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W.P.No.24591 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 23..06..2023
Orders Pronounced on 10..07..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.24591 of 2015
and M.P.No.1 of 2015

1.R.Veerasekaran

2.D.Palpandian

3.N.Srinivasan

4.A.R.Naveenan

5.J.Thyagarajan

Five Men Committee of Workmen Representing the 104
Employees of Nokia India Private Limited,
Having Office at No.110/63, 2nd Floor,
Corporation of Chennai Shopping Complex,
N.S.K.Salai, Kodambakkam, Chennai 600 024.

..... Petitioners

-Versus-

1.Government of Tamil Nadu,
Rep. by its Secretary,
Labour and Employment Department,
Fort St. George, Chennai 600009.

2.The Assistant Commissioner of Labour (Conciliation),
Sriperumbudur, Kancheepuram District.

3.The Management
Nokia India Private Limited,
SEZ PHASE 3 A1,
SIPCOT Industrial Estate,
Sriperumbudur 602 105.



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4.The Collector,
Kancheepuram District,
Kancheepuram.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to Government Order in G.O.(D) No.342, Labour and Employment (A2) Department, dated 14.07.2015 issued by the 1st respondent and quash the same as illegal, arbitrary and contrary to law and consequently direct the 1st respondent to refer the dispute raised by the petitioner in respect of which failure report has been submitted by the 2nd respondent dated 22.06.2015 bearing Na.Ka.No.B/166/2015 before the appropriate Industrial Adjudicator, within the time frame stipulated by this court.

For Petitioners : Mr.Balan Haridas

*For Respondents : Mr.J.C.Durai Raj,
AGP for RR1 & 2
Mr.P.V.Balasubramanian,
Senior Counsel for
M/s.BFS Legal for R3*

ORDER

This writ petition challenges the order passed by the 1st respondent – the Secretary, Labour and Employment Department, Fort St. George, Chennai 600009. in G.O.(D) No.342, Labour and Employment Department, dated 14.07.2015 refusing to refer the matter to the Labour Court for adjudication.



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2.The short facts leading to the dispute are:-

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(a) There exists a Company under the name and style of Nokia India Private Limited [for short “NIPL”]. It used to be a leading manufacturer of mobile telephones. At one point of time, it was occupying nearly 70% of the market share of mobile phones. The sturdiness that its product have shown was not exhibited in its business. It did not upgrade technologically and its technology became outdated. Consequently, its market share fragmented faster than satellite hitting the ground and therefore, it was constrained to go out of business. At one point, it was employing about 7500 workmen. Since its products were not selling, its business became unviable. Therefore, NIPL offered a scheme for voluntary retirement (VRS) to its employees.

(b) At that time, the trade union viz., Nokia India Thozhilalar Sangam (for short “NITS”) filed a petition under Section 2(k) of the Industrial Disputes Act, 1947 (for short “ID Act”) stating that the company is taking steps to close down its factory. Despite the protests by the trade union, the VRS was accepted by most of the employees and they exited from the company. Of 7500 about 912 did not opt for VRS.

(c) During this period, there were changes at the International Level and NIPL's business was purchased by Microsoft Inc. Taking note of the



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income tax problems that NIPL was facing, Microsoft Inc decided to acquire operations of NIPL across the world save India. Microsoft also terminated the agreement that it had with NIPL termed “transitional service agreement”. With the future of NIPL being bleak, NITS saw the light and decided to settle the matter.

(d) During the course of conciliation, NIPL came up with a settlement proposal and it was accepted by NITS. Prior to this, NIPL had issued a notice saying that it was stopping production. Taking note of all these circumstances, NITS held a meeting on 30.10.2014 as well as on 31.10.2014. An agreement was signed under Section 18(1) of the ID Act on 31.10.2014. On the basis of this settlement, dues of each workman was ascertained and they were paid. It is also not in dispute that 104 employees, who are involved in the subject matter of this writ petition, also received the amounts. The demand of NITS was that this package should be better than the VRS package, under which majority of the workmen had left.

(e) Accordingly, NITS had negotiated with NIPL for payment on the following heads:-

- i. Notice Pay
- ii. Bonus



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- iii. Annual Health Checkup Benefit
- iv. Ayutha Pooja & Marriage Gift
- v. Cost of Raincoat
- vi. Bridge grant
- vii. Encashment of Earn Leave
- viii. Gratuity on settlement of Provident Fund and
- ix. One Time Benefit

(f) As per its letter dated 07.10.2014, NIPL had stopped its production on 31.10.2014. It might not be out of place to point out that better package than VRS which is the subject matter of 18(1) settlement was negotiated on 27.10.2014, placed before the General Body on 30.10.2014 and 31.10.2014 and finally it was signed on the same day with NIPL.

(g) There is no dispute that out of 4475 employees, 4471 had preferred to be with NITS. This is also clear from the counter filed on behalf of NIPL which says that 4471 workers had chosen to opt for “check off” concession be given in favour of NITS. I also have to take note of the fact that 104 employees, who were left out, were also part of NITS.

(h) After the settlement was arrived at, the payments were made in accordance with the settlement. About two months later, on 02.01.2015,



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persons claiming to be members of New Democratic Labour Front stated that they are not agreeable to the terms of settlement as it attempts to over-reach Section 25-O of the ID Act. On that basis, they demanded that the Government should ensure that wages are paid every month and steps should be initiated for prosecuting the management for illegally closing down the factory without taking prior permission under the ID Act.

(i) On 19.02.2015, a similar letter was addressed to NIPL. Finding no response for these two letters, on 23.02.2015, a dispute was raised by a five-member committee stating that 18(1) Settlement is contrary to Section 25-O of the ID Act and therefore, the matter requires to be conciliated upon. NIPL also filed a counter on 10.04.2015 before the conciliation officer. The conciliation officer filed a failure report on 22.06.2015. The said report was sent to the Government.

(j) After perusing the records, the Government passed the following order:-



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வ. எண்	கோரிக்கையின் விவரம்	மறுப்புக்கான காரணம்
1	நிர்வாகம் தொழிற்சங்கத்துடன் செய்து கொண்ட தொழிற்சங்காறு சட்டப்பிரிவு 18(1)-ன் கீழான ஒப்பந்தம் ஐவர் குழு மூலம் தொழிற்சங்கம் எழுப்பியுள்ள இந்த 104 தொழிலாளர்களை கட்டுப்படுத்துவது அவர்கள் அந்த ஒப்பந்தத்தினை ஏற்றுக் கொள்ளவில்லை நோக்கிய நிறுவனத்தின் 100-க்கும் அதிகமான தொழிலாளர்கள் பணிபுரிந்து வந்த நிலையில் தமிழக அரசிடம் முறையாக தொழிற்சங்காறு சட்டப்பிரிவு 25-0ன் கீழ் முன் அனுமதி பெறாமல் ஒப்பந்தப்படி எழுப்பியுள்ளது சட்டப்படி செல்லத்தக்கதல்ல. எனவே இத்தொழிற்சங்காறில் உள்ள அனைத்து தொழிலாளர்களுக்கும் நவம்பர் 2014 முதல் பின் சம்பளம் மற்றும் இதர சலுகைகளுடன் பணி அளிக்க வேண்டும்.	ஐவர் குழு சார்பாக மென்னை உயர்நீதிமன்றத்தில் தாக்கல் செய்யப்பட்டுள்ள உரிமை மனு 7563/2015ல் தொழிலாளர் உதவி ஆணையர் முன்பு நிலுவையிலுள்ள தொழிற்சங்கம் எண்.ஆ/166/2015 மீது உடனடியாக செக் வார்த்தை மேற்கொண்டு ஒப்பந்தம் ஏற்படுத்துவதும் அல்லது சார்பு முறிவறிக்கையினை அனுப்புவதும், அத்தொழிற்சங்கவாதினை அரசு உரிய தொழில் தீர்மானத்தின் தீர்வுத்திற்கு அனுப்ப உத்தரவிடக் கோரி உரிமை மனு தாக்கல் செய்துள்ளது. மேற்கண்ட நிறுவனமும், நோக்கிய இந்தியா தொழிற்சங்கமும் 31/10/2014 அன்று செய்துகொண்ட ஒப்பந்தத்தின் ஷரத்து 19.6ல் மேற்படி தொழிற்சங்கம் வேறு நபர்களுக்கு விற்கப்படும்பட்சத்தில் நோக்கிய இந்தியா நிர்வாகம், ஏற்கனவே, பணிபுரிந்த பணியாளர்களுக்கு வயது வரம்பு பாராது முன்னுரிமை வழங்க நோக்கிய இந்தியா தொழிற்சங்கம் கேட்டுக்கொண்டது. நோக்கிய இந்தியா நிர்வாகம் அப்படி ஒரு நிலை ஏற்படும் நிர்வாகம் பரிந்துரைக்கும் என ஒப்புக்கொண்டது என்று குறிப்பிடப்பட்டுள்ளது. இப்பிரிவின்படி, இந்நிறுவனம் 31/10/2014 முதல் உற்பத்தி நிறுத்தம் செய்யப்பட்டு பெரும்பாலான தொழிலாளர்கள் சட்டசலுகைகளுக்கு மேல் பெறும் தொகையை பணப்பயனாக பெற்றுக்கொண்டு, அதில் சில 64 தொழிலாளர்களுக்கு மட்டும் தாங்கள் சார்ந்த தொழிற்சங்கமும் நிர்வாகமும் செய்துகொண்ட இருதரப்பு ஒப்பந்தத்தினை ஏற்காமல் ஒப்பந்த பணிகளை மட்டும் பெற்றுக்கொண்டு ஐவர் குழுவாக மாறி எழுப்பிய இத்தொழிற்சங்கத்தில் பொருள் இல்லை என்று கருதியும் (cannot unsettle settled issue) என்பதனாலும், இதனை தொழிலாளர் நீதிமன்றத்தின் தீர்வுத்திற்கு விட தேவையில்லை.



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It is this Government Order, which is put in challenge before me in the present writ petition.

3. Mr.Balan Haridas, learned counsel appearing for the petitioner would submit that

(i) majority of the trade union workers had not participated in the General Body Meeting;

(ii) settlement contravenes the provisions of the ID Act, in particular, it violates Section 25-O of the ID Act; and

(iii) that though the amounts were received pursuant to the agreement dated 31.10.2014, they have to be adjusted as per Section 25-O (6) of the ID Act.

4. He would further state that the order of the government amounts to interference with the petitioner's access to justice and that the Government has no power to adjudicate an issue under Section 10(1) of the ID Act. He states all that it can do is, to see if a dispute exists and if a dispute exists, it has to refer the same, without having any other option. He would also invite my attention to say that as Section 25-O of the ID Act has not been followed, it attracts the penalty under Section 31(2) of the ID Act and for an act when a



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penalty is invited, the agreement dated 31.10.2014 must give way.

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5. Mr.P.V.Balasubramanian, learned counsel appearing on behalf of M/s.BFS Legal for the 3rd respondent would state that NIPL had few marketing problems for its feature phones and since its amounts were frozen as per, order of the income tax department under Section 281-B of the Income Tax Act, it fell into deep financial issues. He would invite my attention to the minutes of the General Body Meeting whereunder NITS had, on 31.10.2014, placed the 18(1) Settlement before the General Body and it was only thereafter that 18(1) Settlement was signed on the same day. He would state that majority of the workmen had left under the VRS and it is only the remaining persons who had to be dealt with. NITS had negotiated and got better terms than the original VRS. He would state that the matter having been settled, it should not be reopened by the Government under Section 10(1) of the ID Act.

6. Mr.J.C.Durai Raj, learned Additional Government Pleader appearing for the respondents 1, 2 and 4 would contend that the Government can refer a matter if a dispute exists and in this case, as the settlement had been arrived at , it is not a matter for reference under Section 10(1) of the ID Act.

7. Mr.Balan Haridas would cite before me the following judgements of the Supreme Court in



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(i) **Telco Convoy Drivers Mazdoor Sangh v. State of Bihar [(1989) 3 SCC 271]** for the proposition that the Government cannot adjudicate on the merits of the dispute;

(ii) **Sharad Kumar v. Government of NCT of Delhi [2002 (2) LLN 871]** for the proposition that the Government cannot decide whether a person is a workman or not and it has to be the subject matter of adjudication by the court. In other words, he would try to argue that the role of the Government is not adjudicatory but, it is only administrative;

(iii) **Oswal Agro Furane Ltd v. Oswal Agro Furane Works Union [(2005) SCC 224]** to urge that the agreement entered into between the workmen and the union if it is contrary to Section 25-O of the ID Act, it will be against public policy and therefore, it should not be enforced; and lastly

(iv) **Ariane Orgachem Private Limited v. Wyeth Employees Union [(2015) 7 SCC 561]** to state that refusal to make a reference to the court by the Government where allegations of sham transfer of industrial undertaking takes place amounts to determination of an existing dispute.

8. I have carefully considered the arguments of either side.



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9. It is not in dispute that a settlement was arrived at between the union representing its members and NIPL on 31.10.2014. The only trade union which was functioning in NIPL was NITS. It is not in dispute that the terms under which NITS had arrived at the settlement is larger than VRS. It is further not in dispute that pursuant to the scheme, amounts had been transferred by NIPL to the individual workman. Last but not the least, it is not in dispute that a dispute was raised only after the amounts had been received and not before. There was absolute silence between 31.10.2014 and 02.01.2015. In other words, the petitioners waited till the scheme had been put into effect and had been complied with.

10. If I were to accept the argument of Mr.Balan Haridas then, the only way an establishment can be closed is by resorting to Section 25-O of the ID Act. I feel such an interpretation would be taking away the right of the workman through its union to negotiate and come at a settlement. S.25-O of the ID Act is a provision which enables the employer to close down its factory when certain conditions are complied with. At that stage, power is given to the Government to intervene and to see if the application made under Section 25-O of the ID Act is valid. The gist of the argument is if employees of an industry were to accept a scheme and voluntarily exited from the same, since application



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under Section 25-O had not been filed, such a closure will fall foul of Section 25-O. Such a view is not acceptable to me. That will be interfering with the right of the employees as well as that of the employers to deal with their respective rights and would enlarge the power of the Government, in order to enforce its diktat.

11. The purpose of the Industrial Dispute Act itself is for investigation and settlement of industrial disputes. The power under Section 10(1) has been given to the Government to make a reference only when any industrial dispute exists or is apprehended. In other words, it does not close the doors for the employer and employees to negotiate and settle the matters. It is for that reason, the Industrial Disputes Act, 1947, incorporates and encourages a settlement between the employer and employees under Section 18(1) of the ID Act.

12. It is pertinent to point out that a settlement arrived at under Section 18(1) is binding on parties to the agreement. The parties to the settlement in the present case were NIPL and NITS. It is clear from the affidavit filed by the petitioner that they were the members of NITS. NITS had negotiated a settlement and that was arrived at under Section 18(1). To state that after the settlement had been arrived, they will raise a dispute, is to take away the freedom of negotiation from an employer and workmen or from the workman



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and the trade union representing the workman, a right to negotiate.

13. As already premised, once the matter is settled, a dispute does not exist. The power of the Government is there as long as a dispute exists. Once the dispute is settled, the industrial dispute is no longer in existence.

14. On signing of the agreement on 31.10.2014, the dispute had been settled once and for all. I would have looked at the petitioners at a different angle, had they approached the court immediately. However, they waited till the amounts were transferred to them and only thereafter, they approached the court. This shows that they wanted the benefits under the agreement at the same time, they wanted to resile from it. Permitting them to resile from the agreement under which they had taken the benefits will amount to travesty of justice as both the employer as well as the employees had changed their respective positions on the basis of the agreement dated 31.10.2014.

15. The plea that the access to the courts is being deprived to the workman, is a very interesting argument. The condition precedent for a reference to the court is existence of a dispute. If the dispute has been settled, there is nothing left for it to be adjudicated upon. Therefore, as long as a dispute exists, the Government can refer the matter to the industrial tribunal or labour court for the purpose of arriving at an adjudicated verdict. Here is the



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case where the parties themselves, as pointed out above, have settled the matter and therefore, the question of having access to the courts does not arise.

16. If the plea of the petitioner is accepted, no dispute which has been settled through an agreement will retain its sanctity. The employer and the union representing the employees will settle the dispute and act upon it, only to have it reopened at the hands of a few. Courts should be a party to encourage settlements and not to ferment the disputes. Even on that score, I am constrained to hold against the petitioners.

17. Insofar as the argument on Section 25-O of the ID Act is concerned, it is not the only way in which a company can decide to close down its unit/factory. There are primarily two parties in such settlement between, first is, the employer and the second is, the union representing the employees. If both had arrived at a settlement and concluded that running the business would not be viable and the employer parts with amounts to the satisfaction of the employees, to insist that it should be done only through Section 25-O , in my considered view, is not a proper reading of the ID Act.

18. It is here, I have to deal with the judgement cited by Mr.Balan Haridas. A reading of the judgement of the Supreme Court in **Telco Convoy Drivers Mazdoor Sangh v. State of Bihar [(1989) 3 SCC 271]** would show



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that the Government had come to a conclusion that convoy drivers of Telco are not workman and therefore, had refused to refer the matter. Paragraph 11 of the said judgement becomes relevant which reads thus:-

“11. It is true that in considering the question of making a reference under Section 10(1), the government is entitled to form an opinion as to whether an industrial dispute ‘exists or is apprehended’, as urged by Mr.Shanti Bhushan. The formation of opinion as to whether an industrial dispute ‘exists or is apprehended’ is not the same thing as to adjudicate the dispute itself on its merits.”

19. A careful reading of the above said paragraph would show that it is the subjective satisfaction of the Government made on objective criteria which is a condition precedent for S.10(1) of the ID Act. The subjective satisfaction should be that an industrial dispute “exists or is apprehended”. In the present case, in the light of the settlement arrived at between the parties on 31.10.2014, the Government had formed an opinion that there was no dispute in existence. From a reading of the affidavit of the writ petition, one can safely conclude that the petitioners agreed that the settlement was arrived at but, they wanted to argue to say that it was unfair.



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20. Mr.Balan Haridas pointed out that during the general body meeting, majority of the members were not present. It is an internal dispute between the members of NITS which cannot be gone into by the Government. The matter having been settled, the Government had rightly rejected the petition stating that settled issues cannot be unsettled.

21. Moving to the next judgement in **Sharad Kumar v. Government of NCT of Delhi [2002 (2) LLN 871]**, the view taken in this judgement is the similar view that was taken in **Telco Convoy Drivers Mazdoor Sangh's case** cited supra. In that case too, the issue was whether 'concerned person' would fall within the definition of Section 2(s) of the ID Act. Such a dispute cannot be determined by the Government. Whether a person is a workman or not is to be decided after recording of evidence. As already seen, the power of the Government does not exist beyond coming to a satisfaction whether there is an existence of dispute or an apprehension of dispute. It is therefore, the Supreme Court had held that the issue whether a person is workman or not cannot be dealt with by the Government and necessarily, the matter has to be referred to the labour court.

22. The sheet-anchor argument of Mr.Balan Haridas is that the case of



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Oswal Agro Furane Ltd v. Oswal Agro Furane Works Union [(2005) SCC

224] holds that an agreement entered into between the management and employees can be challenged before the court. Though the judgement of the Supreme Court does not give the entire detail of the facts, it is made clear from the following facts emerged from paragraph 3 that Oswal Agro Furane Limited was called upon to pay a sum of rupees fifty crores by the Supreme Court to the State of Punjab. On the ground that such a huge liability had been incurred, a notice was issued to the State Government in terms of Section 25-O of the Act on 29.06.1996. Acting on the application, notices were issued on 12.06.1996 to the workman. Thereafter, on 14.06.1996, a 12(3) settlement was arrived at between the parties and finally, the workman challenged the settlement under Section 12(3) before the Court immediately.

23. The facts narrated above would clearly show that after initiation of proceedings under Section 25-O of the ID Act, the company tried to resile from it by reaching a settlement under Section 12(3) of the ID Act and such settlement was challenged by the workman before the court immediately. The facts set forth in the judgement do not show that the workman had taken the benefits under the settlement arrived at under Section 12(3) of the ID Act and thereafter, they had decided to challenge it.



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WEB COPY 24. In other words, the process under Section 25-O had been kick-started by the management and to get over the process they had arrived at 12(3) settlement. Such a case is fundamentally different from the situation before us. The 18(1) settlement was arrived at after a majority of the workmen had taken VRS. Under 18(1) settlement, the remaining workmen were given better terms. It is one thing to state that after initiation of the process under Section 25-O, a settlement was arrived at and a totally different one that a statement was arrived at even before the process had commenced.

25. I have to take note of the scope of Section 18(1) and the power of collective bargaining. The ID Act encourages collective bargaining. A settlement is preferred to a litigation. The scope of 18(1) settlement has been considered by several judgements of the Supreme Court.

26. Suffice to refer to the judgement in **K.C.P. Limited v. Presiding Officer [(1996) 10 SCC 446]**. The relevant paragraphs being 24 & 25 which are extracted hereunder:-

“24. In connection with the justness and fairness of the settlement it was observed that this has to be considered in the light of the conditions that were in force



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at the time of the reference. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of industrial peace and well-being, there is always give and take. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust. It was further observed that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole.

25. It has to be kept in view that under the scheme of labour legislations like the Act in the present case, collective bargaining and the principle of industrial democracy permeate the relations between the management on the one hand and the Union which resorts to collective bargaining on behalf of its members-workmen with the management on the other. Such a collective bargaining which may result in just and fair settlement would always be beneficial to the management as well as to the body of workmen and society at large as there would



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be industrial peace and tranquillity pursuant to such settlement and which would avoid unnecessary social strife and tribulation on the one hand and promote industrial and commercial development on the other hand. Keeping in view the aforesaid salient features of the Act the settlement which is sought to be impugned has to be scanned and scrutinised. Settlement of labour disputes by direct negotiation and collective bargaining is always to be preferred for it is the best guarantee of industrial peace which is the aim of all legislations for settlement of labour disputes. In order to bring about such a settlement more easily and to make it more workable and effective it may not be always possible or necessary that such a settlement is arrived at in the course of conciliation proceedings which may be the first step towards resolving the industrial dispute which may be lingering between the employers and their workmen represented by their unions but even if at that stage such settlement does not take place and the industrial dispute gets referred for adjudication, even pending such disputes, the parties can arrive at amicable settlement which may be binding to the parties to the settlement unlike settlement arrived at during conciliation proceedings which may be binding not only to the parties to the settlement but even to the entire labour force working in the organisation concerned even though they may not be members of the Union which might have



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entered into settlement during conciliation proceedings. The difference between the settlement arrived at under the Act during conciliation proceedings by parties and the settlement arrived at otherwise than during conciliation proceedings has been succinctly brought out by the decision of this Court in *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corpn. Ltd.* [(1991) 1 SCC 4: 1991 SCC (L&S) 1] wherein Ahmadi, J. (as His Lordship then was) spoke for the Court to the following effect: (SCC Headnote p. 5)

“Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings [Section 18(1)] and (ii) those arrived at in the course of conciliation proceedings [Section 18(3)]. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognised majority union has extended application as it will be binding on all workmen of the establishment, even



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those who belong to the minority union which
had objected to the same. To that extent it
departs from the ordinary law of contract. The
object obviously is to uphold the sanctity of
settlements reached with the active
assistance of the Conciliation Officer and to
discourage an individual employee or a
minority union from scuttling the settlement.
There is an underlying assumption that a
settlement reached with the help of the
Conciliation Officer must be fair and
reasonable and can, therefore, safely be
made binding not only on the workmen
belonging to the union signing the settlement
but also on the others. That is why a
settlement arrived at in the course of
conciliation proceedings is put on par with an
award made by an adjudicatory authority.””

27. The aforesaid judgement settles the issue that for the purpose of



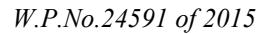
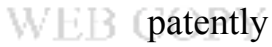
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industrial peace, there is always give and take by either side. The settlement is a package deal. That deal having been entered into in the present case and all pending issues having been settled, the Government did not want to unsettle the same. That seems to be the correct view in my opinion.

28. Apart from that, the Supreme Court has further directed that the settled matters should not be unsettled. It is not the role of the Government to act in a mechanical manner and to refer all and any dispute that may be raised. It cannot be used to revive the matter which have been settled long back. This view was laid down in **Nedungadi Bank v. K.P. Madhavan Kutty [(2000) 2 SCC 455]**.

29. Yet again I have to reiterate that the workman had enjoyed the benefits of the settlement arrived at on 31.10.2014 and it was too late in the day to turn around and state that they will enjoy the benefit but the court has to deem it as an adjustment under Section 25-O(6) of the ID Act. I am not willing to go into the details of that issue for the simple reason, as pointed out above, on the date of which the request was made for reference under Section 10(1) of the ID Act, by virtue of the settlement, no dispute existed.

30. Turning to the last judgement in **Ariane Orgachem Private Limited v. Wyeth Employees Union [(2015) 7 SCC 561]**, I would take note of para 33



Further direction in para 34 is that the disputes question on facts have to be determined only by evidence before the industrial tribunal or before the State Government.

32. Mr. Balan Haridas would say that the amounts were transferred to the bank accounts of the respective workmen and therefore, the workmen are not to be blamed as it was done in an automatic manner. If this is the situation, nothing prevented the workman to say that they are not willing to accept the amount and return the amount to the employer. On the contrary, they enjoyed the benefits under the settlement and kept quiet for a crucial period of nearly



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four months and only thereafter, they approached the Government under

Section 10(1) of the ID Act. By that time, the agreement had been signed and terms had been over and done with. I agree with the view of the learned Government Pleader that if the writ petition is allowed it will unsettle the settled issues. At this distance point of time, nearly after 9 years, I am not willing to give a direction to the Government to unsettle the settled matters.

33. For the foregoing discussion, I do not find any merit in the writ petition and the same deserves only to be dismissed.

In the result, the writ petition is dismissed. No costs. Consequently, connected MP is closed.

10..07..2023

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To

- 1.The Secretary,
Government of Tamil Nadu,
Labour and Employment Department,
Fort St. George, Chennai 600009.
- 2.The Assistant Commissioner of Labour (Conciliation),
Sriperumbudur, Kancheepuram District.
- 3.The Collector, Kancheepuram District, Kancheepuram.



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V.LAKSHMINARAYANAN, J.

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