

**Hindustan Lever Limited Vs Hindustan Lever Employees" Union and
Others
 Hindustan Lever Employees" Union Vs Hindustan Lever
Limited**

Writ Petition No"s. 549 and 1003 of 2004

Court: Bombay High Court

Date of Decision: Dec. 6, 2006

Acts Referred:

Bombay Shops and Establishments Act, 1948 " Section 32#Constitution of India, 1950 " Article 226#Factories Act, 1948 " Section 79#Industrial Disputes Act, 1947 " Section 10

Citation: (2007) 2 BomCR 102

Hon'ble Judges: D.Y. Chandrachud, J

Bench: Single Bench

Advocate: P.K. Rele, instructed by Piyush Shah, for the Appellant; K.K. Singhvi and Meena Doshi, for the Respondent

Judgement

D.Y. Chandrachud, J.

An award of the Industrial Tribunal in a wage reference forms the subject matter of the proceedings. Both the

employer -Hindustan Lever Limited (HLL) - and the Unions are dissatisfied with material segments of the award. The proceedings before the

Court involve a petition under Article 226 of the Constitution by the employer and two petitions by the Unions. Submissions have been heard on

behalf of the employer and on behalf of the Unions up on the challenge instituted before the Court in all the petitions to getherand this judgment

would accordingly dispose of those petitions.Essentially, the question that arises for determination before the Court is whether the Industrial

Tribunal has failed to exercise its jurisdiction consistent with the principles of law that must govern wage adjudication. This Court, while accepting

the gravamen of the challenges to the award has arrived at the conclusion that the Industrial Tribunal has manifestly failed to apply the settled

principles that govern wage adjudication. A remand of the proceedings shall accordingly follow.

The Reference:

2. Hindustan Lever has a Head Office at Churchgate, a Factory at Sewri and a Research Centre at Andheri in the Mumbai Region. The Company

inter alia has at material times engaged in the manufacture of soaps, detergents and personal products. The wage references relate to demands

raised by the Union for the hourly rated and subordinate category of workmen engaged in the three establishments. At the establishment at

Churchgate, HL Languages clerical workmen and subordinate staff. The clerical workmen are classified in categories ""C"" and ""T"" depending upon

whether they work for 36 or 48 hours, while the subordinate staff includes Sepoys, drivers, watchmen, sweepers and coolies who work for 42

hours. The factory at Sewri engages (i) Hourly Rated workmen who are operatives; (ii) Subordinate staff similar to those employed in the Head

Office working either 42 or 48 hours a week; and (iii) Clerical workmen as in the Head Office. At the Research Center at Andheri, HLL engages

Hourly Rated subordinate and Clerical staff as at the Factory and Head Office.

3. The subordinate staff at the Head Office was governed by an Industrial Settlement dated 10th January 1992. The settlement was extended to

the subordinate and hourly rated staff of the Bombay Factory and of the Research Centre by an award of the Industrial Tribunal presided over by

Mr. H.L. Mehendale, dated 24th March 1994. The settlement and the award were terminated 1 and a fresh Charter of Demands was placed on

the Company by the Union. Upon a failure of conciliation proceedings, three References came to be made to adjudication. The Charter of

Demands and the dates on which the orders of reference came to be made are as follows:

Reference No.	Establishment	Charter of Demands	Date of Reference
83/97	Head Office	23-2-1996	30-11-1997
751/98	Mumbai Factory	09/07/97	23-6-1998
56/99	Research Center	29-10-1998	23-8-1999

4. The Union filed statements of claim on 24th June 1998, 1st September 1998 and 5th November 1998 seeking to justify on the basis of the

region-cum-industry principle. The management filed its Written Statements in the References. The Union inter alia urged before the Industrial

Tribunal that the Mumbai Establishment of Colgate Palmolive is a comparable concern. A Union representative from Colgate Palmolive was

examined in evidence. The Secretary of the claimant Union was examined in support of the demands. During the pendency of the References

several demands came to be dropped by the Union, these being (i) A five day week/HR duty; (ii) Accident benefits; (iii) Housing assistance/loans;

(iv) Loans; (v) Gratuity; (vi) Acting allowance; (vii) Recruitment; (viii) General demands and (ix) Dearness allowance. HLL's claim to parity:

5. While the adjudication was pending, HLL entered into a settlement with the Clerical workmen of the Head Office on 20th February 2003. It is

also now an admitted position that similar settlements in respect of the monthly rated staff have been entered into by the same Union for the

Factory at Sewri and for the Research Centre. The settlement for the Factory was entered into on 13th April 2004 and for the Research Centre on

26th August 2005. HLL filed an application on 11th July 2003, Exhibit C-61 for disposing of the References on the basis of parity. In support of its

plea, HLL relied upon what it pleaded was a long standing practice under which settlements signed at the Head Office or at any of the

establishments in the Mumbai Region had been extended to the other establishments on the basis of parity. In this regard, in support of its

application, the management pleaded as follows:

...in the past, whenever a settlement was signed either at the head office or at any of the establishments in the Bombay region, the Unions have

sought to claim similar benefits on the basis of parity and this Hon"ble Court has, by several Awards, extended the benefits given in one

establishment to another establishment on the basis of parity and accordingly disposed off the reference. In fact His Honour Judge Shri Mehendale

disposed of even the demands of the Company in Ref (IT) No. 76/92 without permitting the Company to lead evidence by Award dated 20-03-

95. The Company has contested these Awards in Writ Petition(s) ... along with the Writ Petition filed by the Union ... These petitions came up for

hearing before His Lordship Justice S. Radhakrishnan. During the course of the hearing, the Union submitted statement tracing the history of

collective bargaining and extension of benefits in the various establishments and contended that benefits have been extended not on the basis of

region-cum-industry but on the basis of benefits that have been given in other establishments of the Company in the Bombay region.

6. The contention of the management was that the principle of parity between the three establishments at Mumbai has in a judgment of a Learned

Single Judge of this Court, Dr. Justice S. Radhakrishnan, in a batch of petitions between the same parties, which has attained finality. Since the

Unions had not moved the Tribunal for a disposal of the References in terms of the Head Office settlement, the management submitted thus:

In the circumstances, the Company is constrained to make this application so that an Award can be made making the head office settlement as the

basis on the principle of parity albeit extending the benefits with necessary changes as may be applicable as it has always been the case of the

unions as will be seen from the extracts of the judgment of Justice S. Radhakrishnan reproduced above as also the contentions of the unions as

submitted before the High Court in Annexure 6. The benefits given in one establishment ought to be extended to the other establishments on the

basis of parity.

HLL stated that in the Head Office settlement of 20th February 2003 the Union had conceded several demands of the Company and had given up

certain demands including those for revision of basic wages, pension and stagnation increments. While seeking of the References in terms of the

Head Office Settlement, HLL contested the claim of the Union to retrospective extension of benefits and for interest.

7. In its reply dated 18th July 2003, the Union submitted that the application at Exh.C-61 be heard together with the main Reference on merits.

The grievance of the Union was that while seeking parity HLL was conceding only a small fraction of the benefit which was given to the Clerical

staff at the Head Office and that in actual fact the principle of parity was not being fully applied. The case of the Union was that while there was an

unbroken history of parity in so far as common allowances are concerned as between the Clerical staff on the one hand and the subordinate and

Hourly Rated staff on the other, this parity did not relate to basic wages or to retirement benefits. The Union consequently sought final disposal of

the References on all facets stating that it founded its submission both on the basis of region-cum-industry and The settlement with the Head Office

which should be applied harmoniously.

The Award:

8. The Industrial Tribunal delivered its award on 31st December 2003. A summary of the findings is in order.

(i) On the question of parity, the Tribunal while adverting to the judgment of Dr. Justice Radhakrishnan, noted earlier, formulated the issue as

follows:

Whether the principle of industry-cum-region so also the parity should be taken into consideration or only the parity and not the principle of

industry-cum-region?

The Tribunal held that while revising the pay scales, it was not only the principle of parity but the industry-cum-region principle which would have

to be applied. The application filed by employer at Exh.C-61 was dismissed;

(ii) On the basic wages, the Tribunal noted that the last wage revision had taken place by the Chitale Award of 20th June 1974 and since then

increment rates had remained unchanged. The Tribunal held that with the increase in the cost of living, revision of wage scales was required. The

Tribunal noted that both according to HLL and the Union, Colgate Palmolive was a comparable concern. Whereas the working hours for Colgate

workmen were 192 hours per month, the workmen at HLL worked for 208 hours per month. The Tribunal held that hence, HLL must pay to its

workmen 8.33% more than what was paid by Colgate both in terms of basic wages and dearness allowance. The Tribunal noted that the witness

from Colgate who deposed in support of the Union had not provided adequate evidence in regard to actual fixation of salary, the span and total

wage packet in each of the concerned categories of Colgate. The Tribunal while rejecting the chart for wage fixation proposed by the Union came

out with the following suggestions:

With the conclusion supra, I would like to suggest that either Court of inquiry, or the Committee comprising The Unions" representatives and the

representatives of company, headed by independent expert be constituted to collect all the requisite details from Colgate Palmolive and for fixation

and revision of scales.

(iii) An additional House Rent Allowance was granted by the Tribunal at par with the workmen in Colgate overruling the objection of the

management that since such a demand had been given up in the wage settlement with the Head Office workmen, the workmen were not entitled to

an additional HRA over and above the HRA that is already being paid;

(iv) The existing Shift Allowance which was being paid at the rate of 12% of the basic wage for working in shifts with an additional amount of Rs. 3

per night shift was revised in line with what was being paid in Colgate;

(v) The workmen were granted two additional paid holidays in line with Colgate so as to provide twelve paid holidays in a year;

(vi) The demand for revision of the existing pension scheme on the basis of the pension schemes in Life Insurance Corporation, State Bank of India

and Government was not acceptable to the Tribunal and the Tribunal noted that Colgate Palmolive did not have a pension scheme. The Tribunal

held that the Union had failed to establish a region-cum-industry practice to provide pension as a third benefit in addition to Contributory

Provident Fund. The Tribunal, however, considering the rise in Consumer Price Index allowed a revision of pension to the extent of Rs. 100/- in

each of the categories where monthly pension payments range between Rs. 100/- to Rs. 250/-. The period of pension which extends to 120

months from the date of retirement was not extended;

(vii) The Tribunal granted retrospective effect with regard to basic wages, adjustments, fitment and allowances from the date of the Charter of

Demands.

(viii) The Tribunal has granted a revision in respect of certain allowances on the basis of the settlement with the Head Office dated 20th February

2003. These allowances are (i) leave travel allowance; (ii) conveyance allowance; (iii) attendance allowance; (iv) social security allowance; (v)

special allowance; (vi) self development allowance; and (vii) lunch allowance.

(ix) The Tribunal allowed the demand of the Union for the conferment of permanency upon three workmen holding that they had completed 240

days" continuous service as temporaries. The scope of the challenge:

9. HLL has, in the proceedings initiated before the Court under Article 226 of the Constitution, confined the challenge to the award of the Tribunal

in respect of the following areas, namely, (i) basic wages; (ii) additional HRA; (iii) shift allowance; (vi) grant of two additional paid holidays; (v)

pension; (vi) retrospective effect and interest; and (vii) filling up of vacancies. The Unions have in the two Writ Petitions instituted by them before

the Court, challenged the award of the Tribunal on the question of basic wages inasmuch the Tribunal directed that a Committee be constituted by

the management and by the Unions together with an independent expert for collection of data from Colgate Palmolive and for fixation and revision

of wage scales. The Unions seek that their prayer for a fixation of wage scales be allowed or in the alternative, the Tribunal be directed to fix wage

scales. In addition, the provisions of the award in regard to (i) adjustment increment; (ii) stagnation increment; (iii) retrospectivity; (iv) interest;

(v) pension; and (vi) permanency are sought to be impugned. The Unions submit that the claim to adjustment and stagnation increments was

erroneously disallowed; that the claim for benefits should not have been allowed only from the date of the Charter of Demands but from 1st

January 1996 which was the demand; that the claim for interest should be allowed on several other service conditions other than those enumerated;

that the grant of pension has to be revised upwards; and permanency should be granted to other apart from the three workmen to whom benefits

were granted.

10. For convenience of exposition, it would be appropriate for the Court to take up seriatim each of the grounds of challenge which came to be

urged on behalf of HLL and the Unions in assailing the award of the Tribunal Parity.

11. On 11th July 2003, HLL moved an application before the Tribunal for disposing of the References on the basis of parity. The immediate cause

for the application was that on 20th February 2003, a settlement was arrived at between the management and the monthly rated staff of the Head

Office. HLL asserted that in the past whenever a settlement was signed either at the Head Office at any of the establishments in the Mumbai

Region, the Unions sought to claim similar benefits on the basis of parity for the workmen at the other establishments. The Industrial Tribunal had

by several awards extended the benefits given in one establishment to another establishment on the basis of parity while disposing of the reference.

As an illustration, reliance was placed on the award of the Industrial Tribunal presided over by Shri Mehendale which was affirmed in a judgment

of a Learned Single Judge of this Court, Hon'ble Dr. Justice S. Radhakrishnan. HLL's case was that the Head Office settlement dated 20th

February 2003 should be extended mutatis mutandis to the workmen governed by the references. HLL's case, it may be noted, was that those

demands which have been given up in the Head Office settlement should similarly be regarded as having been dropped from the pending

references. However, in so far as the issue of retrospectivity was concerned, the Company adopted the position that the workmen will not be

entitled to arrears or the payment of interest. The contention of the Union was that the settlement dated 20th February 2003 is for the Clerical

category and while there was an unbroken history of parity in so far as common allowances are concerned between the clerical staff and

subordinate and hourly rated staff that parity did not extend to basic wages or retirement benefits.

12. The Tribunal dismissed HLL's application (Exh. C-61) seeking a disposal of the references on the basis of parity holding that while revising pay

scales, it is not merely the principle of parity but the industry-cum-region principle that would have to be applied. The Tribunal held that both these

principles would have to be applied "harmoniously".

13. The management has assailed the findings of the Tribunal and submitted that: (i) Having accepted the principle of parity in litigation involving the

Company and the Union, the Tribunal erred in rejecting the application of HLL and in proceeding to dispose of the references partly on the basis

of parity and partly on the basis of industry-cum-region; (ii) The Tribunal failed to apply the binding judgment of Dr. Justice Radhakrishnan sitting

as a Single Judge in this Court and that as a result imbalance would be caused in the service conditions of workmen working in various categories;

(iii) The judgment of the Learned Single Judge of this Court which attained finality was in effect a direction to maintain parity between

establishments of the same employer in the Mumbai Region by taking into account the total wage packet; (iv) The award of the Tribunal has

seriously disturbed the time tested differentials between different categories. The adoption of any benefit from the monthly paid staff settlement

would need to impose all the conditions attendant thereto as specified in The settlement for the hourly rated and service staff workmen to truly

reflect parity.

14. On the other hand on behalf of the Union, it has been submitted that (i) parity regarding wage scales must be as between workmen who belong

to the same or similar categories. Parity has to be horizontal and not vertical: for instance a clerk in the Head Office can have parity in wage scales

with a clerk in the Factory or Research Centre, but there cannot be a parity in wage scales between clerks, skilled or semi skilled workmen, peons

and watchmen with regard to wage scales; (ii) Parity can exist between different categories of workmen with regard to such conditions of service

which are applicable to all workmen irrespective of the grades in which they are placed; and (iii) Without prejudice to the earlier submissions, the

Union was agreeable to accept The settlements dated 20th February 2003, 13th April 2004 and 26th August 2005 that were arrived at for the

clerical staff of the Head Office, Factory and Research Centre. The contention of the Union, however, was that the settlements constitute a

package deal of which individual terms and clauses are not severable. As a result though the demands of the workmen were granted with effect

from 1st March 2003, arrears and interest came to be allowed from 1987 and the grant of these benefits from 1987 constitute an intrinsic part of

the settlement.

15. While considering the question of parity, it would, as a matter of first principle, merit emphasis that the object of the principle is to ensure that

workmen engaged in similar categories in various establishments of the same employer in the same region do not suffer an imbalance of service

conditions. A clerk in the establishment of HLL at the Head Office at Churchgate must, under the principle of parity, be similarly placed in the

determination of his service conditions as a clerk at the Factory or the Research Centre. This equivalence reflects a principle of horizontal parity:

parity in service conditions as between corresponding categories of workmen. Aside from horizontal parity which extends similar conditions to

workmen falling in similar categories in different establishments of the same employer in the same region, the second principle of equivalence is that

of vertical parity. Vertical parity applies independent of the categories involved in respect of those conditions of service or allowances which apply

to all workmen irrespective of the categories in which workmen may be engaged. Parity in the establishments of one and the same employer

particularly when they fall in the same region has a striking appeal in industrial jurisprudence because the *raison d'être* is to ensure against an

imbalance in wages and service conditions which will otherwise result in industrial unrest.

The question of parity, however, cannot depend only upon a prior consideration since the overall pattern of industrial relations and the long

standing practice followed in the establishment of the employer quite often does have a material bearing on the pattern of wage fixation.

16. In the case of HLL the principle of parity has found recognition as a guiding basis for wage fixation for a period in excess of four decades. The

importance of applying the principle of parity in the Mumbai establishments of HLL finds a comprehensive judicial recognition in a judgment of a

Learned Single Judge of this court which has attained finality and which has been accepted by the parties. That judgment was a judgment rendered

by Dr. Justice S. Radhakrishnan on 29th October 2002 in *Hindustan Lever Ltd. v. Hindustan Lever Employees' Union* 1 *Hindustan Lever*

Employees' Union, *Hindustan Lever Mazdoor Sabha* and the Union at the Research Centre were all parties to the proceedings before this Court.

Before the Learned Single Judge, HLL impugned the award of the Industrial Tribunal *inter alia* on the ground that the Tribunal had disposed of the

references "merely on 1 Writ Petition Nos. 1335/95, 1236/97, 1458, 1459, 1460 & 1478 of 1999 and Writ Petition Nos. 105, 106 and 114 of

2001. the basis of parity" which according to HLL, was not sustainable. The Learned Single Judge, while repelling the submission noted that a parity

had been maintained right from 1952 and that a Division Bench of the Court had in fact, adverted to the injustice that would be caused if parity

were to be disturbed:

With regard to the above objection, one has to clearly bear in mind that right from 1952 (in) the Thakore Award which was a composite Award

dealing with Office Staff as well as Factory Staff the parity was maintained. Subsequent thereto, even in Bhojwani's Award such a parity was

maintained. Apart from both the aforesaid Awards, the employer and the employees' Union have arrived at the Settlement in 1979 with regard to

Sewri Factory and the same parity was adopted in The settlement with regard to the Head Office. Thereafter if one were to analyse the Dungaree

Award, the same parity was maintained in fixing the pay as well as the allowances. After that in the year 1983 the Settlement which was arrived at

with regard to the Head Office was again followed with regard to the Factory. Under the aforesaid facts and circumstances, specially from 1952 to

1983 consistently for the period of almost 30 years, such a parity has been followed. Even the Division Bench of our High Court while delivering

the judgment in Writ Petition No. 864 of 1986 dated 6.9.1989, has held that such a parity has always been maintained, and in fact, if such a parity

was not to be there, it would cause injustice, and the Industrial Court by maintaining such a parity was held to be proper, as clearly observed in

paragraph 45 of the aforesaid judgment.

The Learned Single Judge then held that HLL itself had consistently extended settlements entered into with the workmen at the Head Office to the

factory and the Research Centre or vice versa for almost thirty years:

In fact, as indicated hereinabove, the employer themselves has consistently extended the Settlement, once entered into between the Head Office

and there after extending it to the Factory and the Research Center or vice-versa. Based on the above, for almost 30 years, the same parity was

maintained. Even the Division Bench order has stated that if there is deviation from the same, that would cause the injustice. Hence, I am clearly of

the view that there is nothing perverse or illegal in adopting parity principle in the above awards. "The objection of HLL that there could be no

parity as between categories of workmen at the Factory, Head Office and the Research Centre was overruled with the following

observations: "Third main objection of ... the learned Counsel for the employer company is that the Industrial Tribunal has blindly granted parity,

inasmuch as various categories of workers in the Head Office, in the Factory and also in the Research Centre are different and they cannot be

treated on par. In fact, if one were to look at the Awards, the parity awarded is that if two increments are given to Head Office, the same kind of

increments are given to the factory staff. One cannot find fault on the ground that there are no similar categories in the Factory, the Head Office

and the Research Centre.

Finally the Court overruled the objection that there was no evidence to substantiate the grant of parity holding that right from 1952 till 1983 a

consistent pattern of parity had been followed; such parity, the Court held, extended not merely in the matter of industrial awards of the Tribunal,

but in the matter of settlements between the employer and the Unions as well.

17. There is material on record to demonstrate the existence of parity in the service conditions that were applied to the workmen of the Head

Office on the one hand, and those at the Factory and the Research Centre on the other. The consistent practice finds judicial recognition in the

judgment of this Court. It is on the basis of a long standing and consistent practice of parity between the workmen at the three establishments in

Mumbai that HLL moved the application at Exh. C-61 for the disposal of the references in terms of the settlements which were arrived at on 20th

February 2003 with the clerical staff at the Head Office.

18. Fairly before this Court Learned Counsel appearing on behalf of the Union accepted the principle of parity but submitted that the settlement

dated 20th February 2003 represents a package deal that was arrived at between the Union and the management and that all the terms and

conditions of the settlement must be regarded as a composite whole. The submission of the Union is that it is not open to the management to deny

the benefits of certain clauses of the settlement particularly those relating to retrospectively and interest when the grant of such benefits forms apart

of the overall scheme of the industrial settlement.

19. In order to appreciate the submission, it would be necessary for the Court to peruse some of the relevant provisions of the settlement dated

20th February 2003. The recitals in The settlement record that the bone of contention between the Union and the management which had come in

the way of a negotiated settlement, for nearly forty years, was a high rate of neutralisation given by the slab system of dearness allowance. The

settlement records that the Union had given up its demand in relation to basic wages upon which the management stated that it had agreed to enter

into negotiations for a settlement at the Head Office establishment. The settlement specifically records that it represents a package deal that was

arrived at between the parties, no part of which would be severable:

The parties have negotiated with a view to foster harmonious industrial Relations ... and have finally arrived at this settlement as a package deal,

which is a full and final settlement with respect to all pending demands of the Sabha and the Management in the establishment at Head Office from

1987 till date of applicability of this settlement and in which no part of The settlement is severable from the others. In doing so The management

and the Sabha have looked at the total wage packet resulting from this settlement.

Parties agreed that the settlement would be in full and final settlement of all demands of the Union and that all demands that were not specifically

agreed to were dropped. During the period of its validity, until 20th February 2006, the Union agreed not to raise any additional demand which

would lead to a financial burden on the management and parties accepted that the package of benefits provided thereunder would provide for

equitable and sustained earnings. In the event of there being an arbitration/adjudication, parties were to apply in a joint application for an award in

terms thereof. Several provisions of the settlement emphasise that it constitutes a negotiated package, settling overall the conditions of service during

the tenure of the settlement. On the part of The Unions several proceedings which were pending in diverse Courts came to be withdrawn and an

assurance of productivity and discipline was given to the management together with a concession in regard to the right of the management to

introducerationalisation, standardization and improvement in techniques. The Unions gave up several demands including inter alia demands for

revision of basic wages, stagnation increments, additional HRA and pension. As an integral part of the settlement, Part-B of The settlement

provided that the management would pay arrears at certain rates with effect from 1st April 1987 together with interest at the rate of 10% per

annum. The settlement provided that with effect from 1st March 2003, the benefit of several allowances would be extended including (i) social

security allowance; (ii) educational allowance; (iii) conveyance allowance; (iv) house rent allowance; (v) leave travel allowance; (vi) self development

allowance; (vii) acting allowance; and (viii) performance bonus. The management in the present case, while seeking a disposal of the references in

terms of the settlement dated 20th February 2003 sought on the one hand the concessions that were made by the Union as part of the settlement.

On the other hand, the contention of The management was that the workmen were not entitled to arrears allowed by Part B of the settlement dated

20th February 2003. The management contends that for the workmen governed by the reference to the Tribunal, an industrial settlement dated

10th January 1992 held the field until 31st December 1995 and Clause 15 of the settlement specifically provided thus:

The workmen agree that in consideration of the Company having agreed to their demands as above, they shall not either independently or jointly

raise another demand involving any financial burden on the Company during the period of this settlement and in particular shall not seek parity in

service conditions with employees in other units of the Company, consequent to terms and conditions of service at such Units being revised under a

settlement or award.

The term of the settlement expired on 31st December 1995 and the Charter of Demands dated 9th July 1997 was for a revision with effect from

1st January 1996. In these circumstances, the contention of the management was that the workmen were not entitled to any retrospective benefits

prior to 1st January 1996 on the basis of the Head Office Settlement.

20. The Tribunal had no justification for the summary manner in which the application filed by the employer at Exh.C-61 was rejected. The

principle of parity on which the application of HLL was founded, is a matter of long standing industrial practice in the establishments of HLL in the

Mumbai Region to which the References relate. This long standing practice was consistently followed by extending industrial settlements entered

into at the Head Office to the Factory and the Research Centre and vice versa. The industrial practice was followed in extending industrial awards

of the Tribunal as well. Above all, the existence of parity was judicially recognised by this Court in a judgment which attained finality and which

was duly implemented. In the face of overwhelming material before the Tribunal, a careful appreciation of the issues involved was warranted. The

Industrial Tribunal instead proceeded to adopt the principle of parity in certain areas and the industry-cum-region principle in others. The manner in

which the industry-cum-region principle is applied would be considered subsequently.

21. The basic approach of the Tribunal suffers from a manifest error. The Tribunal has applied sporadic elements of parity (such as when it dealt

with the allowances that were granted by the industrial settlement) and elements of industry-cum-region with regard to other elements of the wage

package. Both the employer and the Union having accepted the fundamental precept of parity, it was for the Tribunal to consider as to whether the

employer was justified in denying the benefits of Part-B of the Head Office settlement relating to the settlement of past dues on the ground that the

demand of the Union was for a revision with effect from 1st January 1996 upon the expiry of the earlier settlement and that during the term of the

earlier settlement dated 10th January 1992, Clause 15 ruled out such a demand. On the other hand, the plea of the Unions is that the industrial

settlement constitutes a package deal of which portions should not be severed. The Unions contend that when certain demands were given up in

the Head Office settlement, such as for revision of basic wages, the benefits granted by the settlement including past arrears comprised integral

elements of the overall package. An answer to these rival submissions was part of the adjudicatory function of the Tribunal which it has manifestly

failed to discharge. Instead, the answer which the Tribunal has found, does not do justice either to the principle of parity or, as this judgment would

subsequently explore, to the principle of industry-cum-region. A mismatch of the two principles does not allow for consistency in industrial

adjudication or foster the object of industrial peace. The entire approach of the Tribunal to the issue of parity was thus completely unsustainable.

22. A remand of the proceedings to the Industrial Tribunal would be warranted in order to enable the Tribunal to reconsider the whole issue of

parity afresh having regard to the observations contained both in the judgment of the Hon'ble Dr. Justice S. Radhakrishnan and in the present

judgment. If the Tribunal comes to the conclusion that the observance of parity amongst the three establishments of the same employer must

continue to be preserved in order to secure industrial peace, it would be essential for the Tribunal to lay down in the course of its adjudication in

appropriate package of service conditions and benefits that would ensure existence of parity. It is for the Tribunal to have regard to the overall

wage packet and to the benefits which the workers have received in the meantime. It is only appropriate and proper that a factual determination

should be made by the Tribunal in the first instance. Wide as the powers of this Court under Article 226 of the Constitution are, it is necessary that

an initial determination involving factual determinations be made by the Tribunal. the issues, as the previous discussion shows, involve drawing a

balance between conflicting claims. The primary determination must be made by the Industrial Tribunal in the exercise of the broad powers which

are conferred upon the Tribunal in matters of industrial adjudication.

Regioncumindustry

23. HLL has challenged the award of the Tribunal on the ground that in any event, if its submissions on parity were not to be accepted, the principle

of industry-cum-region was not properly applied by the Tribunal both in the matter of basic wages and in determining the other allowances.

24. Decided cases have settled the parameters of the principle of region-cum-industry which has to be applied by Industrial Courts when they

adjudicate upon wage structures, dearness allowance and other conditions of service. In the practical application of that principle, the industrial

adjudicator has to consider wage scales which prevail in similar concerns in the region with which it is dealing. Similar concerns are those in the

same line of business as the concern in respect to which the dispute is being adjudicated. Moreover, even in the same line of the business, it is not

appropriate to consider ""a small struggling concern with a large flourishing concern"". Among the factors which the Industrial Court must consider is

the extent of the business carried on by the concern, the capital invested, profits made, the nature of the business, strength of the labour force, the

nature and extent of reserves, dividend declared, prospects of future business and other such facets. Where a concern pays the highest wages in a

particular line of business, there should be greater emphasis on the region part of the industry-cum-region principle though the comparison has to be

with similar concerns in the same region. The principles are well settled. A reference may be made to the judgments of the Supreme Court in

French Motor Car Co. v. Their Workmen, 2 Indian Oxygen Ltd. v. Its workmen, 3 Novex Dry Cleaners v. Its Workmen, 4 Greaves Cotton and

Co. v. Their Workmen, 5 Polychem Limited v. R.D. Tulpule⁶ and Remington Rand of India Ltd. v. Their Workmen. 7 These cases emphasise that

in applying the industry-cum-region formula the total wage packet would be required to be considered both in the context of wages as well as

other allowances.

25. In the present case, the submission urged on behalf of HLL is that the Tribunal granted an increase of 8.33% in basic wages and Dearness

Allowance solely on the basis that the workmen at Colgate work for 192 hours (42 hours per week) as against HLL where the workmen work for

208 hours (48 hours per week). This approach has been criticised on the ground that HLL has different categories of workmen who work for 36, 42

and 48 hours weekly. Moreover, the fact that working hours are more would not be a justification for an 8.33% increase in basic wages and

dearness allowance. Dearness allowance was not a demand referred for adjudication. The wages of those workmen in "C" Grade who work for

36 hours and those in "T" Grade who work for 48 hours, have not been fixed on the basis of the differentials in working hours in the past, these

wages being existent as a result of awards and settlements. The award of the Tribunal has been challenged on the ground that there was in fact, no

application by the Tribunal of the principle of industry-cum-region. There was, it has been submitted, neither a consideration of the total wage

packet nor a comparison category wise of the workmen. Above all, it has been submitted that the Tribunal has abdicated its jurisdiction by failing to

determine the wages category wise and the direction of the Tribunal to constitute a Committee of the workmen, the employer and an independent

expert to collect data and fix. The wages category wise shows a complete non-application of mind and a failure to exercise adjudicatory

jurisdiction.

26. On behalf of the Union, it has been submitted that considerable degree of difficulty that emerges in the application of the industry-cum-region

formula was obviated in the facts of the present case since the establishment of Colgate Palmolive at Mumbai was accepted by HLL and by the

Union as a comparable concern. In fairness, it must be stated that even before this Court Learned Senior Counsel for both the contesting parties

accepted the factual position that Colgate Palmolive is regarded by the parties as a comparable concern. However, on behalf of HLL it is submitted

that whereas Colgate had three grades, namely, Grades "A", "B" and "C"; HLL had more than ten Grades in the monthly rated and subordinate

staff and it was urged that the grievance of the management is that there was in fact, no adjudication at all; no consideration of corresponding

categories, no application of the region-cum-industry formula and an absence of application of mind to the wage packet.

27. The award of the Industrial Tribunal grants a flat increase in the basic wages and dearness allowance of 8.33% on the foundation that while the

workmen in Colgate work for 192 hours, their counterparts in HLL work for 208 hours. The challenge to the award on the ground that the Tribunal

failed to compare the corresponding categories of workmen in Colgate and in HLL must *ex facie* be accepted. In para 53 of its award, the Tribunal

reflected an awareness of the necessity "to know the exact fixation of scales and the total wage packet of each of the categories of the Colgate

workmen" and to compare them with categories of workmen concerned with the references before the Tribunal on the basis of the nature of their

duties. The Union led the evidence of a Colgate representative, S.M. Shetty. The evidence of that witness was regarded by the Tribunal as

deficient. The Tribunal held that it is, therefore, not possible to accept the chart submitted by the Union:

He simply stated that on an average the increase is by Rs. 2300/-. He has not stated as to what is actual fixation of salary, the span and total wage

packet of each of concerned categories of Colgate. Hence, it is not possible to accept the chart of proposed fixation submitted by Party No. 2. As

a result, I hold that the workmen concerned are entitled and First Party company is liable to revise the wage scales on par with Colgate Palmolive

but with 8.33% increase in basic and Dearness Allowance.

Having found serious deficiencies in the evidence, the Tribunal nonetheless proceeded to grant a flat increase of 8.33% in The wages and dearness

allowance principally if not wholly, on the basis of a difference in the hours of work between Colgate and HLL. There is absolutely no

consideration by the Tribunal of The wage scales prevalent in Colgate and in HLL as between corresponding categories of workmen.

28. The Tribunal abdicated its adjudicatory function by directing HLL and the Union to constitute a Court of Inquiry or a Committee consisting of

representatives of the parties and an independent expert . The directions issued by the Tribunal in that regard are as follows:

With the conclusion supra, I would like to suggest that either Court of inquiry, or the Committee comprising The Unions" representatives and the

representatives of company, headed by independent expert be constituted to collect all the requisite details from Colgate Palmolive and for fixation

and revision of scales.

The Industrial Tribunal which adjudicates upon a wage reference u/s 10 of the Industrial Disputes Act, 1947 has to perform the task of

adjudication and it does not require an elaborate line of reasoning to establish that the function of adjudication cannot be abdicated by a judicial

body. Parties and their experts can and must be allowed to produce evidence before the Tribunal but the task of adjudication cannot be delegated

to a third party. Adjudication constitutes the core of the judicial process. The law casts an obligation upon a judicial body to adjudicate. The

institutional framework of the Court imparts credibility and integrity to the process of adjudication. The Tribunal has in the present case, abdicated

that function. There is no determination of basic wages by the Tribunal. The award of the Tribunal, therefore, suffers from a fundamental error

which vitiates the exercise. The direction that the wages of each of the categories of workmen be revised at par with Colgate Palmolive on an

increase of 8.33% in basic wages and dearness allowance is indefinite and not capable of implementation. The entire exercise of determining which

are the corresponding categories in Colgate and HLL and of evaluating the total wage packet as well remains to be done and ought to have been

carried out by the Tribunal itself. The Tribunal has evidently failed to do so. On behalf of the Union, it has been submitted that the judgment of the

Supreme Court in Hindustan Lever Ltd. v. B.N. Dongre, 8 demonstrates that a difference in the working hours can provide a justification for higher

pay scales for workmen. the submission was that a workman in Colgate who gets a basic wage of Rs. 100/- would receive an amount of Rs.

6,190/- together with dearness allowance. His counterpart in HLL would get Rs. 6,190/-plus 8.33% which is equivalent to Rs. 6,706/- comprising

of basic wages and dearness allowance. To arrive at this wage packet of Rs. 6,706/-, it was submitted that a basic wage of Rs. 116.62 should be

given to the workmen. On this line of argument, it was submitted that a basic wage of the Colgate workmen of Rs. 100/- for 192 hours would be

equal to Rs. 116.62 as a basic wage in HLL for 208 hours of work.

29. Undoubtedly, the extent of work and the number of hours that are put in by workmen is a relevant consideration in determining wage scales.

Those who work more should be paid more. The error of the Tribunal, however, lies in assuming that there is an invariable mathematical co-relation

between differentials in the hours of work on the one hand, and wages on the other. Wage fixation is a far more complex exercise involving a

1994 2 CLR 673 consideration of a host of relevant issues one of which would be the extent of work required for a job. The conditions of work,

the nature of functions and responsibilities, the corresponding categories which are being compared as between comparable concerns and the total

wage packet cannot be brushed aside or ignored in the application of the region-cum-industry formula. There is no comparative evaluation by the

Industrial Tribunal on the basis of the industry-cum-region formula.

30. During the course of the submissions an effort has been made on behalf of the Union to demonstrate that material was produced before the

Tribunal that would have furnished an adequate basis for an adjudication by the Tribunal. For instance, it was submitted that the conditions of

service of the Colgate workmen were produced on the record of the Tribunal, these being in the form of settlements that were entered into

between the years 1962 and 2000. The Union submitted that the corresponding categories of workmen "are more or less admitted". Reliance was

placed on a chart produced by the management at Exh.C-20 and it was submitted that the chart showed how the basic wages of HLL workmen

could be equalised with the workmen in Colgate. The Union, it was submitted, had worked out an equivalent of basic wages of HLL after factoring

a rise of 8.33%. The Union, it was submitted, had produced comparisons with the 1995 and 2000 settlements with Colgate. On the other hand, it

was urged that it was the management who had failed to produce a comparison of the total wage packet in Colgate and HLL and an adverse

inference ought to be drawn. The submission that The management's chart, Exh.C-20, showed how the wage scales of HLL workmen could be

equalised with Colgate would not be an appropriate reading. The award of the Tribunal⁹ as well as the written submissions filed by the

management¹⁰ would clearly demonstrate that the chart at Exh.C-20 was not an admission on the part of the management but was filed only to

demonstrate what according to the management was a misrepresentation that was made by the Union. There is no merit in that submission.

31. The submission which has been urged on behalf of The Union boils down to an argument that while the Tribunal abdicated its jurisdiction to

adjudicate upon the demand of basic wages, such an exercise could, in fact, have been carried out by the tribunal and this Court in the exercise of

its jurisdiction under Article 226 of the Constitution should do so. The jurisdiction of the

Court under Article 226 is undoubtedly wide, and the width of that jurisdiction was explained by the Supreme Court in *Gujarat Steel Tubes Ltd. v.*

Gujarat Steel Tubes Mazdoor Sabha. 11 The High Court in the exercise of the supervisory jurisdiction is governed by settled parameters. Where

the Award of the Industrial Tribunal is based on evidence produced before the Tribunal, the High Court in its jurisdiction under Article 226 of the

Constitution would be loathe to interfere. Where the Tribunal carries out the exercise of wage fixation in the first place, based on a consideration of

relevant evidence and the underlying principles that emerge from decided cases, the High Court ordinarily would not interfere. However, the

present case is one where there has been an abdication on the part of the Tribunal in adjudicating upon the demand for a revision of basic wages.

The adjudicatory function has been left to a third party. In such a case, it would be wholly inappropriate for the High Court in the exercise of its

jurisdiction under Article 226 of the Constitution to act as a primary fact finding authority or as primary adjudicator. In industrial law, that

jurisdiction is vested by the Industrial Disputes Act, 1947 with the Tribunal to whom *a11 Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel*

Tubes Mazdoor Sabha and Others, . reference to adjudication is made. The function of the High Court essentially is to ensure that the Tribunals

keep within the bounds of their authority in exercising the power of adjudication. The High Court would not be justified in substituting itself for the

Industrial Tribunal in the delicate and sensitive task of determining wage scales in the first instance. That exercise must be carried out by the

Tribunal and it is that exercise which the Tribunal failed to carry out in the present case.

Shift Allowance:

32. The Industrial Tribunal has allowed a revision in the shift allowance at par with what is being paid to the workmen at Colgate. The submission

that has been urged on behalf of HLL is that the Tribunal has increased the shift allowance without consideration of the total pay packet. Now in so

far as the shift allowance is concerned, it would be material to note that the Head Office Clerical staff does not work in shifts and the shift

allowance is, therefore, not an issue material to them. The undisputed position is that the shift allowance is not a new condition of service. The

allowance was being paid even prior to 1952 after which it was revised. The Tribunal has noted that the shift allowance is being paid for work in all

three shifts though an additional amount is paid for every night shift of work. The management had accepted that Colgate was comparable. The

revision in the shift allowance by the Tribunal so as to be at the same level as what was being paid to the Colgate workmen does not in

these circumstances, warrant any interference of the Court under Article 226 of the Constitution.

Additional House Rent Allowance:

33. The Industrial Tribunal has allowed the demand for additional House Rent Allowance (HRA) on par with what was being paid to the workmen

at Colgate Palmolive. The submission of HLL is that the Tribunal has not made any comparison of the figures with the additional HRA that was

being paid at Colgate. The second submission is that in the settlement of 20th February 2003 which was entered into in respect of the clerical and

technical categories of workmen at the Head Office" the Unions expressly gave up the demand for any form of HRA over and above what was

payable under the Maharashtra Workmen Minimum House Rent Allowance Act with effect from January 1999. The settlement records this

concession in Clause 4(d) of Part-B and stipulates that with effect from 1st March 2003 only the statutorily payable HRA was admissible to the

employees.

34. The submission of the Unions in response is that the awarded HRA is that which is paid to the workmen at Colgate or statutory HRA,

whichever is higher. This service condition has, it is submitted, been implemented and arrears have been paid. The Unions urged that from 1991,

the clerical staff at the Head Office was in receipt of additional HRA over and above the statutory HRA. The workmen covered by the award in

the present case were, however, not granted that benefit. Hence, there was no parity in regard to HRA between the clerical staff of the Head Office

and the workmen covered by the award from 1991. The Head Office settlement dated 20th February 2003 discontinued allowances prospectively

from 1st March 2003. Since the Company itself refused to grant additional HRA to the workmen covered by the award since 1991, it is according

to the Union, unfair on the part of HLL to deny HRA at par with Colgate on an argument of parity with the Head Office clerical staff. Moreover, it

has been submitted that the workmen at the Head Office gave up the demand for additional HRA on the basis of the total wage packet which is

not being extended to the workmen covered by the award. Finally, it has been submitted that the actual amount granted by way of HRA is less

than the actual amount received by the workmen under the Head Office Settlement.

35. The rival submissions of the parties reveal that the essential difference between HLL and the Unions turns on the question of parity. HLL

asserts that the workmen at the Head Office gave up the demand for the payment of an additional component over and above what is payable

statutorily towards HRA. HLL's submission posits that parity must be maintained in regard to this allowance as well. The Unions on their part

assert that the giving up of the demand for an additional component towards HRA in the Head Office Settlement was a composite part of an

overall settlement which cannot be read in isolation from the other benefits that the settlement allows. The clauses of The settlement have already

been adverted to in the earlier part of this judgment and those clauses clearly stipulate that the concessions granted by the Unions by dropping

certain demands were part of an overall package. The preamble to the Settlement records that the settlement itself is "a package deal" and there is,

therefore, merit in the submission urged on behalf of the Unions that the dropping of the demand by the Union in the Head Office Settlement cannot

be disassociated from the overall package of benefits that was granted by the settlement. Considering one clause of The settlement in isolation

would, therefore, not be a valid interpretative device. Nor for that matter would reading a clause of The settlement in isolation with the others, do

justice to the intention of the parties or to the process of collective bargaining. Having said that, the fact remains that the ultimate view which would

be taken in regard to an allowance such as an additional HRA which has been granted on the basis of region-cum-industry (more specifically on a

comparison with Colgate) would depend upon what view the Tribunal would take on the issue of parity in the first instance. If the Tribunal were to

hold that a parity in regard to conditions of service ought to be maintained on the ground that such parity existed between the three establishments

in the Mumbai Region, the grant of an additional HRA only to the workmen covered by the award would run counter to the principle of parity. This

Court in the earlier part of the judgment already having made it clear that a reconsideration by the Tribunal of the whole issue of parity was

warranted afresh, it would be necessary to leave the issue of the payment of additional HRA for reconsideration by the Tribunal in the light of its

determination of the question of parity. The Unions have submitted that in the meantime, payment has been made of arrears to the workmen and if

this be so, the Tribunal upon remand will undoubtedly take note of the amount thus paid when it considers the overall wage packet as a part of a

fair adjudication.

Pension:

36. On the issue of pension, both HLL and the Unions are aggrieved by the award. Pension is an existing condition of service for the workmen

who are covered by the references to adjudication in this case. The workmen had been drawing pensionary benefits ranging from Rs. 100/- to Rs.

250/- per month for a period of 120 months after retirement under the terms of a Settlement of 1983. The claim for revision was to enhance

pensionary payments to 50% of the last drawn basic pay with the existing scheme of dearness allowance for a minimum period of fifteen years. The

workmen had sought to place reliance on the pensionary benefits available in the State Bank of India. The Tribunal held that since the case of the

workmen themselves was that Colgate Palmolive was a comparable concern and there are other industries which carry on business similar to that of

HLL, it was not advisable to rely on the scheme for pension available to State Bank of India employees. The Tribunal, also held that the pension

scheme in Life Insurance Corporation and the Government were on a completely different footing. The Tribunal noted that admittedly Colgate

Palmolive did not have any pension scheme. the workmen at the Head Office of HLL were, according to the Tribunal, granted a Social Security

Allowance. Colgate Palmolive had a Joint Saving Scheme. The Tribunal found that the demand for pension had not been duly justified on the basis

of region-cum industry or by demonstrating the total cost of pensionary payments as part of the overall wage packet:

On merits, the demands for pension ought to have been justified by the unions on the basis of region-cum industry and having done so it ought to

have factored the cost of providing pension as a part of total packet. The Second Party Unions failed to show that there is any region-cum-industry

practice to provide pension as a third benefit in addition to contributory fund.

The Tribunal was of the view that such pensionary payments should not create an imbalance in the total wage packet and an increase in the

monetary burden on HLL would reflect on the production cost. The actuary who gave evidence on behalf of The management stated that the cost

of providing pension would be Rs. 78.88 crores for the Factory, Rs. 5.96 crores for the Research Center and Rs. 2.3 crores for the Head Office.

D.W. 5 who was examined by the Unions stated that no evidence of an actuary was going to be produced on behalf of the workmen. In the

settlement that was arrived at with the Head Office, the demand in regard to pensioner payments was withdrawn in view of the increase the Social

Security Allowance and the increase in the total wage packet. The Social Security Allowance was increased from Rs. 485/- per month to Rs. 785/-

per month from 1st March 2003. The Tribunal held that the existing pension scheme and its correlation to the demand for gratuity was pending in

two other references with regard to the hourly rated and monthly paid workmen at the Research Centre and the hourly rated and monthly rated

subordinate staff of the Factory. Ultimately, after a discussion along the aforesaid lines, the Tribunal held that the only consideration for granting an

increase in pension is the steep rise in the Consumer Price Index which "may be sufficient reason for increasing present amount of pension to some

extent". the Tribunal proceeded to grant an increase in pension of Rs. 100/-each in all the categories for which present pensionary payments range

between Rs. 100/- to Rs. 250/- per month. The existing period of 120 months after retirement for providing Pensioner payments has not been

increased.

37. On behalf of HLL, it has been submitted that the service conditions in HLL contemplate four retiral benefits: (i) Provident Fund; (ii) Family

Pension under the Provident Fund Scheme; (iii) Gratuity; and (iv) Pension. HLL submitted that in the Head Office settlement, the demand for

pension was withdrawn and the Social Security Allowance was increased from Rs. 485/- to Rs. 785/- permonth. The award of the Industrial

Tribunal, it was submitted, has granted Social Security Allowance as payable under Clause 4(a) of Part-B of the Head Office Settlement and it

was submitted that hence in these circumstances, there was no basis either for the payment of or for the enhancement of pensionary payments. In

sum and substance, therefore, the submission was that (i) The factor of four retiral benefits being available; and (ii) The grant of the Social Security

Allowance at par with the Head Office settlement has not been considered by the Tribunal in its award.

38. On the part of the Unions, it has been submitted that two retiral benefits, namely, Provident Fund and Gratuity were uniform for all categories

of workmen. The parity in regard to gratuity was broken when the Rane Award dated 17th September 1983 granted to the clerical staff of the

Head Office a higher rate of gratuity -75% of the last drawn salary for every completed year of service, in the case of workmen who had

completed fifteen years of service. Moreover, the monetary ceiling was replaced by a variable ceiling. Hence, it has been submitted that as a result,

the gratuity for clerical staff works out to approximately 75% of the last drawn salary. The Company declined to extend the Rane Award to the

workmen covered by the three references in question. By a settlement of 17th September 1983 as applicable only to the hourly rated and

subordinate staff, pension was introduced as a condition of service, valid for ten years after retirement at monthly payments ranging from Rs. 100/-

to Rs. 150/-. The Unions have, therefore, submitted that the principle of parity did not extend to clerical staff with regard to pension and when the

demand for pension was dropped in the Settlement dated 20th February 2003, pension was not an existing service condition for them. It is also

submitted that the mere fact that the service condition of pension did not exist in a comparable Company in the industry does not disentitle the

workmen from justifying such a claim otherwise no new condition of service would ever be established. The Employees Pension Scheme in HLL is

not in addition to Provident Fund. The pension of the Head Office service staff was revised in 1992 when they received Rs. 250/- as monthly

pension. The amounts payable to the Factory and Research Centre workmen, however, remained at Rs. 100/-, Rs. 125/- and Rs. 150/-. The

Tribunal granted an ad-hoc increase of Rs. 100/- which was unrelated to the object sought to be achieved, namely, the protection of the value of

pension from being eroded by a rise in the cost of living. The Unions, therefore, on their part are aggrieved by the award of pensionary payments,

in so far as it only granted an ad-hoc increase of Rs. 100/- per month.

39. In dealing with the issue of pensionary payments, it would, at the outset, be material to deal with the submission of The management that the

demand for pensionary payments was given up by the Unions in the Head Office Settlement. Clause 4(i) in part-B of the Head Office Settlement is

to the following effect:

4.i. PENSION

The Sabha agrees to withdraw their demand with reference to Pension in view of the increase in the Social Security Allowance and the increase in

the total wage packet.

Clause 4(i) would, therefore, show that the demand for Pensioner payments was withdrawn by the Union when the Head Office settlement was

negotiated not only on the basis of the increase in the Social Security Allowance, but in view of the increase in the total wage packet as well. The

Social Security Allowance was increased from Rs. 485/- per month to Rs. 785/- per month with effect from 1st March 2003 and the benefit of

this increase which was granted by the Head Office Settlement was extended by the award to the workmen covered by the references. The error

in the line of reasoning in the submission of HLL lies in equating the withdrawal of the demand for pension in the Head Office settlement with an

increase simplicitor in the Social Security Allowance. Apart from the increase in the Social Security Allowance, there are two additional factors

which cannot be ignored. The first is the fact that the increase in the total wage packet that was granted by the terms of the settlement was stated by

the settlement itself to be a reason for the withdrawal of the demand. The Union has drawn the attention of the Court to the fact that the arrears

which were granted to the clerical staff by way of the settlement work out to about Rs. 2, 69,815/- over and above what they would have been

entitled to had the benefits granted to them, been confined to what they had demanded and were entitled to by way of parity. The second

circumstance is that the parity in the matter of gratuity was broken consequent upon the Award of 20th February 1983 when the clerical staff

at the Head Office was granted a higher rate of gratuity. The settlement dated 17th September 1983 introduced pension as a condition of service to

the hourly rated and the subordinate staff valid for a period of tenures after retirement at rates between Rs. 100/- to Rs. 250/- per month. When the

pensions of the Head Office service staff were revised in 1992, those of the Factory and Research Center remained the same. The submission of

the workmen have an Employee Pension Scheme in addition to Provident Fund may not be entirely accurate as it has not been disputed before the

Court that the scheme has been created by diversion of the employer's contribution to the Provident Fund, thus reducing the Provident Fund to

that extent.

40. There is merit in the submission which has been urged on behalf of the Union that the approach of the Tribunal to the entire issue of pensionary

payments is perfunctory. The Tribunal has in the ultimate analysis granted an ad-hoc increase of Rs. 100/- per month based upon the increase in the

Consumer Price Index. Undoubtedly a revision of the pensionary payments cannot be considered in isolation from the overall wage packet and the

consequential burden that would be placed on the employer. The circumstance in which pensionary benefits came to be introduced by the

settlement of 17th September 1983 constitutes important background material as does the object and purpose of the provision. Protecting

pensionary payments from erosion consequential to the increase in the cost of living, is an important aspect of the adjudicatory function. The ad-

hoc increase granted by the Tribunal was not part of an interim but a final award. A final award of adjudication has to be based upon a careful

evaluation of all the circumstances. An order of remand would be warranted so as to enable the Tribunal to consider afresh the demand for

revision in pensionary benefits.

RETROSPECTIVITY:

41. The Industrial Tribunal granted retrospective effect to its award of basic wages, adjustments, fitments and allowances from the respective dates

of the Charters of demand. In the three references, the Charters of demand were submitted on 23rd February 1996, 9th July 1997 and 29th

October 1998. In paragraph 111 of the Award, the Tribunal allowed the demand for allowance on the basis of the Head Office Settlement dated

20th February 2003. The Head Office Settlement provides that the allowances as settled would be given effect to from 1st March 2003. the

submission of HLL is that since the allowances that have been granted in paragraph 111 of the Award have specifically been granted with

reference to the Head Office Settlement and The settlement provided that the allowances would be with effect from 1st March 2003, the Tribunal

should not have disturbed parity by allowing the demand with effect from the date of the Charters of Demand.

42. The Unions have drawn the attention of the Court to the fact that in the Charters of Demand, there was a separate demand in regard to

retrospectivity and interest. The Unions made that demand for retrospectivity with effect from 1st January 1996. The scheme of the demands was

that individual allowances were reclaimed together with a particular quantum whereas the grant of retrospective revision was dealt with separately. In

the application at Exh. C-61 that was filed by the management, HLL submitted that the demand for retrospective effect should be rejected since in

any event the workmen were receiving an additional quantum of Rs. 1500/- with effect from 23rd June 1998. In respect of certain demands,

basically consisting of those allowances to which all workmen were entitled irrespective of category and grade, a purshis came to be filed by

consent before the Tribunal by which benefit was granted on the basis of the settlement entered into at the Head Office with clerical staff. The

Union stated while filing the Purshis that the demand in respect of allowances may be granted in terms of the Head Office Settlement without

prejudice to the contentions of the parties including retrospective effect. By an endorsement on the Purshis, the representative of the Company

recorded that HLL had already furnished its view in Exh. C-61 and it stood by that position in respect of allowances, basic wages, retrospective

effect and pension as more particularly stated therein. The sequence of events supports the submission of The Unions that the demand for

retrospective operation was kept open when parties agreed that some of the allowances which were granted under the settlement at the Head

Office should also be given to the workmen covered by the award. In paragraph 8 of the award, the Tribunal also observed that the allowances

covered by the Purshis were disposed of by consent in terms thereof. Paragraph 10 of the award of the Tribunal contains a tabular statement of the

demands that remained for adjudication and these included the question of retrospective effect. From the material placed on record, it is clear that

the demand of the Unions for the grant of the benefits with retrospective effect was open for adjudication.

43. An Industrial Tribunal adjudicating upon a wage reference has, in view of the well settled principle of Industrial Law, the jurisdiction to

determine the date with effect from which should be allowed. The presentation of the Charter of Demands or, for that matter, the date of the

reference are valid parameters for the grant of retrospectivity and it is for the Industrial Tribunal in each case to determine what should be the date

with effect from which revision should take place. The earlier settlement dated 10th January 1992 with the subordinate staff came to an end on

31st December 1995. The Charter of Demands dated 9th July 1997 provided that it was with effect from 1st January 1996 that the demands were

raised. Clause 15 of the settlement of 10th January 1992 had provided that the workmen shall not raise another demand involving a financial burden

on the Company during the period of the settlement and shall not ", seek parity in the service conditions with employees in other Units of the

Company, consequent to terms and conditions of service at such Units being revised under a settlement or award.

44. As an abstract principle of law, therefore, the Tribunal like another Industrial Tribunal adjudicating upon a wage reference had the jurisdiction

to hold that the benefit of the wage revision should be with effect from the date of the Charter . The workmen are aggrieved because the Tribunal

didn't grant a wage revision with effect from 1st January 1996 which is the date with reference to which the Charters of demand claimed a

revision. The management has a more fundamental grievance on the ground that even if the question of retrospectivity was open for adjudication, the

Tribunal was not justified in granting retrospective effect to those allowances which were granted on the basis of the Head Office Settlement. The

Tribunal allowed the benefit of the allowances in paragraph 111 of the Award of the Tribunal specifically on the basis that those allowances were

granted in the Head Office Settlement. That Settlement specifically prescribes the date for the grant of allowances as 1st March 2003.

However, the settlement gave a package of benefits to the workers, among them being arrears as provided in Part-B of the Settlement

towards "settlement of past dues". Since the wider issue of parity is being left open for a fresh decision by the Tribunal, it would consequently be

appropriate and proper if the question of retrospectivity is left to be determined afresh by the Tribunal having due regard inter alia to its finding on

the issue of parity. If parity is to be maintained, the outcome of the consequential issue must follow. Contrariwise, If the Tribunal comes to the

conclusion that for cogent and valid reason the principle of parity has to be departed from, that in turn will affect the nature and extent of

retrospectivity to the demands which are allowed by the Tribunal. In these circumstances, the issue of retrospectivity shall be considered afresh by

the Tribunal in the course of the adjudication upon remand.

INTEREST:

45. The award of the Tribunal granted interest at the rate of 10% p.a. with respect to HRA, LTA and the self development allowance. On this

aspect, the Unions have submitted that while the Tribunal in the course of the discussion held that the workmen were otherwise entitled to the

allowances and to the other monetary benefits of which they were deprived, there was no reason for the Tribunal to grant interest on arrears only

on the three allowances spelt out in the Award of the Tribunal. The issue of interest being consequential in nature, it would be appropriate and

proper that the Tribunal is directed to reconsider the entire issue upon remand. There shall be an order accordingly.

ADJUSTMENT INCREMENT AND STAGNATION INCREMENT:

46. The finding that has been arrived at by the Tribunal is as follows:

In view of the direction for wage scales revision, it is not necessary to record the findings on the issues of increment, fitment, adjustment, stagnation

and span. Since increase by 8.33% in basic and Dearness Allowance is granted, I see no justification in granting adjustment and stagnation

increment. The prayer " rejected.

47. The Unions have challenged the award on this aspect on the ground that the Tribunal has not recorded any finding on merits and the demand

was rejected only on the ground that a revision of wage scales has been granted. The Unions contend that in every settlement the workmen at

Colgate have been granted adjustment and stagnation increments apart from wage revision. The demand for stagnation increment is only for the

workmen at the Head Office and the demand has been made on the prevailing pattern in Colgate.

48. The Tribunal has declined to consider the demand only on the ground that an increase of 8.33% has been granted in the basic wage and

dearness allowance. Since this Court has set aside the finding of the Tribunal in regard to the 8.33% increase, it would be appropriate to keep the

issue of adjustment and stagnation increments open for reconsideration by the Tribunal on remand. There shall be an order accordingly.

LEAVE FACILITY:

49. The Tribunal granted two additional paid holidays on that this would be at par with Colgate. HLL's submission is that this increase has been

granted without considering the total leave facilities available to the workmen. Moreover, it has been submitted that there is a valid distinction

between operatives who perform manual work and clerical staff: Under the Bombay Shops and Establishments Act, 1948, which applies to

commercial establishments, the annual leave provisions are provided for in Section 32 (21 days per annum) while " 79 of the Factories Act, 1948,

leave provided is of one day for every 20 days of work (amounting to 15 days in a year). In The circumstances, it has been urged on behalf of the

management that a difference in paid holidays between employees of commercial establishments such as the Head Office and operatives employed

in Factory establishments such as those at Sewri and the Research Centre is valid.

50. In *Alembic Chemical Works Co. v. Its Workmen*, 12 Justice P.B. Gajendragadkar (as the Learned Chief Justice then was) while speaking for a

Bench of three Learned Judges of the Supreme Court, noted that it is not seriously disputed that a distinction has generally been made between

operatives who do manual work and clerical and other staff. The Court noted that it is also not disputed that in practice such a distinction is made

by comparable concerns. A distinction between the two categories of 12 *Alembic Chemical Works Co. Ltd. Vs. The Workmen*, employees was

held to perfectly justifiable so that no question of discrimination would arise. Equally significant is the observation of the Supreme Court to the

effect that while industrial adjudication seeks to achieve social justice, unduly liberal provisions in the matter of leave may affect production and,

therefore, the interest of the general community:

There is no doubt that when industrial adjudication seeks to do social justice, it cannot ignore the needs of national economy; and so in considering

matters of leave, either in the form of privilege leave or sick leave, the tribunals should not ignore the consideration that unduly generous or liberal

leave provisions would affect production and obviously production of essential commodities is in the interest of not only the employers and the

employees but also of the general community.

In *Indian Oxygen Ltd. v. Its Workmen* (supra), the Supreme Court while setting aside an award of the Tribunal which had increased the number of

paid holidays, again emphasised that the need for maintaining productivity meant that absence from work should not be unduly encouraged. The

Court observed as follows:

In the appellant company, the office staff was getting 21 days as annual leave and 17 days on account of festival and national holidays, that is, 38

days of paid absences; other factory staff was getting 21 days as annual leave and 10 days on account of festival and national holidays, that is, a

total of 31 days of paid absences. As a result of the award, the office staff in the appellant company would be getting 47 days of paid absences on

full pay and the factory staff 40 days of such absences. We can see no reason for this increase of paid absences which is clearly and distinctly

above the pattern in the comparable concerns in that region. It is hardly necessary to say that, especially at the present time, emphasis in the country

should be more on increased production, and absence from work should not be unduly encouraged.

In the present case there is merit in the submission urged on behalf of the management that the Tribunal was completely in error in proceeding to

grant an increase in the leave facilities merely on the ground that such facilities were available in Colgate and that at the Head Office 15 days" paid

holidays were available. The Head Office is a commercial establishment. Statutory provisions such as those in the Bombay Shops and

Establishments Act, 1948, on the one hand and the Factories Act, 1948, on the other demonstrate that a valid legislative classification has been

made between commercial establishments on the one hand and production unit on the other. That such a distinction is valid and intelligible is also

clear from the law laid down by the Supreme Court. In the judgment in Alembic which is of 1961 and the subsequent judgment in Indian Oxygen

which is of 1963 the Supreme Court emphasised the importance of maintaining production levels. The observations of the Supreme Court apply

with as much force today when the needs of a competitive business environment cannot be ignored. Industrial adjudicators must be conscious of the

need for industrial organisation to be efficient, flexible and productive. Granting additional paid holidays is not a matter of largesse to be doled out at

the arbitrary discretion of the industrial adjudicator. The Industrial Tribunal did not find that the existing provisions in regard to leave were in

adequate. That is not in fact the contention of the Unions even in the arguments before this Court. the question is not merely of the grant of two

additional holidays, but of a fundamental fallacy in the approach which the decision of the Tribunal discloses. The award of the Tribunal in this

regard is, therefore, completely without basis and foundation and is accordingly quashed and set aside.

VACANCIES:

51. The Tribunal has directed the grant of permanency to three workers on the ground that they were entitled to the benefit by virtue of having

continuous service of 240 days. Learned Senior Counsel appearing on behalf of the Management stated before the Court that the Management

does not press the challenge in regard to the conferment of permanency on the three workmen viz; Sarvashri Lobo, Jitendra Dulera and S.S.

Mirkar; without prejudice to the submissions of HLL on other aspects under this head.

52. The Unions have challenged the Award on the ground that relief was not granted by the Tribunal of permanency to all temporary workmen

working on rotation and that similar relief should be granted to four temporary peons and six temporary Sweepers.

53. On behalf of the management, it was urged that (i) There was no evidence to show that the persons had put in 240 days of service; (ii) None

of the workmen concerned had stepped into the witness box to give evidence and the two witnesses who deposed on behalf of the Unions did not

depose in respect of any particular temporary workman; and (iii) In view of the settled principles of law, mere affidavits and self serving statements

made by workmen were not sufficient.

54. Now it is a well settled principle of law, following the judgment of the Supreme Court in Range Forest Officer v. S.T. Hadimani, 13 that it is for

the claimant to lead evidence to show that he has worked for 240 days in a year preceding his termination and that the filing of an affidavit is only a

statement of a claimant which cannot be regarded as sufficient evidence for the Court or the Tribunal to come to the conclusion that the workman

had worked for 240 days in a year. The decision in Hadimani, has since been followed in several judgments of the Supreme Court which have

been elaborately considered in R.M. Yellatti v. Assistant Executive Engineer. 14 Mr. Justice S.H. Kapadia speaking for a Bench of three Learned

Judges held as follows:

This Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This

burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence,

both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There

will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the

court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register,

etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that

mere affidavits or self-serving statements made by the claim workman will not suffice in the matter of discharge of the burden placed by law on the

workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster

rolls perse without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw adverse inference against the

management.

Neither of the workmen in respect of whom the Unions seek the benefit of permanency stepped into the witness box in support of their respective

cases. The burden of establishing the length of service cannot be cast upon the management since that would be contrary to the position in law laid

down by the Supreme Court.

The burden had to be discharged by the Workmen concerned stepping into the witness box and adducing cogent evidence, or a

documentary. The burden has not been discharged.

55. Item 11 of Schedule IV of the Industrial Disputes Act, 1947 refers to any increases or reduction in the number of persons employed or to be

employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control. Under

Item 10 of Schedule V an unfair labour practice consists in employment of workmen as badli, casuals or temporaries and to continue them as such

for years with the object of depriving them of the status and privileges of permanent workmen. On behalf of the Unions, UW2 deposed that there

was a reduction in the strength of permanent peons while UW3 deposed in regard to Sweepers and Coolies.

56. In Hindustan Lever Ltd. v. R.M. Ray, 15 The Supreme Court held that workers were not entitled to make a grievance on the ground that while

there had been a number of voluntarily induced retirements, many of the posts were not filled after the holders of those posts had retired or left. In

so far as Item 11 was concerned, the Supreme Court held that it was necessary to establish that the workers were adversely affected. In the

present case, the evidence on the record clearly fell short of establishing that the management had employed casuals or temporaries for years with

the object of depriving them of the status of permanent workmen. The award on this count consequently cannot be sustained and will have to be

quashed and set aside.

CONCLUSION:

57. For all these reasons, I am of the view that there is considerable degree of merit in the challenge preferred by The management to the legality

and validity of the award of the Tribunal. The management has challenged the award, as noted earlier, in respect of (i) Basic wages; (ii) Additional

HRA; (iii) Retrospective effect and interest; (iv) Filling up of vacancies; (v) Pension; (vi) Grant of two days additional paid holidays; and (vii) Shift

allowance. HLL has stated before the Court that it has accepted the award in so far as it relates to the conferment of permanency on three

workmen. Save and except in regard to the grant of shift allowance, and permanency to three workmen whose names are noted above, I am of the

view that rule will have to be made absolute in terms of prayer (a) of the petition filed by HLL. The proceedings shall stand remitted back to the

Industrial Tribunal for reconsideration in the light of the observations contained in this judgment. Upon remand, the Tribunal shall endeavour an

expeditious disposal, preferably within a period of six months from the date on which a certified copy of this order is produced before it.

58. In so far as Writ Petition 1003 of 2004 filed by The Unions is concerned, there is a challenge to the award of the Industrial Tribunal in regard

to (i) The directions to constitute a Committee in the matter of collecting data and revising the basic wage scales; (ii) Adjustment increment; (iii)

Stagnation increment; (iv) Retrospectivity; (v) Interest; (vi) Pension; and (vii) Permanency. In so far as prayers (a-i) to (a-vi) are concerned, the

petition shall stand disposed of in terms of the directions already issued in the body of the judgment. Prayer Clause (a-vii) is rejected.

59. In so far as Writ Petition 1004 of 2004 is concerned, prayers (a-i) to (a-v) shall be governed by the directions contained in the body of this

judgment.

60. Learned Counsel appearing on behalf of the Unions has submitted that an appropriate direction may be issued by the Court to (i) protect the

workmen in respect of payments which have already been made under the Part-I and Part-II Awards so that no recoveries are made pending the

proceedings on remand; and (ii) the allowances referred to in the Head Office Settlement are paid. Learned Counsel appearing on behalf of HLL

has stated on instructions that (i) Payments which have been made shall be subject to such adjustment as may be warranted upon the Award of the

Tribunal on remand and no recoveries will be made from the workmen in the meantime; and (ii) The allowances covered by the Head Office

Settlement and specified in Para 111 of the Award of the Tribunal shall continue to be paid. The statement which has been made on behalf of HLL

will sufficiently protect the workmen until the Tribunal disposes of the proceedings upon remand.

61. Rule is made absolute to the aforesaid extent. In the facts and circumstances, parties shall bear their own costs.