(2014) 11 BOM CK 0103

Bombay High Court

Case No: Writ Petition No. 2513 of 2006

General Employees'' Union	APPELLANT
Vs	
Inter-Gold (I) Pvt. Ltd.	RESPONDENT

Date of Decision: Nov. 19, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Contract Act, 1872 - Section 23
- Industrial Disputes Act, 1947 - Section 10, 12(3), 18, 18(1), 18(3)(d)

Citation: (2015) 1 ABR 219 : (2015) 4 ALLMR 760 : (2015) 1 BomCR 433 : (2015) 5 MhLj 751

Hon'ble Judges: R.M. Savant, J

Bench: Single Bench

Advocate: R.D. Bhat, Advocate for the Appellant; Sudhir Talsania, Senior Advocate, Amit Dutia and Mahesh Londhe i/by Sanjay Udeshi and Co, Advocate for the Respondent

Judgement

R.M. Savant, J.

The writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the judgment and order dated 29/07/2006 passed by the learned Member, Industrial Court, Mumbai, by which order the Complaint (ULP) No. 317 of 2005 came to be disposed of and the Complaint (ULP) No. 428 of 2005 came to be dismissed.

2. The facts necessary to be cited for adjudication of the above Petition can be stated thus: -

Respondent No. 1 in both the Complaints i.e. Complaint (ULP) No. 317 of 2005 and Complaint (ULP) No. 428 of 2005 is M/s. Inter-Gold (I) Pvt. Ltd. which had a diamond division. In the said diamond division about 450 workmen were employed. The said workmen were owing allegiance to Bhartiya Kamgar Sena (hereinafter referred to as "BKS" for short). The said BKS was a recognized union in so far as Respondent No. 1 is concerned. The said BKS had filed Complaint (ULP) No. 317 of 2005 against the

Respondent No. 1 and its Directors invoking items 5, 6 of schedule-II and items-2, 3, 9 and 10 of schedule-IV of the MRTU and PULP Act, 1971. The said BKS as a recognized union had entered into settlements with the Respondent No. 1 in respect of the service conditions of the workmen. The last of such settlements was dated 25/09/2002 which was for the period from 01/10/2001 to 30/09/2005. The said settlement was accepted by all the workmen and was signed by the BKS as a recognized union with the Respondent No. 1-Company. The cause for filing the said complaint was the action of the Respondent No. 1 Company of inviting the committee members of the BKS on 18/06/2005 for a meeting and informing them that the company has decided to close-down its existing diamond unit at SEEPZ and to shift the entire business activities relating to diamonds to Kandivli in its new establishment known as M/s. Inter-Gold Diamonds Pvt. Ltd. During the course of discussion with the committee members it seems that the Respondent No. 1 had offered a memorandum of settlement referable to Section 2(p) read with Section 18(1) of the Industrial Disputes Act. However, the said settlement was opposed to on behalf of the committee members of the BKS. The main objection to the proposed settlement was that in terms of the settlement dated 25/09/2002 for the transfer of the workmen from one unit to other i.e. from the Respondent No. 1-Company to its associate/subsidiary company it was agreed that the Respondent No. 1-Company will discuss with the committee members about the modalities and the procedure for transfer, but this assurance was not abided by and suddenly the workmen were given the option about shifting and transfer to Kandivli. It was therefore the case of the BKS in the said complaint that the Respondent No. 1 was using pressure tactics and that there was an attempt by the Respondent No. 1 to declare a lock-out in so far as the diamond division is concerned. The said complaint was therefore filed for a declaration of unfair labour practice committed by the Respondent No. 1 and consequential reliefs to direct the company to cease and desist from the unfair labour practice; to restrain the company from the change in service conditions of the workmen; to direct the company to give all the status, benefits and the privileges arising out of the settlement dated 25/09/2002; to restrain the company from terminating the services of the concerned workmen and not to transfer to M/s. Inter-Gold Diamonds Pvt. Ltd. at Kandivli; to restrain the company from compelling the workmen to sign the proposed memorandum of settlement; direct the company to give regular entry, work and wages as per last several years practice and other facilities; and lastly to direct the Respondent No. 1 to negotiate, bargain and sign the settlement and to take consent on or before making any change in any manner in respect of service conditions of the concerned workmen.

It appears that in the said complaint, an application for interim relief was moved by the complainant BKS on which application an order of directing the Respondent No. 1-Company to maintain status quo till the disposal of the interim application was passed. The said application for interim relief was opposed to on behalf of the Respondent No. 1 by contending that in terms of the settlement dated 25/09/2002

and especially clause-17 thereof the transfer of the workmen to any unit, establishment of the company even outside Mumbai was permissible. It was contended that because of the business exigency the Respondent No. 1 had decided to shift its activities relating to diamond manufacturing to Kandivli in one of its associate companies and therefore there was no question of any unfair labour practice.

3. The dispute between BKS and Respondent No. 1 came to be settled on account of the settlement dated 17/08/2005 which was arrived at with the BKS in furtherance of the settlement dated 25/09/2002. In view of the said settlement dated 17/08/2005 a pursis came to be filed in the Industrial Court on 26/08/2005 that the parties have settled the matter on the basis of which the ad-interim order of status quo which was passed by the Industrial Court came to be vacated.

4. After the said order of status quo came to be vacated, the Petitioner herein i.e. the General Employees Union (for short hereinafter referred to as "GEU") filed a complaint being Complaint (ULP) No. 428 of 2005 in the Industrial Court invoking item Nos. 1(a), (b), 2(b), 4(c) and 6 of schedule-II and item Nos. 3, 5, 9 and 10 of schedule IV of the MRTU and PULP Act, 1971. It was the case of the said union that out of 450 workmen who were working with the diamond division, majority of the workmen have joined the complainant-GEU in the last week of August 2005. It was further averred that initially the workmen were owing allegiance to the BKS which had obtained the certificate of recognition and had also signed the settlement for wages and service conditions of the workmen. However, the workmen realized that the said BKS was not functioning in the interest of the workmen but in the interest of the employer, therefore, somewhere in 2002, except a handful of workmen all other workmen had resigned from the membership of the BKS and had joined the Bhartiya Kamgar Karmchari Mahasangh (for short hereinafter referred to as "BKKM") which had also filed an application for recognition which was pending at the relevant time when the said Complaint (ULP) No. 428 of 2005 came to be filed. It was further the case of the complainant-GEU that the workmen had resigned from the membership of the said BKMM and had joined the complainant GEU. It was the case of the complainant-GEU that on the workmen joining the complainant-GEU, the officials of the Respondent No. 1-Company started threatening them on account of which one executive committee member was suspended and an inquiry was also commenced against him. However, later on the said inquiry was not proceeded with and was closed. It was the case of the complainant-GEU that the workmen working in the diamond division are engaged in polishing diamonds and related activities. It was its case that the said company is functioning from SEEPZ and is enjoying several benefits and protection granted by the government in order to promote export from the country. It was further averred that on 30/08/2005 at the end of the working hours the Respondent No. 1-Company put up a notice stating that 450 workmen are transferred to Respondent No. 6-Inter Gold Diamonds Pvt. Ltd. at Kandivli. It was further mentioned in the matter that the workmen would continue

to draw the same wages and there would be no break in service. It was further mentioned in the said notice that the Respondent No. 1-Company had discussion with the recognized union and their committee members and the memorandum of settlement in the notice of transfer was filed in the Industrial Court in Complaint (ULP) No. 317 of 2005. It was contended that the workmen were unaware about the provision of settlement dated 25/09/2002 between the Respondent No. 1 Company and the BKS. The said settlement dated 25/09/2002 was questioned on the ground that the clause for transfer is against the provisions of law as there is no provision in the Model Standing Orders for transfer. It was contended that even a recognized union cannot enter into any settlement which has clauses which are contrary to law. It was therefore averred that the transfer of the workmen to the new entity is in breach of the service conditions. The complainant-GEU had therefore on the said basis sought a declaration of unfair labour practice committed by Respondent No. 1 and consequential reliefs to direct the Respondent to quash and set aside the notices dated 30/08/2005 by which the workmen were transferred to Respondent No. 6.

5. In the said Complaint (ULP) No. 428 of 2005, an application for interim relief was moved by the complainant-GEU. The interim relief sought by the complainant-GEU was rejected by the Industrial Court upon which the complainant-GEU had filed Writ Petition in this Court being Writ Petition (Lodging) No. 2296 of 2005. A learned Single Judge of this Court did not interfere with the order passed by the Industrial Court, however, a direction came to be issued to expedite the hearing of the said Complainant (ULP) No. 428 of 2005 and decide the same not later than four months of the said order. The said complaint was accordingly expedited.

6. After the Writ Petition was disposed of, the Industrial Court took the said Complaint for adjudication. In support of its case, the complainant-GEU had examined three witnesses whereas the Respondent No. 1-Company had examined its Director Mr. Hitesh Mehta. Both the parties also relied upon documentary evidence. The BKS and the BKMM had also intervened in the said complaint and were joined as Respondent Nos. 7 and 8 but they had not adduced any evidence. The Industrial Court on the basis of the material on record dismissed the said complaint. This resulted in the complainant-GEU filing a Writ Petition, being Writ Petition No. 768 of 2006 in this Court. In the said Writ Petition the judgment and order passed by the Industrial Court came to be set aside by the consent of the parties and the matter was remanded back to the Industrial Court for a de novo consideration and the Industrial Court was directed to dispose of the Complaint (ULP) No. 317 of 2005 and the Complaint (ULP) No. 428 of 2005 on or before 30/07/2006. It appears that after the remand the complainant-GEU had intervened in Complaint (ULP) No. 317 of 2005 filed by the recognized union i.e. BKS and was joined as Respondent No. 3 to the said complaint. The complainant-GEU filed its written statement wherein it reiterated the stand which it had taken in its own complaint being Complaint (ULP) No. 428 of 2005. In addition thereto the

complainant-GEU contended that on account of the transfer, there was change in the service conditions which amounts to breach of Section 9A of the Industrial Disputes Act.

7. In so far as the Respondent No. 1-Company is concerned, it filed its written statement reiterating the contentions which it had raised earlier. In addition thereto, the Respondent No. 1-Company contended that on account of the settlement dated 17/08/2005 the dispute was settled between the BKS and the Respondent No. 1-Company, and that the memorandum of settlement was also filed in the said complaint on 26/08/2005 whilst it was pending before the learned member Shri Kadlag, Industrial Court, Mumbai on the basis of which the status quo granted in the said complaint was vacated pursuant to which about 90 employees had joined the Respondent No.-6 Inter-Gold Diamonds Pvt. Ltd. at Kandivli. It was the case of the Respondent No. 1 that since the Complaint (ULP) No. 317 of 2005 was principally filed making a grievance that in terms of the settlement dated 25/09/2002 there ought to be discussion in respect of the modality and procedure for transfer, and since the settlement dated 17/08/2005 which had been arrived at after number of negotiations between the Respondent No. 1 and the recognized union in view thereof there remained no dispute between the recognized union i.e. BKS and the Respondent No. 1. Filing of Complaint (ULP) No. 428 of 2005 by the complainant-GEU was questioned by the Respondent No. 1-Company on the ground that in so far as an unrecognized union, which the GEU was, it had very limited rights in the matter of espousing the cause of workmen which right was restricted to the discharge, dismissal or retrenchment of the individual workmen, but in the instant case there being no case of dismissal or retrenchment, the complaint filed by the complainant-GEU was not maintainable. On the basis of the aforesaid pleading of the parties, the Industrial Court framed the issues amongst which Issue No. 2 viz. does the Respondent No. 3 prove that the settlement dated 25/09/2002 is illegal, which can be said to be the defining issue, came to be framed. All the issues which were framed were decided against the complainant-GEU.

8. The learned Member of the Industrial Court considered the said complaints and as indicated above has by the impugned judgment and order dated 29/07/2006 disposed of the Complaint (ULP) No. 317 of 2005 and dismissed the Complaint (ULP) No. 428 of 2005. In the course of dismissing the said Complaint (ULP) No. 428 of 2005 filed by the complainant-GEU, the Industrial Court held that the settlement dated 17/08/2005 arrived at between the recognized union i.e. BKS and the Respondent No. 1-Company was a valid settlement. The Industrial Court held that though the application for de-recognition was filed by the GKU as well as BKMM as on the date of the settlement, the BKS being the recognized union, was entitled to enter into the settlement with the Respondent No. 1-Company. The Industrial Court held that the grievance of the recognized union that the modality and procedure prior to effecting the transfer which was contemplated by the settlement dated 25/09/2002 was assuaged by the fact that the settlement dated 17/08/2005 was

arrived at between the BKS and the Respondent No. 1-Company after negotiations. In so far as the grievance urged on behalf of the GKU that the workers were not made aware of the settlement i.e. the clause of transfer is concerned, the Industrial Court held that every individual workman had received the amount of Rs. 2500/-, and having signed the register, it could not be said that the workmen were not aware of the settlement, as the said amount was paid under the settlement. The Industrial Court held that had it been a case that the workmen were not ready to accept the transfer clause, then by way of protest at least some of the workmen would have returned the amount to the company. In so far as clause-17 of the said settlement is concerned, the Industrial Court held that since the transfer of the workmen could be effected to an associate/subsidiary company, the transfer of the workmen to M/s. Inter Gold Diamond Pvt. Ltd. which is a hundred percent associate/subsidiary company and which transfers have been accepted by the said M/s. Inter-Gold Diamond Pvt. Ltd., and therefore, there was a tripartite agreement between the parties, hence the transfer could not be termed as illegal. The Industrial Court negatived the contention urged on behalf of the GEU that a notice under Section 9A of the Industrial Disputes Act is necessary as according to the Industrial Court the transfer being effected pursuant to the settlement with the recognized union, there was no change in the service conditions. The Industrial Court held that in view of the settlement dated 17/08/2005, in so far as the Complaint (ULP) No. 317 of 2005 is concerned, nothing survived in the same. The Industrial Court held that if GEU is aggrieved by the conduct of the BKS in the matter of breach of undertaking given to this Court, then it is open for it to adopt separate remedy by way of contempt proceedings etc. The Industrial Court distinguished the judgments cited on behalf of the GEU by observing that in the said cases the transfer was held illegal for want of tripartite agreement and in some cases the settlement was held to be illegal because though it was with recognized union, it was in respect of discharge, dismissal, retrenchment and removal of the individual workman. The Industrial Court, as indicated above, has accordingly dismissed the Complaint (ULP) No. 428 of 2005 and disposed of the Complaint (ULP) No. 317 of 2005. As indicated above it is the said judgment and order dated 29/07/2006 which is taken exception to by way of the above Writ Petition.

9. SUBMISSIONS ON BEHALF OF THE PETITIONER BY THE LEARNED COUNSEL SHRI R D BHAT

A] That clause 17 of the settlement dated 25/09/2002 which is a clause relating to the transfer is vague inasmuch as it is not mentioned as to which transferee company the workmen are to be transferred.

B] That the said clause 17 is also hit by Section 23 of the Indian Contract Act as it results in the termination of service of the workmen. That the recognized union cannot enter into any settlement which is contrary to law and is not in the interest of the workmen. Reliance is placed on the judgment of a learned Single Judge of this

Court in the case of Ibrahim Hanif Mulani Vs. General Manager, Walchandnagar Industries Ltd. and Another,

C] That by placing reliance on clause 17 whether the entire workforce can be transferred to another company. Since the transfer effected by taking recourse to the said clause 17 has the effect of impinging upon the service conditions of the workmen, the same could not have been done without following Section 9A of the Industrial Disputes Act.

D] That no workman can be transferred from one employer to another employer and from one undertaking to another undertaking. That the transfers effected without the workers having been given knowledge of the settlement were illegal. Reliance is placed on the judgment of the Apex Court in Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others, and the judgments of the learned Single Judges of this Court in the case of Brihanmumbai Union of Journalists & ors. v/s. Nav Bharat Press Ltd. and anr. 2002 II CLR 67 and in the case of Adil K. Patel Vs. Tata Iron and Steel Company Ltd. and others,

E] That having regard to clause 11 of the Schedule-IV of the Industrial Dispute Act, the Respondent No. 1 was obligated to issue a notice of change in respect of the said transfer.

F] That the facts disclose that it was the intention of the Respondent No. 1 to close-down the undertaking which is also fortified by the evidence given by the witnesses on behalf of the Respondent No. 1.

G] That the settlement dated 17/08/2005 has not been signed by all the office bearers of the recognized union and therefore there could not have been implementation of the same.

H] That the Industrial Court has erred in not exercising jurisdiction inasmuch as it has not considered the legality and validity of the settlement by going into the aforesaid aspect;

I] That the settlement results in breach of Section 9-A, 25-O and 25 of the Industrial Dispute Act;

J] That the Respondent No. 1 could not have entered into any negotiation with the Respondent No. 1 when it very well knew that substantial number of employees out of the said 450 employees working in the diamond division of the Respondent No. 1 had resigned from the membership of the BKS.

10. SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 1 TO 6 BY THE LEARNED COUNSEL SHRI SUDHIR TALSANIA

i] That the appointment letter issued to the workmen by the Respondent No. 1 itself provided that the transfer of the workmen to any other establishment or sister concern of the Respondent No. 1. It is therefore not as if that the condition of

transfer was introduced for the first time by the settlement dated 25/09/2002.

ii] That the Complaint (ULP) No. 317 of 2005 was filed by the recognized union on the apprehension that the modalities and procedure for transfer would not be adhered to by the Respondent No. 1. However, it is pursuant to the negotiations that took place between the Respondent No. 1 and the BKS that the settlement was arrived at between the parties on 17/08/2005 which inter-alia worked out the modalities for transfer. The settlement having been arrived at with the recognized union i.e. BKS was binding on the workmen; in support of the said contention reliance was placed on Herbertsons Ltd. v/s. Their Workmen and others 1976 (33) F.L.R. 398

iii] That though initially the Industrial Court granted an order of status quo, the same was vacated later, on the settlement dated 17/08/2005 being placed before the Industrial Court and though thereafter no interim order was operating in favour of the workmen, they have refused to join the Respondent No. 7-Inter-Gold Diamond Pvt. Ltd., this shows the conduct of the workmen. The settlement was arrived at on 17/08/2005 and the Petitioner-GEU has come on the scene for the first time on 27/8/2005 and therefore could not make a grievance in respect of the settlement dated 17/08/2005.

iv] That no notice of change was required as the transfers were effected pursuant to the settlement arrived at with the recognized union and there being no closure, retrenchment or transfer of the undertaking;

v] That individual notices were issued to the workmen in support of which contention the learned Senior Counsel for the Respondent Nos. 1 to 6 Shri Talsania placed reliance on one such notice issued to one workman which is in the compilation filed on behalf of the Respondent No. 1

vi] That Clause 17 of the settlement dated 25/09/2002 itself prescribed the restriction viz. that the transfer could not be effected without consultation with the recognized union. Since the recognized union has signed the settlement, the same could not be questioned.

vii] That the Respondent No. 7 being a party to the negotiations which have been arrived at and since the settlement dated 17/08/2005 working out the modalities for transfer has been signed by the Respondent No. 7 which is transferee company, there was a tripartite agreement and therefore the Industrial Court was right in coming to a conclusion that the agreement was valid and subsisting;

viii] That there was no closure of undertaking and what has been done is only that the business relating to polishing and cutting of diamonds has been shifted to Kandivli, there is no closure, and therefore there is no breach of Section 25(O) of the Industrial Dispute Act. In support of the said contention reliance was placed on the judgment of the Biddle Sawyer Ltd. Vs. Chemical Employees Union and Others,

ix] That the settlement dated 17/08/2005 being arrived at with the recognized union, the principles of law as laid down in the case of Herbertsons''s case (supra) would come into place.

x] That if the GEU is aggrieved by the settlement dated 25/09/2002 as followed by the settlement dated 17/8/2005, the same cannot be gone into in a complaint filed under the MRTU and PULP Act, 1971 but an industrial dispute would have to be raised and it is in a reference that the said dispute could be adjudicated. In support of the said contention reliance was placed on the judgments of the Apex Court in the case of Jaihind Roadways Vs. Maharashtra Rajya Mathadi Transport and General Kamgar Union and Others, and in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others,

CONSIDERATION

11. Having heard the learned counsel appearing on behalf of the Petitioner Shri R D Bhat and the learned Senior Counsel appearing on behalf of the Respondent Nos. 1 to 6 Shri Talsania, I have considered the rival contentions. The Complaint (ULP) No. 428 of 2005 has been filed by the GEU invoking the provisions of the MRTU and PULP Act, 1971 and the challenge revolves around the legality and validity of the settlement dated 17/08/2005 which was preceded by the settlement dated 25/09/2002. The challenge revolves around the clause of transfer which is Clause 17 of the said settlement dated 25/09/2002 which for the sake of ready reference is reproduced herein under: -

"DEMAND NO. 17: TRANSFER:

It is agreed by and between the parties that it shall be the sole discretion of the Management to transfer workmen to any associate company or from one department to another or to one unit to another either or any other place in Mumbai where the Company has its own unit or branch, whether such nit; establishment are existing or not at the time of signing of settlement. On such transfer, the Workmen will be entitled to receive the benefits applicable to the establishment where his services have been transferred. He will also be governed by such rules and regulations applicable to that unit/department/establishment where he has been transferred."

It would also be apposite to reproduce clauses 1, 2 and 3 of the settlement dated 17/08/2005 which settlement is in furtherance of the settlement dated 25/09/2002: -

"1 It is expressly agreed by and between the parties that all the workmen shall be transferred with continuity of service to the company and factory situated at the following address: -

"M/s. Inter Gold Diamond Pvt. Ltd.

Plot No. 11,

Ashok Chakravarthy Road,

Sweet Land Nursery,

Kandivali (East),

Mumbai-400 101"

2. It is further expressly agreed by and between the parties that the workmen shall be transferred as above on or before 20th September 2005 in batch-wise and in phase manner as decided by the management from time to time. That names of such of the workmen who are to be transferred and date on which they will report for duty shall be displayed on the notice board of the company one day in advance. The decision of the management shall be final and binding.

3. That on transfer as aforesaid the wages and other service conditions of the workmen shall not be adversely affected nor the services of the workmen will be interrupted, nor terms and conditions of services applicable to be workmen; after aforesaid transfer shall be less favourable then that applicable to them immediately before the transfers."

By notice dated 30/08/2005, the 450 workmen working in the Diamond Division of the Inter-Gold (I) Pvt. Ltd. have been transferred to Inter-Gold Diamonds Pvt. Ltd. Kandivali. The said Inter-Gold Diamonds Pvt. Ltd. is the associate/subsidiary company of the Inter-Gold (I) Pvt. Ltd. The said Clause No. 17 which is the main feature of the agreement/settlement dated 25/09/2002 is challenged inter-alia on the ground that the said clause is vague; that the said clause of the agreement if put into effect has the effect of closure of the undertaking without following the procedure prescribed by Section 25-O of the Industrial Disputes Act. The said clause has also the effect of changing the service conditions without complying with Section 9A of the Industrial Disputes Act; that though the agreement has been entered into by the recognized union, the recognized union could not have entered into the agreement which is not beneficial to the workmen. The said challenges raised would therefore have to be addressed.

12. In so far as the settlement dated 25/09/2002 is concerned, it is an undisputed position that the said settlement has been entered into with the BKS which at the relevant time was undisputedly the recognized union. The efficacy of the settlement entered into by the recognized union is enunciated by the Apex Court in the Judgment in the case of Herbertsons Ltd. (supra). The Apex Court in the said judgment has held that when a recognized union negotiates with an employer the workers as individuals do not come into the picture, and it is not necessary that each individual worker should know the implications of the settlement since it is expected to protect the legitimate interests of labour, and enters into a settlement in the best interests of labour. The relevant excerpt of the judgment of the Apex Court can be gainfully reproduced herein under: -

"When a recognized union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implementations of the settlement since a recognized union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. Nothing of that kind has been suggested against the President of the 3rd respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration."

In view of the said fact of the recognized union negotiating with the Respondent No. 1 and entering into a settlement, that the said settlement can therefore be said to go beyond the pale of challenge. The Industrial Court in its impugned order has, therefore, after adverting to the fact that though the applications for de-recognition of the BKS were made, however, on the day when the settlement was entered into the BKS continued to be a recognized union, held that the settlement entered into by the BKS was valid and binding as the said settlement was referable to Section 2(p) read with Section 18(1) of the Industrial Disputes Act.

The contention of the learned counsel for the Petitioner that clause 17 of the settlement dated 25/09/2002 is vague and uncertain and is therefore hit by Section 23 of the Contract Act be accepted. In so far as clause 17 is concerned, though it provides for transfer to any other associate company or from one unit to another, the modalities for such transfer were to be worked out between the BKS and the Respondent No. 1. The Complaint (ULP) No. 317 of 2005 was therefore filed by the BKS on the apprehension that without working out modalities effect was sought to be given to clause 17. The BKS and the Respondent No. 1 entered into negotiations and arrived at the settlement dated 17/08/2005 by which the modalities for transfer were worked out as well as the associate/subsidiary company of the Respondent No. 1 to which the workmen were to be transferred was identified. In fact the Respondent No. 6 is also a party to the settlement dated 17/08/2005. It is in view thereof that the Industrial Court held that there is tripartite agreement which was reached between the BKS, the Respondent No. 1 and the Respondent No. 6.

The judgment in Ibrahim Hanif Mulani''s case (supra), reliance on which was placed by the learned counsel for the Petitioner. would have no application in the facts of the present case as in Ibrahim Hanif Mulani''s case there was a retrenchment 100 workmen on the basis of the settlement with the recognized union whilst retaining the juniors. It is in the said context that the learned Single Judge of this Court held that the clause relating to the termination of services would have to be severed. In the instant case, the workmen have been transferred to an associate/subsidiary company of the Respondent No. 1 herein pursuant to the settlement with a recognized union. The terms and conditions of their services are also protected.

Hence the facts of the instant case are clearly distinguishable from the facts in Ibrahim Hanif Mulani''s case

13. Now coming to the aspect as to whether the settlement has the effect of closure of the undertaking. It is required to be noted that what has been done by the notice which is issued pursuant to the settlement is that 450 workmen who were working in the diamond cutting and polishing division in the Respondent No. 1 have been transferred to the Inter-Gold Diamonds Pvt. Ltd., which as indicated above, is the associate/subsidiary company of the Respondent No. 1 herein. By the said transfer what is sought to be done is transferring the activities of cutting and polishing of diamonds from the Respondent No. 1 to its associate/subsidiary company. However, it is an undisputed position that the Respondent No. 1 herein continues its other activities at the original place in SEEPZ. In the said context it would be useful to refer to the judgment of the Division Bench of this Court in Biddle Sawyer Ltd.''s case (supra). The Division Bench was concerned with the interpretation of the word "closure" as defined in Section 2(cc) and as appearing in Section 25-O of the Industrial Disputes Act. The Division Bench after going through the conspectus of law cited before it ultimately concluded in Paragraph 38 of the said judgment that closure is the closing down permanently of the source of employment of the workmen, i.e. the place where the employment is actively generated. But it cannot be said that merely because a place of manufacture has been closed down and restarted at another place or transferred to another employer, that the undertaking has been closed down. The Division Bench in the said case has also referred to the judgment of the Apex Court in the case of Tatanagar Foundry Co. Ltd. Vs. Their Workmen, where the Apex Court has held that in the case of a closure, the employer does not merely close down the place of business but he closes the business itself finally and irrevocably. The Division Bench in the said judgment has also referred to the judgment of this Court in the case of Innovations Garment Limited v/s. S.K. Singe & Another (2002) II C.L.R. 902 wherein this Court held that since there was no closure of the manufacturing activities at Mumbai and it was decided to relocate or shift the factory at Mussoorie, it cannot be said that it was a closure of the factory or company at Mumbai, and therefore held that section 25(O) of the Industrial Act is not attracted.

14. In my view, having regard to the test laid down by the Division Bench of this Court In Biddle Sawyer''s case (supra) the contention urged on behalf of the Petitioner by the learned counsel Shri Bhat that the effect of the settlement and especially Clause-17 thereof has the effect of closure of the undertaking and same has been effected without following the procedure under Section 25(O) of the Industrial Disputes Act cannot be accepted. At the cost of repetition it is required to be noted that what has been done is only the transfer of the workmen to an associate/subsidiary company of the Respondent No. 1 herein i.e. the Respondent No. 6 herein. However the other business activities of the Respondent No. 1 are continued at SEEPZ.

15. In so far as Section 9(A) of the Industrial Disputes Act is concerned, in my view, the said provision would not be applicable in the facts of the present case. It is required to be noted that there is no change in the conditions of service of the workmen who have been transferred as it is made clear in the notice that the workmen would be entitled to the same terms and conditions which has also been accepted by the transferee company, and therefore, there is no substance in the said contention of the learned counsel for the Petitioner. It is required to be noted that the settlement dated 17/08/2005 is also signed on behalf of the transferee company i.e. the Respondent No. 6 herein. It is also further required to be noted that along with the notice dated 30/08/2005, there is also a notice of the transferee company requesting the workmen to join it, and hence there is a tripartite agreement between the recognized union-BKS, the transferee company and the Respondent No. 1 herein. It has already been stated herein above that the terms and conditions of service continued to be the same though they have been transferred to the Respondent No. 6 i.e. the Inter-Gold Diamonds Pvt. Ltd.

16. There is substance in the contention of the learned counsel appearing on behalf of the Respondent No. 1 herein that if the Petitioner-GEU is aggrieved by the settlement dated 25/09/2002, the remedy for the GEU was to raise an industrial dispute as regards the settlement, and could not have invoked the jurisdiction of the Industrial Court under the MRTU and PULP Act, 1971. In the said context, the judgments of the Apex Court in the case of National Engineering Industries Ltd.''s case (supra) and Jaihind Roadways''s case (supra) can be gainfully referred to. The said judgments lay down the proposition that when there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, mis-representation or concealment of facts or even corruption, it could be the subject matter of an industrial dispute. In the context of the present Petition paragraph No. 24 of the judgment in National Engineering Industries Ltd.''s case (supra) is material and is reproduced herein under for the sake of ready reference: -

It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace then an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at

on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. Recognized union having majority of members is expected to protect the legitimate interest of labour and enter into a settlement in the best interest of labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings is binding on the members of the workers'' union as laid down by section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of Unions that are signatories to such settlement under section 12(3) of the Act is based on the principle of collective bargaining for resolving Industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act", as pointed out in the case of P. Virudhachalam and Others Vs. Management of Lotus Mills and Another, . In all these negotiations based on collective bargaining individual workman necessarily records to the background Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

17. As regards the contention of the learned counsel for Petitioner Shri Bhat that the transfers are illegal, in support of which contention the learned counsel for the Petitioner placed reliance on the judgment of the Apex Court in Jawaharlal Nehru University''s case (supra) and the judgments of the learned Single Judges of this Court in Brihanmumbai Union of Journalists & others, case (supra) and the judgment in Adil K Patel''s case (supra). In my view the said contention has no merit in the light of the fact that clause-17 which provides for transfer to the associate/subsidiary company is a part of the settlement dated 25/09/2002 which has been entered into

by the Respondent No. 1 with the recognized union-BKS and effect to which was given by settlement dated 17/08/2005. The judgments which have been relied upon are not cases wherein the transfers were effected pursuant to any settlement arrived at in the course of collective bargaining. In the said cases, the transfers were effected pursuant to the conditions mentioned in the appointment letter, for administrative exigencies or transfer of the undertaking which the Apex Court and the learned Single Judges of this Court have found fault with.

The facts in the Jawaharlal Nehru University''s case (supra) were that the Jawaharlal Nehru University had set up the centre of Post-graduate studies at Imphal. The Jawaharlal Nehru University had accordingly appointed teaching and administrative staff to man it. The Respondent K.S. Jawatkar was appointed as an Assistant Professor at the said centre. The centre of Postgraduate studies was subsequently transferred to the Manipur University. The Syndicate of the Jawaharlal Nehru University resolved that the centre for Post-graduate studies would cease to exist as such and the centre would become the Division of the Manipur University and function accordingly. It was further resolved that the members of the faculty of the centre of Post-graduate studies at Imphal would become members of the staff of the Manipur University. The services of the Respondent therein were accordingly transferred.

The Resolution of the Jawaharlal Nehru University transferring his services was challenged by the Respondent before a learned Single Judge of the Delhi High Court. The learned single Judge allowed the Petition and held that the Respondent was not obliged to join the Manipur University and was entitled to continue in the Jawaharlal Nehru University. The Jawaharlal Nehru University challenged the said judgment of the learned Single Judge by way of an LPA. The Division bench of the Delhi High Court confirmed the judgment of the learned Single Judge. The matter was carried to the Apex Court by the Jawaharlal Nehru Centre.

The Apex Court held that the Respondent K.S. Jawatkar was and continues to be an employee of the Jawaharlal Nehru University, and that his employment could not be transferred by the Jawaharlal Nehru University to the Manipur University without his consent, notwithstanding any statutory provision to that effect. The Apex Court held that the contract of employment of the Respondent was a contract with the Jawaharlal Nehru University and no law can convert that contract into a contract between the Respondent and the Manipur University. The Apex Court held that no employee could be transferred, without his consent, from one employer to another. The consent may be express or implied.

The facts of the instant case are clearly distinguishable from the facts in the Jawaharlal Nehru University''s case (supra). In the instant case the settlement providing for transfer has been arrived at with the recognized union. The said settlement is the result of collective bargaining which is aimed at achieving industrial peace. The settlement with a recognized union stands on a different

pedestal than the other settlements. Once there is a settlement with the recognized union then the individual workmen is not required to be consulted. In any event in the instant case each individual workman was aware of the settlement, as he has accepted the amount of Rs. 2500/- and has also signed on the register wherein there is an endorsement made on the top that the workmen are made aware of the settlement. The aspect of consent would therefore not be applicable in the present case. Hence the judgment in Jawaharlal Nehru University''s case (supra) does not further the case of the Petitioner-GEU in any manner.

In the Brihanmumbai Union of Journalists''s case (supra) the transfers were sought to be justified on the ground that they were in accordance with clause 5 of the appointment letters and same were effected for strengthening the regional offices. However, a learned Single Judge of this Court before whom the Writ Petition had come up against the refusal of the Industrial Court to grant interim reliefs found that the action of the company in transferring the Petitioners i.e. the workmen along with posts under the guise of strengthening regional offices was not in exercise of the managerial powers under clause 5 of the letter of appointment and transfer is in fact in colourable exercise of powers.

In Adil K. Patel''s case (supra) the Petitioner was employed in Accounts Department of the Respondent Company. He was transferred to the Share Transfer Department. The said Share Transfer Department was closed and the work was transferred to another company. The Petitioner refused to take up the assignment with the other company upon which his services were terminated. The company sought to rely upon the letter issued by the employees association stating therein that 14 employees of Share Transfer Department other than Petitioner agreed to take employment with new company. The issue was whether the said letter amounts to a settlement which was binding on the Petitioner. In the said Writ Petition a learned Single Judge of this Court held that such a letter cannot be termed as a settlement within the meaning of Section 2(p) of the Act and therefore on the refusal of the Petitioner to go to report to the transferee company and his services being terminated on the said ground was found to be illegal. The facts of the cases on which the reliance was placed by the learned counsel appearing for the Petitioner stand apart from the facts in the instant case where there is a settlement which has been entered into with the recognized union which is binding on all the workmen. The Industrial Court has also recorded a finding of fact on the basis of the material on record that the Inter-Gold Diamonds Pvt. Ltd. is a associate/subsidiary of the Respondent No. 1.

18. The settlement was also sought to be assailed on the ground that the workmen were not made aware of its contents. Apart from the fact that such a contention cannot be countenanced once there is a recognized union and the recognized union enters into a settlement [See Herbertson''s case (supra)]. It is also required to be noted that the workmen have been paid an amount of Rs. 2500/- which was payable

under the settlement which has been accepted by the workmen. The Industrial Court has therefore rightly observed that the fact that the amount of Rs. 2500/- has been accepted by the workmen is a pointer to the fact that they were aware of the settlement as otherwise they ought to have raised a query as to on what account the said amount of Rs. 2500/- is paid. Apart from the said fact the register in respect of the said payment bears the signatures of the workmen and also carries the endorsement that the workers have been explained the terms and conditions of the settlement dated 25/09/2002 in presence of the committee members and that the workers have agreed to all the terms and conditions of the settlement, and have received the amount of Rs. 2500/- against arrears of payments as per settlement. Hence there is no merit in the said contention of the learned counsel for the Petitioner.

19. Another aspect which cannot be lost sight of is that though the interim reliefs were rejected by the Industrial Court against which Writ Petition (Lodging) No. 2296 of 2005 came to be filed by the GEU in this Court, a learned Single Judge of this Court had refused to interfere with the order passed by the Industrial Court but directed the Complaint (ULP) No. 317 of 2005 to be disposed of within four months. The said order was challenged by the Petitioner-GEU by way of Appeal No. 901 of 2005. The Division Bench of this Court had dismissed the said Appeal having regard to the nature of the order passed by the learned Single Judge of this Court. What is significant to note is that in spite of the interim reliefs having been rejected, the workmen who have not joined the Respondent No. 6 have continued to remain away. Hence it is a circumstance which has to be taken into consideration whilst adjudicating the above Petition. A period of 9 years has elapsed since the interim reliefs were refused to the Petitioner-GEU in Complaint (ULP) No. 428 of 2005. Hence the aforesaid facts also cannot be lost sight of having regard to the challenge raised in the above Petition.

20. The Industrial Court in the teeth of the fact that the settlement in question has been entered into with the recognized union has held that the said settlement is legal and valid. The Industrial Court has whilst recording the said finding delved into the various grounds on the basis of which the settlement was challenged by the GEU. This Court has also gone into the said aspects. The question is, whether this Court should exercise its writ jurisdiction under Article 226 of the Constitution of India. The view taken by the Industrial Court cannot be said to be a view which could not be taken in the facts and circumstances of the case. If viewed from the said angle the impugned judgment and order passed by the Industrial Court does not merit any interference at the hands of this Court in its writ jurisdiction. The above Writ Petition is accordingly dismissed. Rule discharged with parties left to bear their respective costs.