Amli in Dadra and Nagar Haveli (Union Territory). The union represents some workers employed at Amli factory.
4. In the Union's petition, it is contended that majority of the workers of Amli CLS Plant and Liquid Bleach Plant of the company, who are covered by the settlement dated 30th September, 2008 ("Amli Settlement") became members of the petitioner-union on or about 2nd October, 2012. On 21st October, 2012 a meeting of the managing committee of the union is said to have been held and the company was informed of this fact vide letter dated 29th October, 2012. The union is said to have terminated the Amli Settlement on

16th November, 2012 vide letter dated 10th November, 2012. According to Mr. Singhvi the learned Senior Counsel for the union, upon coming to know that the workers covered by the Amli Settlement had joined the petitioner-union, the company hurriedly signed a settlement with 9 workers working in the tea plant on 12th November, 2012 which was a holiday. The Amli HPC factory plant has since been integrated with three other factories, namely, Athal Beverages and Sayli Beverages both located at Silvassa, and Daman Unit-II. The petitioner has set out particulars of the dates of settlement governing the workers at these four plants. Athal Beverages and Sayli Beverages were manufacturing tea and Daman Unit-II manufactures disinfectant and liquid bleach. It is contended that on relocation of Athal Beverages, Sayli Beverages and Daman Unit-II to Amli factory, the company signed a Bridge settlement with the workers.

5. It is Mr. Singhvi's case that the settlement dated 12th November, 2012 is not binding on the workers covered by Amli Settlement since they had already become members of the petitioner-union on 2nd October, 2012 and the company's management and the Labour Enforcement Officer/Conciliation Officer were informed about the same. The members of the petitioner-union were not part of the in respect of the

alleged Settlement dated 12th November, 2012 (“November Settlement”). It is contended that for various reasons as set out in paragraph 9 of the petition, the November Settlement was not binding as it was entered into without informing all the workers. The Conciliation Officer had also failed to inform the Union of the conciliation proceedings which were called on 12th December, 2012. Undue haste is alleged. It is contended that the November Settlement does not amount to a settlement since the conciliation proceedings failed to conform to the provisions of the Industrial Disputes Act (“Act”) including giving notices to the workmen. It is alleged that the November Settlement is unfair since the notices of conciliation proceedings were not given to the petitioner-union. It was contended that on 29th October, 2012 the union had also informed the company that 11 workers working in CLS Plant have withdrawn as authorised representatives for negotiations and the management was made aware of the same. Vide another letter dated 5th November, 2012, the Union also informed the company that any settlement with other plant workers will not be binding on the workers of the petitioner-union. The petitioner enclosed therewith a letter dated 4th November, 2012 signed by 166 workers of the CLS plant informing the company that they have joined the petitioner-union and all negotiations should be held with the elected representatives of the

petitioner-union.

6. Mr. Singhvi, learned Senior Counsel submitted that the November Settlement deprives the workers of the benefit of the earlier settlement and a demand was raised to the effect that the November Settlement should not be treated as a settlement under Section 18(3) of the Act. On behalf of the union Mr. Singhvi relied upon the following judgments :

- (i) Hotel Imperial Vs. Hotel Workers Union (1960) 1 SCR 476;
- (ii) Lokmat Newspapers Pvt. Ltd. Vs. Shakarprasad (1999) 6 SCC 275;
- (iii) Grindwell Norton Ltd. & Grindwell Norton Workers Union 1987 (54) FLR 727 SC;
- (iv) Employees of Engg. India Vs. Engg. India Ltd. 1986 (52) FLR 537 SC
- (v) C.T.R. Trade Union Vs. C.T.R. Mfg. Industries 1993 (III) LLJ 952 (Bom.HC);
- (vi) Dena Bank Vs. D.V. Kundadia (2011) 15 SCC 690;
- (vii) Bennett Coleman & Co. Ltd. & Anr. Vs. Narayan Atmaram Sawant & Ors. 2002 II CLR 335;

7. The Union alleged that the process followed was contrary to Sections 12 and 18 of the Act. The Conciliation Officer's conduct in having

completed the process of settlement in a single day is sought to be questioned as having fallen foul of Section 12(2) and 12(3) of the Act. Thus, the petitioner has contended that the November Settlement is illegal, void ab initio. That apart, such settlement is prohibited by the 5th Schedule of the Act. The settlement is also questioned on the basis that it has deliberately not granted uniform increase in wages to all the workers of the factory, especially since the petitioner's believe the contribution of the workers at CLS plant is far higher than the contribution of the workers at the tea plant.

8. On 11th June, 2013 the Appropriate Government made a reference of the Charter of demands of the union of HPC Silvassa factory, CLS and Domex unit at village Amli to the Industrial Tribunal. The order of reference is annexed to the petition at Exhibit-E. A Statement of Claim was filed on 31st July, 2013. The Union also filed an application for interim relief seeking payment of Rs.8,500/- per month from October 2012. A reply came to be filed and certain preliminary issues were raised vide application dated 20th April, 2016 which according to Mr. Singhvi was intended to prevent the workmen from getting any interim relief and frustrating the workmen's demand. The company filed an application and called upon the Industrial Tribunal to decide upon maintainability of the reference as a preliminary issue.

On 10th June, 2015, the Tribunal passed an order. The order dated 10th June, 2015 observed that since there was challenge to November Settlement and as per Section 18(3)(a) of the Act, the settlement would be binding on all parties, the question of whether or not the November Settlement is binding on all members of the union would require a detailed inquiry into issues. Accordingly, it was held that the application for interim relief be heard along with Exhibit-35 viz. the application raising preliminary issue. The parties were given liberty to lead evidence, if they so desired. This order is being challenged in the Union's petition.

9. The company contended that while the union had raised a general demand, the November Settlement is invalid. The company contended that the petitioner-union had no locus to represent the employees of the company. In its reply, the company contended that the union has a registered address in Mumbai and that it can operate in the company at its Head Office and branches anywhere in India. According to the company, the HPC Silvassa factory at Amli is not a branch but an independent factory, and the petitioner - Union has no locus or legal right to represent it. Furthermore, it was contended that the constitution of the union does not permit admission of the employees of Amli plant. It is contended that as against work force of

535 permanent workers employed at Amli unit only 30 workers were a part of the petitioner-union and have signed the November Settlement. 4 workers have since resigned and strength of the union could not be more than 134. 75.41% of the workers had signed the November Settlement, clearly a majority. It is further contended that the Amli union has witnessed a merger of three unions which were initially governed by separate settlements and upon merger, the aforesaid bridge settlement was signed which was due to expire on 30th September, 2012.

10. The company contended that a single settlement was signed with the workers of Amli unit after consolidation of the workers at Athal Beverages, Sayli Beverages and Daman Unit-II. The settlement was signed with intervention of the Conciliation Officer as aforesaid. The Amli unit stands as a single unit and no segregation is possible. After the November Settlement was signed, a corrigendum came to be signed with certain modifications to the settlement on 19th November, 2013 whereby 23 authorised representatives of the workers accepted the settlement as a whole by affixing their signatures and Amli unit being situated in Union Territory, there was no question of there being any recognised union and that company was at liberty to sign the settlement with any of the unions representing permanent

workers. If the other unions or workers challenged the settlement, the demand would not constitute an industrial dispute under Section 2(k) of the Act, on the basis that an individual dispute cannot become Industrial Dispute. The maintainability of the reference was thus questioned on the basis that there were two disputes, one being the Charter of demands dated 10th November, 2012 and secondly, the challenge to the November Settlement.

11. With regard to the November Settlement, it is contended that its validity is required to be decided first inasmuch as, if it is concluded that the settlement was legal, the reference would not survive. Therefore, it was necessary to decide the maintainability of the reference before taking up the application for interim relief. It was contended that since the aforesaid issues go to the root of jurisdiction and maintainability of the reference, the reference could not be entertained. The Tribunal was called upon to decide the maintainability as a preliminary issue as also whether the union has locus to represent the employees.

12. During pendency of the application for granting interim relief, the union filed a further application on 8th July, 2015 seeking ad-interim relief by way of directions to the company to grant benefits of

the November Settlement to the workers covered by the reference. It was contended that pursuant to the Charter of demands for the year 2013, the interim relief application was filed on 31st July, 2013. The November Settlement was for a period of four years of which three years had lapsed. Therefore it was urged that the ad-interim relief was required to be granted.

13. The application was opposed by the company which in its affidavit in reply dated 7th March, 2017 contended that while the interim relief application seeks payment of Rs.8,500 per month with effect from 1st October, 2012, the company had filed an application (Exhibit-35) raising a preliminary issue. The company contended that the application for ad-interim relief was filed with ulterior motive and to prejudice the minds of workers secure reliefs which were subject matter of proceedings in which the order dated 10th June, 2015 had been passed. The union had not challenged the order in Exhibit-35 at the material time and the Union's petition is filed after more than 10 months of passing the order and no convincing reasons have been given for the delay. In spite of the order dated 10th June, 2015 granting leave to lead evidence, no evidence had been led at the material time, yet the Union made an application for ad-interim relief.

14. It is contended by Mr. Naik, learned Senior Counsel on behalf of the company that the petitioner union had not complied with the directions in the order dated 10th June, 2015 and the application for ad-interim relief was only a method of sabotaging due process. The Tribunal vide its ad-interim order dated 25th February, 2016 directed the company to pay benefits under the November Settlement to the members of the petitioner-union.

15. The company being aggrieved by the order of the Industrial Tribunal dated 25th February, 2016 filed the companion Writ Petition No. 11595 of 2016. Mr. Naik submitted that the Union has not given any reason as to why its writ petition was not filed for 10 months. It is contended that the petitioner-Union had tried to surpass the judicial process by filing an application for ad-interim relief. It is further contended that the petition of Union does not survive as the Union had since filed an affidavit in lieu of examination in chief, and the trial has begun. In the reply, the company denied that the November Settlement was signed hurriedly. It has reiterated that it was signed in conciliation, in consonance with Section 3 of the Act and is therefore a valid and legal settlement with the elected representatives of employees. On this basis, it is contended that the union's petition has no merit especially since the contention of the

union that the Tribunal had passed an order without hearing the petitioner-union is baseless, for had it been so, the Union would have challenged the order dated 10th June, 2015 promptly.

16. In Writ Petition No.11595 of 2016 the company has challenged the order dated 25th February, 2016 by which the company was directed to provide all the benefits of the November Settlement to the workmen, who had filed the ad-interim application till adjudication of the reference and the arrears from the date of implementation of settlement were directed to be paid in three equal installments. It is the company's case that almost 767 employees of the Amli factory had signed the November Settlement. It was signed by 26 authorised representatives in the General Body meeting held on 27th August, 2012. The newly elected authorised representatives are believed to have been communicated in September 2012 along with the resolution passed by the workmen. This led to a series of meetings between the parties and with intervention of the Conciliation Officer the settlement was signed. On 19th November, 2013 a corrigendum was signed with certain modifications where 23 authorised representatives of Amli union accepted the settlement as a whole by affixing their signatures.

17.Mr.Naik submitted that after hearing the parties the Industrial Tribunal had passed an order dated 10th June, 2015 holding that the application for the interim relief can be decided together with the application framing preliminary issue. After the order was passed no attempt was made to lead evidence but on 8th July, 2015 the application for ad-interim was filed. Mr.Naik contended that the ad-interim application amounts to abuse of process of the Court since in the guise of application, the union was attempting to effectively convince the tribunal to recall the order passed on 10th June, 2015. Mr.Naik contended that there was no provision for grant of ad-interim relief under the Act and the tribunal is required to pass an order either interim or final as contemplated under Section 2(b) of the Act. The validity of the settlement would have to be decided first and if the tribunal came to the conclusion that the November Settlement was valid, this would not survive. The ad-interim application was assailed as an attempt to negate the effect of the order dated 10th June, 2015 which was in force. It was contended that by the impugned order dated 25th February, 2015, effectively the Tribunal had ignored the fact of the order dated 10th June, 2015.

18.Mr.Naik submitted that the attempt was to create disharmony amongst the employees whose elected representatives have signed

the November Settlement. The impugned order would have the effect of favouring the minority group of employees without there being any obligation to do so and retrospectively from November 2012. No circumstances have been made out warranting grant of ad-interim relief. Mr.Naik submitted that the Union cannot approbate and reprobate inasmuch as the November Settlement was final which was challenged and pending that challenge, the Union could not have sought benefit under that settlement.

19. On behalf of the company Mr.Naik relied upon the following judgments :

- (i) Peico Electronics & Electricals Ltd. Vs. Peico Employees Union & Ors. (Civil Appeal No.2942 of 1995 dated 3rd May, 1995);
- (ii) Goodlass Nerolac Paints Ltd. Vs. Paints Employees Union 2009 III LLJ 703 (Bom.HC.);
- (iii) Enercon (I) Ltd. Vs. Kishor B. Patel & Ors. 2013 II CLR 308;
- (iv) V.V.F. Ltd & Ors. Vs. Sarva Shramik Sangh & Anr. 2006 III CLR 531;
- (v) Goa MRF Employees Union Vs. MRF Ltd. Civil Appeal No.1007 of 2004;
- (vi) Tata Consulting Engineers Associates Staff Union vs. Tata Sons Ltd. & Anr. 2001 (90) FLR 1066 (Bom.HC);

(vii) Steel Authority of India Ltd. Vs. Union of India & Ors. 2006 III LLJ 189;

20.Mr.Naik also invited my attention to pay slips for the month of March 2017 and August 2017 in respect of two employees, who had not been given benefit of the November Settlement or settlement of 22nd December, 2016. He also relied upon examination in chief recorded on 15th February, 2017 and further examination in chief and cross examination recorded on 15th April, 2017 and 14th June, 2017 in support of his submissions that the Union had made out a case for interference with the order dated 10th June, 2015.

21.In Hotel Imperial (Supra) the Supreme Court while considering the dispute between three hotels and their workmen about conditions of labour, had occasion to consider the scope of powers of the Industrial Tribunal and in particular “an interim or final determination” of an industrial dispute and observed that the Tribunal has to confine adjudication to those points and matters incidental thereto. The Supreme Court considered the arguments on behalf of the appellants that the Tribunal was required to confine itself to adjudicating on the points referred and that question of interim relief was not referred to, the same could not be adjudicated upon. The Supreme Court

observed that the word “incidental thereto’ under Section 10(4) left no doubt that interim relief, where it is admissible can be granted as a matter incidental to the main question referred to the Tribunal without a specific and express reference.

22. In the instant case, however, I find that the specific reference made is pertaining to the applicability of the settlement and whether pending the decision of the main reference, interim application being granted was justified. The Court considered that the word “award” could mean an interim or final award and if the Tribunal makes an award pertaining to some matters leaving others to be decided at the later stage, that would constitute an interim award, but these awards are not in the nature of interim relief because the Court decided part of the question in issue. Interim relief on the other hand is granted under Section 10(4) of the Industrial Dispute Act, with respect to matters which are incidental to the points of dispute under adjudication. I do not see how this decision comes to the assistance of Mr. Singhvi.

23. Vide the impugned order, the Tribunal has effectively granted interim relief, for an application seeking ad-interim relief. The situation is unique inasmuch as an interim relief application dated 31st July, 2013 in the form of Exhibit G was already pending before the Tribunal. It is

described as “Application for interim relief / interim award”. The application has gone to great lengths in analysing the financial reports of the company, setting out the settlement(s) which govern service conditions in its various plants and highlighted the fact that the November Settlement is not fair and proper since company has deliberately not granted uniform increase in wages for all the workers in the factory and that the workers covered by the Reference IDR No. 4 of 2013 were granted less wages than the workers in the tea plant.

24. Various decisions of the Supreme Court were referred to in support of the contention that wage increase for workers will be justified, if the paying capacity of the employer had increased, if there was increase in the Consumer Price Index, if the wages of workers had not reached living wage and if there has been a rise in the wage structure in a comparable industry. The nature of the prayers in the interim application were clearly for grant of interim relief which are reproduced below :

“(i) Grant an interim relief of Rs.8,500/- per month to every employee in the First Party Company w.e.f. 1st October, 2012 and to pay to the employees in the Assistant Technician and Technician Grades along with arrears thereof.

(ii) Company shall give time off to two office bearers or

committee members of the union to attend the disputes / matter pending before any Authorities or Courts or Tribunals.

(iii) Pass such other order, direction or relief, this Hon'ble Tribunal deems fit and proper.

25. On a fair reading of the above prayers it is evident that what the employees union is seeking is an interim measure of payment of Rs.8500/- per month effective from 1st October, 2012 and arrears. A detailed reply has been filed to the interim order on or about 13th March, 2014. An application, Exhibit-35 was filed soon after the reply was filed on or about 20th April, 2015. Exhibit 35 was filed by the company seeking a decision on maintainability of the reference as a preliminary issue. According to the company the union raised general demand vide letter dated 10th November, 2012 including one that the November Settlement should not be treated as a settlement under Section 18(3) under the Industrial Disputes Act. The Company contended that the November Settlement was signed under Section 12(3) of the Act before the Conciliation Officer and the settlement will be binding pursuant to section 18(3) of the Act. It was contended that the reference was not maintainable since the jurisdiction of Court had been questioned, it was not appropriate that the interim application should be taken up.

26. Parties were heard on this application and after hearing parties the Tribunal concluded that Exhibit-35 could be decided along with application for interim relief. Parties were at liberty to lead evidence, if they so desired, in support of their contentions. This order was passed on 10th June, 2015. On 8th July, 2015 the union filed an application at Exhibit-G wherein a grievance was made that the application for interim relief was filed on 31st July, 2013 and although two years had passed, hearing had not commenced. The Union adopted the contentions in the statement of claim and interim relief application, as if it was part of the application for ad-interim relief. It was contended that even if the company succeeded in the application for interim relief, the workman would be entitled to receive benefits. For almost three years, the workmen had not got a revision in wages and serious prejudice was being caused to them. Relief was sought by way of “ad-interim arrangement” with the company and all benefits of November Settlement were sought for the workmen under the reference who would give productivity and other conditions without prejudice to the rights and contention of the parties.

27. In the reply the company once again pointed out that preliminary objection had been taken, that the issue was still at large and that no

ad-interim relief should be granted. The Tribunal being a creature of the Statute and there being no provision, the application for ad-interim relief should not be entertained. At the material time no evidence was led by the union which should either have led evidence or filed a purshis declining the opportunity. The impugned order notices the fact that on 10th June, 2015 the Tribunal had passed an order that the interim relief application for deciding the issue on maintainability to be decided together and the parties would be granted opportunity to lead evidence. After dealing with the contention of the parties, the Tribunal was of the view that there was no bar to accept certain terms and conditions under protest. It referred to the three guiding principles for granting ad-interim relief viz. prima facie case balance of convenience and irreparable loss. It had proceeded to hold that the failure of conciliation proceeding and disagreement on terms of settlement is itself proof that there was a prima facie case. It then held that the November Settlement affected some workers but the others deferred with the proposal and the terms of the new/ settlement and that the application seeking ad-interim relief was justified since the balance of convenience lay in favour of the workmen seeking such relief. It was contended that the members of the union were not getting special concession. Reference is made to world economy and the fact that inflation affects even these members of the union and that

if relief is not granted *“irreparable loss of good livelihood”* of workers and their families would be the result. At the same time the employees who were accepting the November Settlement would enjoy all the benefits. Interestingly in the operation portion of the order paragraph 2 reads as follows :

“The First party is directed to give all the benefits of the settlement dated 12th November, 2012 to the workmen concern of this reference till the adjudication of the reference immediately.”

28. The order grants interim relief because the direction contained in clause (ii) is to provide all the benefits of the November Settlement to the workman before the Tribunal till “the adjudication of the reference immediately”. (*emphasis supplied*). Thus effectively interim relief has been granted on an application for ad-interim relief. The tribunal seems to have lost sight of the fact that what the applicant's had sought was ad-interim relief till the decision of the interim application. The interim application and the objection to its maintainability i.e. Exhibit-35 were still awaiting consideration of the Tribunal. It was for the union to have filed its evidence or conveyed its decision not to lead evidence

before the Tribunal. The Union did neither at the time it is another matter altogether that the company also did not lead evidence at the material time.

29. Considering the fact that the impugned order virtually granted interim relief in the face of jurisdictional issue being raised, invocation of Writ jurisdiction of this Court in the facts of the case is justified. Normally in any matter of an interim order, interference in the Writ jurisdiction of this Court is not encouraged, however the facts in the present case are unique and to this extent it is useful to keep in mind the decision of the Supreme Court in *Tayabhai Bagasarwalla v/s Hind Rubber Industries Pvt. Ltd. (1997) 2 SCC 443* which reiterates that the correct approach would be to decide the issue of jurisdiction at the earliest instance. Although that view was expressed in relation to Section 9A of the Code of Civil Procedure, in the instant case when the jurisdictional issue has been raised the Tribunal must decide that issue before embarking upon consideration of application for interim relief. This fact has been noticed by the Tribunal while passing order dated 10th June, 2015 and given the nature of pleading in the interim application and the reply,

the Tribunal thought it fit to permit the parties to lead evidence in support of its contention giving much amount of data in particular on the financial well being of the company as against the reluctance to offer the same benefits of November Settlement to the workers in question. In this view of the matter it is difficult to understand the reasons for the Tribunal having passed the impugned order.

30. The impugned order has virtually roughshod over the objections of maintainability raised by the company. The impugned order omits to consider the issue pertaining to the maintainability of the interim application is left undecided. Surely this was not the correct course that should have been adopted by the Tribunal. It was open to the Tribunal to expedite the hearing of the interim application, as also the issue of maintainability clubbed therewith, however, it chose not to do so.

31. There is substance in the argument on behalf of the company on this aspect. I find that the order of the Industrial Tribunal is susceptible to misuse as in the instant case where the main reference remains pending along with the interim

application and the objection of maintainability. In *V. V. F. Ltd & Ors. vs. Sarva Shramik Sangh & Anr (supra)*, while considering the challenge to an interim order of the Industrial Court. An order allowing benefits to certain group of workmen who had not given up their rights to raise the demand on par with other workman who had entered into a settlement, after giving up their rights to raise demand during the currency of the settlement, was frowned upon by a Single Judge of this Court.

32. In my view it was necessary in the interest of judicial discipline that the Industrial Tribunal refrained from passing any order on the ad-interim application save and except for its rejection. The application for interim reliefs could have been taken up for hearing. The fact that the union's complaint of the interim application being pending for over two years and it used that period of delay as the reason for seeking ad-interim order in the same terms as the interim application met with the approval of the Industrial Tribunal. The impugned order clearly overlooks the fact that the union took no steps to comply with the order of 10th June, 2015. It did not indicate whether it wished to lead evidence nor did it

file a closure purshis. Considering the conduct of the Union, passing of the impugned order was clearly not justified. No doubt the effect of the impugned order would be to provide certain benefits of workmen who were agitating the validity to the November Settlement. However, what they sought to do and what they have almost achieved is to reap the benefits of the November Settlement without having to accept the obligation there under. The onerous parts of the settlement are therefore sought to be avoided.

33. Moreover, the prayer in the application is to the effect that the company should give all benefits of the November Settlement to the workmen covered by the Reference. Whereas the prayer in the ad-interim application is in two parts namely seeking the benefits while offering to comply with the other conditions in the settlement including higher productivity, all of which is stated to be without prejudice. The order itself omits to consider the obligation of the workmen to perform in productivity terms and in relation to the other conditions. The effect of the order is clear, all benefits of the November Settlement should be given to the union members immediately. Arrears are also required to be

paid but in three installments but there is no direction requiring the workmen to perform in terms of the settlement. Thus workman are not obliged to meet the productivity levels contemplated in the settlement or comply with the other conditions, and that in my view is one more reason the impugned order cannot be sustained.

34. In *Lokmat Newspapers Pvt. Ltd (supra)* Mr. Singhvi had relied upon paragraph 49 wherein the Supreme Court observed that when a reference is received, in appropriate cases the Court has ample power and jurisdiction to pass interim orders. In the present case reference had also been made to case of *Grindwell Norton (supra)* in which the Division Bench of this Court has held that interim relief applications are not barred by principles of res judicata or estoppel. While applying the ratio in *Grindwell Norton (supra)* it was submitted by Mr. Singhvi that merely because the application for interim relief was pending was no reason to refuse relief in the application for ad-interim relief. However, on facts of the case I find that this decision is of no assistance to Mr. Singhvi since the question here is not merely of maintainability of an application for interim relief but that

of maintainability of an application for ad-interim reliefs which relies entirely upon the averments in the application for interim reliefs.

35. In the Employees of Engineering India Ltd (supra) Mr. Singhvi, learned counsel has placed reliance upon the observations of the Supreme Court in that case, directing all employees of the public sector undertaking drawing a basic pay of Rs.1000 or less will be entitled to interim relief on the same basis and scale as the other Government of India employees. This shall be on an undertaking given by each of them that in case they fail in the claim made by them, they will refund the excess amount drawn by them and arrears. In my view, such an order will not be justified in the instant case, at the interim stage since it will put undue pressure on the employees. Moreover in the present case the Union had not opted to lead evidence initially and the tribunal has not yet had the opportunity to consider the merits of the case. Mr. Singhvi had placed reliance in the case of Dena Bank (supra) but that ruling was appropriate in the facts of that case but it is not applicable to the facts at hand because in the present case we are concerned with the ad-interim order being

passed in terms of interim application without a full fledged hearing of the interim application and without considering the objection to maintainability. Mr. Singhvi placed reliance on the case of Bennett Coleman & Co. Ltd. & Anr. (supra) which also will be of no assistance to the Union in view of the view I have taken herein.

36. As far as the judgment in the case of Peico Electronics (supra) relied upon by Mr. Naik and in the case of Virudhachalam P. & Ors. (supra), the Supreme Court held that the settlement arrived at during conciliation proceedings between respondent no.1 Management and the four out of five Unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of the signatory unions but also on the remaining workmen who were represented by the fifth Union, which had refused to sign the settlement after having participated in conciliation proceedings, and also that it was axiomatic that such settlement was binding even on future workmen. In the instant case the Union has questioned the company's contention that the settlement was one under Section 18(3).

37. In National Engineering Industries Ltd. (supra) the Supreme Court was hearing the appeal against the judgment of Rajasthan High Court

which held that a settlement arrived at Conciliation proceedings was binding on the workmen. While dealing with provisions of Section 18(3) of the Act, the Court found that a settlement arrived at in the course of conciliation with a recognised majority Union will be binding on all workmen of the establishment, even those of a minority Union or individual workmen, observing that there can be many splinter groups each forming a separate trade union and if every union having few members goes on raising a dispute, there will be multiple disputes with the State Government making reference again and again. The very purpose of settlement will be defeated. In the facts of that case a notice came to be issued on the proceedings and the reference was stayed on the grounds that there has been no progress made thereafter and even otherwise it found futile to allow the reference to continue after lapse of years. In the facts of the present case the maintainability of the reference has been called into question and a decision is yet been arrived at.

38. Mr.Naik has also referred to the decision of Goodlass Nerolac Paints Ltd. (supra) in which the Supreme Court observed that the Industrial Court could not have issued directions for extending the benefits of the settlement to the other workers without they having signed the settlement and since the settlement had a productivity clause and

the workers of the complaint-union had not signed the settlement, the Industrial Court was not justified in enforcement of the settlement in favour of the complaint-Union. I am of the view that there was no basis for imposing the terms of settlement on the company qua the contesting Union. In the course of his submission In Tata Sons Ltd. (supra) the Tribunal had considered the demands referred for adjudication item-wise, recorded its reasons for not granting the same in the context of settlements placed on record, had considered overall comparable concerns of all demands and has given reasons independently holding that the demands were not justified. The Court found that the contention that the settlement cannot be considered to be fair and proper merely because they were accepted by majority, would not be accepted, and that the workmen who are employed by the company are wise enough to have accepted the benefits of the settlement considering all the facts. Quoting from Peico Electronics the Court observed that the Will of the majority workmen will have to be accepted by the petitioner Union and it cannot persist to have independent and separate adjudication of its own demands.

39. In Steel Authority of India, the observations that a definite stand was taken by the employees that they had been working under the

contractors and it would not be permissible for them to take a contradictory and inconsistent plea that they were also the workmen of the principal employer and it was impermissible in law to take a mutually destructive plea. In the instant case that is precisely what is sought to be done. In the course of proceedings before the Industrial Court the witness on behalf of Union admitted during the cross examination by the companies counsel that there were 535 workmen who participated in the election process and that limited representatives were authorised to engage in settlement talks on wage revision. Also in 2008 and 2012 also the settlement of wage revision was allowed following the same procedure. The witness further admitted that the settlement was arrived with the conciliation officer and that a corrigendum had been arrived at. The witness admitted that all 535 workmen participated in election process and the representatives so elected. Although Mr. Singhvi objected to the said evidence on the basis that it is hearsay. In *National Textile Corporation (supra)* Mr. Naik has correctly placed reliance on the observation that pleadings and particulars are necessary to enable the Court to decide the rights of the parties.

40. In the instant case the ad-interim application was merely relying upon averments in the interim application. In the interim application

specific direction has been given to lead evidence and parties were expected to do so or seek closure of evidence on the basis that they would not lead oral evidence. This was not done at the material time and in the circumstances there were no particulars available before the Tribunal on the basis of which the ad-interim order could have been passed. The approach of the Tribunal amounts to ad-hocism and pending the decision on the main interim application the Tribunal ought not to have proceeded to pass the impugned order as an adhoc measure.

41. The other question that arises is whether under Section 10(4) of the Act the grant of ad-interim relief could be described as a decision of matter incidental thereto. Under Section 10(4) in the case of an order referring an Industrial Dispute, the appropriate Government specifies the points of dispute for adjudication and the Tribunal is mandated to confine its adjudication only to those points so referred and matters incidental thereto.

(emphasis supplied)

42. On plain reading it is obvious that “matters incidental thereto” used for sub-section would only be a reference to the matters and issues which are incidental to main points, more in the nature of

corollaries or different branches of the point in dispute. To conclude that power to grant the ad-interim relief is a matter incidental to the points pending for adjudication in the interim relief application and the application adjudicating to maintainability and jurisdiction of the Tribunal is not in my view said to be matter incidental to points referred. In this behalf it will be useful to refer to the decision of the Supreme Court in the case of MRF Ltd. (supra) in which case, the Court observed *prima facie* that they could not agree with the view that the interim relief was granted in exercise of powers conferred upon the Tribunal with respect to matters incidental to points of dispute referred for adjudication, although the Supreme Court thereafter left these matters to be decided by the larger bench, it referred to the decision in Grindlays Bank, Lokmat Newspaper and Delhi Cloth and General Mills Ltd. in that regard.

43. The ad-interim relief application relies upon the contents of the interim relief application which is deemed to be part of the interim relief application. No other reasons are given for seeking ad-interim relief save and except pendency of the earlier application. Thus, the question that arose for consideration is whether pending the disposal of an application for interim relief and a decision on its maintainability, whether a further application for ad-interim relief in

the same terms is permissible.

44. In my view in the facts of the present case the answer must be in the negative. The application for ad-interim relief does not set out any new facts or new circumstances, it does not make out any new case. In fact it relies entirely upon the substance of the application for interim reliefs. The only reason given is that the application for interim relief had not been decided. In my view, without alluding to any delay on part of the Tribunal it is clear that the Union had thus shown no inclination to proceed with the application for interim relief. It appears that the union was seeking to take advantage of its own wrong. Surely this ought not to have been permitted.

45. Now I deal with the Writ Petition No.8122 of 2016 filed on behalf of the Union. On facts, the issues are largely dealt with in relation to the company's writ petition. In the Union's petition, it is reiterated that the "November Settlement" did not amount to settlement in conciliation, that it was arrived at in undue haste to deprive the union the benefits of being engaged in conciliation. The challenge in the Union's petition is to the order dated 10th June, 2015. It is contended that the petitioner had reserved its challenge to the order dated 10th June, 2015 so that the application for ad-interim relief

could be decided. It is submitted that the impugned order in the Union's petition creates procedure for piece meal evidence and the very same issue would be subject matter of the final award. Moreover, neither of the parties before the Tribunal had sought to lead evidence at the stage of challenge on the aspect of maintainability and on the ground that the impugned order would result in repetitive evidence being led and would unduly delay disposal of the interim application. The submission on the subject matter of the settlement is similar to those of the company. The essential contention is that the November settlement does not amount of settlement under Section 12(3) and 18(3) and therefore would not apply. Secondly, it is void ab initio, apart from being unfair to some workers.

46. The gravamen of the Union's grievance is that the contribution of CLS plant to the produce of the company represented by the Union is much more than worker of the tea plant and considering the fact that after the last statement there has been mass erosion due to increase in price index and inflation. The settlement does not therefore grant workers the purchasing power similar to that of earlier settlement.

47. In reply filed on behalf of the company, it is pointed out that after the order dated 10th June, 2015 was passed, the Union has not

challenged the order for more than ten months and the interim application was posted for leading evidence. The Union did not lead any evidence nor did it close evidence but instead made the ad-interim application. It is contended that the ad-interim application was abuse of the process of the Court and the challenge in the present petition is not bonafide. All other allegations are denied.

48. Having heard counsel on this aspect the record indicate that the Union's petition is filed on 21st April, 2016 although interim order was passed on 10th June, 2015. The only reason given for filing this writ petition apparently is that the Union had "reserved" its challenge to the order dated 10th June, 2015 in order to facilitate decision of the ad-interim relief application. The ad-interim application was made on 8th July, 2016, even after passing of the impugned order after the period of 12 months. The ad-interim application itself was made after a period almost a month, and since the ad-interim application relies upon the contents of the interim application, it would only be expected to have been challenged. Hence I pass the following order :

- (a) The impugned order dated 25th February, 2016 passed by the Industrial Tribunal on Exhibit-38 in IDR 4 of 2013 is hereby set aside.
- (b) The Industrial Tribunal shall proceed to hear reference IDR No.4 of 2013 after deciding the application for interim relief being Exhibit-35

as contemplated in the order dated 10th June, 2015.

(c) The recording of evidence, if any, as per order in Exhibit-35 to be completed within a period of three months from today. Exhibit-35 shall be disposed of within a period of two months from completion of recording of evidence.

(d) Writ Petition 8122 of 2016 does not call for any interference. Accordingly the same is dismissed.

(e) Rule made absolute in the above terms.

(f) No order as to costs.

(A.K. MENON,J.)