Supreme Court of India
H.M.T. Limitedwormen Of Indian ... vs H.M.T. Head Office Employees' ... on 29 October, 1996
Author: Kirpal
Bench: J.S. Verma, B.N. Kirpal

PETITIONER:
H.M.T. LIMITEDWORMEN OF INDIAN TELEPHONE INDUSTRIES LTD. AND

Vs.

RESPONDENT:
H.M.T. HEAD OFFICE EMPLOYEES' ASSO. AND ORS.THE MANAGEMENT O

DATE OF JUDGMENT: 29/10/1996

BENCH:
J.S. VERMA, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

[With C.A. Nos. 1723, 1724, 1725, 1726/90] & CIVIL APPEAL NO. 13380 OF 1996 [Arising Out of S.L.P.(C) No. 5345 of 1990] J U D G M E N T KIRPAL, J.

Leave granted.

The award of the National Industrial Tribunal, Bombay (hereinafter referred to as' the Tribunal') adjudicating on the demands of the unions of five Bangalore based public sector undertakings for parity in minimum wage with the minimum wage payable to the employees of another public sector undertaking namely; Bharat Heavy Electricals Limited (hereinafter referred to as 'BHEL') is challenged by the managements as well as the workmen in these appeals.

The minimum wage of the lowest cagetory of workmen of five Bangalore based public sector undertakings namely; Bharat Electronics Limited (hereinafter referred to as 'B.E.L.'), Bharat Earth Movers Limited (hereinafter referred to as 'B.E.M.L.'), Indian Telephone Industries Limited (hereinafter referred to as 'I.T.I. '), Hindustan Aeronautics Limited (hereinafter referred to as 'H.A.L.') and Hindustan Machine Tools Limited (hereinafter referred to as 'H.M.T.') was the same in all these public sector undertakings. By settlements entered into on various dates in 1974 between the managements and the workmen of these five undertakings except I.T.I., the minimum wage of

the lowest category of workmen was fixed at Rs. 300/- consisting of basic pay of Rs. 200/- + Dearness Allowance of Rs. 100/- which was linked with Local Consumer Price Index. The minimum wage in I.T.I. was also fixed at Rs. 300/-. As dearness allowance was linked with All India Consumer Price Index, on the basis of the Index prevailing as on 1,12.1973, the Dearness Allowance payable on the basic wage of Rs. 200/- came to Rs. 91/- and, hence in order to bring uniformity in the minimum wage, the employees of the I.T.I. were paid City Compensatory Allowance (hereinafter referred to as 'C.C.A.') of Rs. 9/- at 4 1/2 % of the basic pay. The settlements in these five undertakings were to be in force till 31.12.1976.

In BHEL, with whom parity was being claimed by the workmen of these five industries, an agreement dated 17/18.9.73 had been entered into whereby the minimum wage was fixed at Rs. 258.70/- comprising of basic pay of Rs, 200/- and Dearness Allowance of Rs. 58/- at the All India Consumer Price Index of 200 points for industrial workers with 1960 base. A revision was effected by agreement dated 17/18.1.1974 and the minimum wage of the workers of BHEL was fixed at Rs. 300/-. This minimum wage, and the wage structure constructed on this basis, came into force with effect from 1.9.1973 and was to be in force for a period of four years. This agreement expired at the end of August 1977 and negotiations for the review and revision of the same w.e.f. 1.9.1977 were commenced between the management and the workers in March, 1978. A final agreement between the management and the workers was reached on 8/9-1-1980. By this agreement, the wages as on 1.1-1978 for an unskilled employee in BHEL at the lowest level as fixed at Rs. 500/- per month at All India Consumer Price Index of 327 points. This agreement was to be effective from 1.1.1978 and was implemented in April, 1980 .

The 1974 settlements between the managements of B.E.L., I.T.I., H.A.L., and B.E.M.L. expired on 31.12.1976 and hence the workmen unions submitted charters of demands in early part of 1977. Conciliation proceedings were held between the managements of five public sector undertakings and their workmen and amicable settlements were arrived at between the parties on 25.5.1978. Term number 1 of these settlements was uniform and is as follows:

> "The Union agrees to accept the offer of the management with regard to pay scales, quantum of Dearness Allowance and Fitment benefits and method of fixation of pay in the revised pay scales as detailed in Annexure-1. This, however is without prejudice to the Union's right to take up the issues of revision of minimum wages and the enhancement of the rate of neutralisation of Dearness Allowance beyond Rs. 1.30 per point with the Government of India and if the Government of India agrees to the improvement in the minimum wages or the Dearness Allowance neutralisation rate the management agrees to make necessary modification to the minimum wages and Dearness Allowance neutralisation rata and consequential adjustment in the wage structure in consultation with the Unions."

The said settlements dated 25.5.1978 did not settle all the demands of the workmen. Conciliation proceedings continued which, therefore, resulted in different memorandum of settlements which were entered into in case of H.A.L. on 30.8.1978, in B.E.M.L. on 31.8.1978, in I.T.I. on 1.9.1978, in H.M.T. on 2.9.1978 and in B.E.L. on 3.9.1978.

These settlements contained different, though somewhat similar, terms with regard to revision of wages. In the settlement of B.E.L., term Nos. 1.0 and 1.1. were as follows:

> "1.0 This agreement is without prejudice to the Union's right to take up the issues of revision of minimum wages and the enhancement of the rate of neutralisation of Dearness Allowance at Rs. 1.30 per point rise/fall in the local CPI, with the Government and if the Government of India agrees to improve the minimum wage or the neutralisation rate beyond Rs. 1.30 per point, the Management agrees to make necessary modifications to the minimum wage, D.A. neutralisation rate and consequential adjustments in the wage structure in consultation with the Unions.
>
> 1.1 If the minimum wages, comprising of pay and Dearness Allowance, or if the rate of neutralisation of Dearness Allowance is altered to a higher rate than agreed to in this settlement in any other Engineering Central Public Sector Undertaking such as BHEL, H.M.T. etc., the Management agrees to make necessary modifications in the relevant clauses and consequential adjustments, in consultation with the Unions."

Similar terms were incorporated in the settlements in the cases of B.E.M.L. and H.A.L.. In the cases of I.T.I. and H.M.T., however, there was no term similar to 1.0 or 1.1 of the B.E.L. settlement but the above- mentioned term 1 of the settlement dated 25.5.78 was reiterated in the preamble of their settlements. At the time when these settlements took place in 1978, negotiations were taking place between the managements and the workers of BHEL which had not resulted in a final settlement. It is for this reason that in the aforesaid clause 1.1 reference was made to the settlement which might take place between the management and the workers of BHEL and which could result in certain modifications being made in the relevant clauses of the settlement.

After the settlement was arrived at between the management and the workers of BHEL on 8/9.1.80 which had resulted in the revision of wage at the lowest level of an unskilled employee to Rs. 500/- P.M. w.e.f. 1.9.78, the unions representing the workmen in the five Bangalore based public sector undertakins raised the question of revision of minimum wage in these industries as per the minimum wage as settled in BHEL. A joint action forum (hereinafter referred to as 'JAF') of the unions of five public sector undertakings at Bangalore and Kolar Gold Fields (which was a unit of BHEL) was formed. On 12.9.1980, this JAF formulated a common proposal for submission to the management and accordingly, the negotiating unions submitted common demands to the respective undertakings in the matter of revision of wages. These demands primarily related to the claim for addition of Rs. 30 to the existing scales of pay.

The aforesaid demands received no response whereupon the negotiating unions gave notices to the respective managements of their decision to go on indefinite strike any day after 10.12.1980. Conciliation proceedings between the managements and the unions then commenced and the strike was postponed to 26.12.1980 on which date the workmen of all the five undertakings struck work after they rejected an offer which had been made by the managements just before the commencement of the strike. After the commencement of strike, conciliation proceedings again started on 27.12.1980. On 5.2.1981, when no agreement could be arrived at, the conciliation officer

submitted his failure report.

The strike in the H.M.T. watch factory was called off on 6.3.1981 and thereafter the J.A.F. took a general decision on 12.3.1981 to withdraw the strike. The strike was, accordingly, withdrawn on 14/15/16.3.1981 and the workers resumed work on subsequent dates. No negotiations for settlement of the demands commenced and thereupon, a decision was taken by J.A.F. to laun h an indefinite hunger strike which commenced on 29.4.1981 and continued till 10.5.1981. The managements of B.E.L., B.E.M.L., I.T.I. and H.A.L. declared a lock out in all their units located at Bangalore w.e.f. 6.5.1981 on the ground that the strike had in fact not been withdrawn and that the workers Continued the strike and they also carried out violent activities inside the factory. Lock out was also declared at Kolar Gold Fields for the same reason W.e.f. 8.5.1981. Thereafter, fresh conciliation proceedings were commenced and the lock out was lifted w.e.f 2/3.6.81 and a settlement dated 9.6.1981 was arrived at between the managements and the unions. The terms of settlement in the cases of all the five Bangalore based public sector undertakings were identically worded and these terms of settlement were as under:

> (i) The wage settlements dated 3rd and 4th September, 1978 which are to expire of 30.6.1981 are extended upto 31.12.1982.
>
> (ii) The workmen on the rolls of the company as on the date of this settlement will be paid a lump sum of Rs. 700/- (Rupees Seven Hundred only).
>
> (iii) With effect from 1.1.1981, for the period they are entitled to wages, they would also be paid an ad-hoc allowance of Rs. 25/- per month. This amount will count as pay for all purposes except for pay fixation.
>
> (iv All other terms and conditions relating to pay, allowances and other monetary benefits in terms of the settlements dated 3rd September and 4th September, 1978 will continue for the extended period of the settlement.
>
> (v) The Union assures the Management that they will assist in the maintenance of discipline, improving productivity and ensuring smooth production in the factory."

Even after the aforesaid settlement dated 9.6.1981, the workmen continued to press for wage parity of the minimum wage with BHEL w.e.f. 1.1.1978 on the ground that the settlement of 9.6.1981 did not settle the demands made by the unions on 12.9.1980. On writ Petitions being filed by the unions against B.E.L., I.T.I., B.A.L and B.E.M.L., the Karnataka High Court vide its decision dated 9.8.1982 directed the Government of Karnataka to make a reference of the industrial dispute to the appropriate tribunal under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). This reference was accordingly, made to the State Industrial Tribunal by order dated 23.4.1983. Two questions were referred to the said Tribunal; one was in respect of parity with employees of the BHEL and the second was about the illegality of strike and the lock out. It appears that the Governments or West Bengal and Maharashtra had also made similar references to the respective State Tribunals. Faced with this situation, where references had been made to the

tribunals in three different states, the managements approached the Central Government and thereupon reference was made to the National Industrial Tribunal by the Central Government on 10/30.5.1984. To this reference the unions of five Bangalore based public sector undertakings, which were situated outside Bangalore. were not made parties and a writ petition was filed in the Karnataka High Court, which by order dated 20.2.1985, directed the Central Government to consider the question of including the State unions in the said reference. Accordingly, by order dated 3.5.1985 reference in respect of all the units, all regional and sales offices of five undertakings was mads. The terms of the reference were as follows:

> "Are the workmen justified in demanding revision of wages bringing their wages on par with BHEL in view of the relevant clauses in the 1973 settlement?
>
> 2. If so, what should be the quantum and the period for which such quantum is to be paid in view of the BHEL settlement subsisting till the end of August, 1982?
>
> 3. Are the workmen of Hindustan Machine Tools Ltd., Bangalore, (ii) Bharat Earth Movers Ltd., Bangalore and Kolar Gold Fields,
>
> (iii) Indian Telephone Industries, Bangalore
>
> (iv) Bharat Electronics Ltd., Bangalore and
>
> (v) Hindustan Aeronautics Ltd., Bangalore justified in going on strike w.e.f. 26.12 1980? If so, to what relief are the workmen entitled?
>
> 4. Are the managements of (i) Hindustan Machine Tools Ltd., Bangalore; (ii) Bharat Earth Movers Ltd., Bangalore and Kolar Gold Fields, (iii) Indian Telephone Industries Bangalore, (iv) Bharat Electronics Ltd., Bangalore and (v) Hindustan Aeronautics Ltd., Bangalore justified in declaring lock outs of their establishments with effect from 8/9.5.81 to 4.6.1981 at Kolar Gold Fields and 7.5.1981 to 2/3.6.1981 at Bangalore? If not, are the workmen entitled to wages for the lock out period or to any other relief?"

In the common statement of claim filed by the unions, it was contended that the workmen were justified in demanding that wages and wage structure be revised so as to bring the minimum wages on par with that obtaining in BHEL. It was a contention of the unions that the relevant clause in 1978 settlement gave liberty to the workmen to raise the question of wage revision as and when there was a final settlement in BHEL or as and when the Government of India communicated a change of attitute in the matter of wage fixation. The unions contended that in view of the settlement dated 8/9.1.1980 in BHEL, the relative difference in the minimum wage of the unskilled workmen in BHEL and the workmen in the units of H.A.L., B.E.L., B.E.M.L., and at Kolar Gold Fields was as follows:

	BHEL	BEL	BEML	HAL
Basic wage	Rs. 335.00		Rs. 305.00	

Dearness Allowance	Rs. 165.00	Rs. 125.00
House Rent Allowance	Rs. 39.00	Rs. 35.00
City Compensa-tory Allowance	Rs. 15.60	Rs. -

Rs. 554.60 Rs. 465.00

In addition in BHEL settlement there was provision for giving one more increment in revised scale to 311 workmen on the roll of the company on the date of the settlement.

With regard to quantum of increase of wages, the unions' claim was as follows:

> "1. The existing scale of pay should be restructured by adding Rs. 30.00 at the minimum and at all stages in each scales.
>
> 2.(a) The irreduciable minimum D.A. for KGF as on 1.9.1978 should be revised to Rs. 133 as against Rs. 128/-.
>
> (b) For the purpose of computation of variable D.A. All India Consumer Price Index figures should be adopted instead of local consumer price index.
>
> 3. For the existing employees, basic pay should be fixed in the following manne:
>
> (a) Add Rs. 30.00
>
> (b) Add one increament.
>
> (c) Add one more increament in lieu of 'next higher state' (to avoid anomalies'. and to provide for consequential adjustments benefits.
>
> 4. City Compensatory Allowance should be paid at the rate of 6% of the basic wages.
>
> 5. The fitment benefit which is not extented to the employees joining after the date of agreement should be extended to them"

The managements in their reply refuted the said demands. The main contention, in this regard, was that when the demand had been raised for revision of pay after the settlement in BHEL had been arrived at, then the disputes had been settled with the payment of ad-hoc amount of Rs. 700/- and an additional ad-hoc payment of Rs. 25/- p.m. from 1.1.1981 and, therefore, the question of wage parity with BHEL did not survive any longer. It was also contended that the strike of the workmen was unjustified and illegal and, therefore, the workmen were not entitled to any wages during the

strike period. The further contention on behalf of the managements was that even after the strike had been called off, the workers had resorted to various acts of intimidations go-slow, beating up of the willing workers who had attended factory during the strike period and the workmen also resorted to other forms of indiscipline including destroying of company property thereby making it impossible to run the factory under normal conditions. In substance the strike conditions were continued from inside the factory which culminated in very serious violent activities which led to the declaration of lock-out. The said lock-out, it was submitted, was justified and legal and, therefore, the workers were not entitled to wages for the period during which the lock-out subsisted.

The Tribunal gave its award on 10.11.1989. While it did not separately deal with the issues which had been framed, it considered the contentions of the rival parties. In brief, the conclusions arrived at by the Tribunal were as follows:

> (a) The scope of reference in respect of parity with BHEL was only with regard to minimum wage payable to the unskilled workmen of the lowest category and, there was no reference for revising the pay- scales during the operation of the earlier settlements.
>
> (b) The relevant clause of the settlement of 1978 had given a right to the employees to ask for parity with BHEL in respect of minimum wage for the lowest category and, therefore, there was no reason why there should not be any parity during the period covered by the settlement of 1978.
>
> (c) The workmen were entitled to the minimum wage of Rs. 500/- p.m. w.e.f. 1.9.1978.
>
> (d) The settlement dated 15.6.1981 did not operate at par to the present reference on the question of parity with BHEL because the settlement dated 15.6.1981, although signed in the course of conciliation proceedings under Section 12(3) of the Industrial Disputes Act, 1947, was without prejudice to the contentions of the employees to give parity in respect of minimum wage for the lowest category of BHEL. By the settlement of 15.6.1981, only an interim arrangement had been arrived at and the payments were thereunder described by the Tribunal as ad-hoc payments, could not be adjusted towards the minimum wage of Rs. 500/- p.m.
>
> (e) Although, the strike commenced by the employees in all the five Bangalore Based public sector undertakings were illegal but the Tribunal held that this strike was justified as the Union of India did not agree to the demand of the employees with parity in respect of minimum wage of lowest category with BHEL.
>
> (f) The lock out declared by the managements of the companies, except in the case of HMT where no lock was declared, was justified.

(g) The employees of the companies at Bangalore should be paid 35% of the wages for the strike and lock- out periods.

The aforesaid Award of the Tribunal has been challenged by the managements of the five undertakings and the unions. The undertakings filed special leave petitions impugning that part of the decision of the Tribunal which had awarded a minimum wage of Rs. 500/- p.m. and had also not allowed the adjustment of Rs. 25/- p.m. even though the minimum wage was fixed at Rs. 530/- p.m. Further more, the challenge was also to the award of 35% of the wages to the workmen during the strike and lock out periods.

Special Leave was granted by this Court on 2.4.1990 limited to the three questions which were;

1) Payment of 35% wages for the period of strike;

2) Payment for the period of lock out; and

3) set-off of Rs. 25/- p.m. claimed by the management, which was disallowed by the Tribunal.

The grievance of the workmen, which led to the filing of these appeals by special leave, was on three counts:

i) That there had been inadequate increase of wages at higher grades;

ii) The Tribunal had ordered discontinuance of C.C.A with regard to the employees of Indian Telephone Industry;

iii) 100% wages for strike and lock-cut period should have been awarded.

It was contended by Mr. Narayan B. Shetye, learned counsel on behalf of the managements, that the Tribunal having come to the conclusion that the strike was illegal, could not have awarded any wages in respect of the strike period. Similarly, as the Tribunal had held that the lock out was justified, it then could not have awarded 35% of the wages for this period to the workmen. Mr. Jitendra Sharma, learned counsel for respondents, however contended that the strike was not illegal and in any event, as the said strike had been called off, no lock out could have been declared. In the alternative, it was submitted that for the period of lock out, which should have been declared to be illegal, the workmen were entitled to full wages.

On the basis of the evidence which was led before the Tribunal it held, as already noted, that the lock-out was justified because the demand of the workmen, which had been raised in terms of the settlement of 1978. had not been agreed to by the Government. The strike was, however, held to be illegal because I.T.I., H.A.L. and H.M.T. were declared to be public utility services and no notice as contemplated by Section 22(a) of the Act had been given. After taking note of the fact that conciliation proceedings between the managments and the workmen were going on when the strike

commenced, the Tribunal concluded as follows;

> "The strike in the public utility services and in other undertakings was illegal because it was commenced during the pendency of the conciliation proceedings before the Conciliation Officer. As mentioned above, at about the same time when the strike notices were given conciliation proceedings in respect of the demands of the workmen were commenced and had not come to an end when the strike was actually commenced on 26.12.1980. Admittedly, by that time the conciliation officer had not made any failure report. The strike in the public utility services viz.
>
> ITI, HAL and HMT Hyderabad was thus in contravention of clause (d) of sub-section (1) of Section 22, while the strike in the other undertakings contravened sub- section (a) of Section 23 of the Industrial Disputes Act, 1947. There is also substance in the contention urged on behalf of the managements that the strike was illegal also because it was in contravenetion of sub-section (c) of Section 23. The strike was not only for breach and non- implementation of some of the clauses in the 1978 settlements but it was in respect of all the demands made by the workmen by the notice hated 12.3.1980 and some of these demands were in respect of matters covered by the 1978 settlements which were in force".

Mr. Jitendra Sharma, learned counsel for the workmen, has not been able to persuade us to hold that the aforesaid conclusion arrived at by the Tribuanl with regard to illegality of the strike is in any way incorrect. It is quite obvious from the facts on record that the workmen had resorted to illegal strike. Without going into the question as to whether the strike was justified or not, and even assuming that the Tribunal was right in coming to the conclusion that the workmen were justified in going on strike, the question as to whether the workmen would be entitled to get any wages during the period of illegal strike is no longer res integra.

A Constitution Bench of this Court in Syndicate Bank Vs. K. Umesh Nayak, (1994) 5 SCC 572 has held that the workmen would be entitled to wages for the strike period if the strike was both legal and justified. In other words, if the strike was only legal and not justified or if the strike was illegal and justified, the workers were not entitled to wages for the strike period. It was observed that "Whether the strike was legal or illegal and justified or unjustified, were issues which fell for decision within the exclusive domain of the industrial adjudicator under the Act and it was not primarily for the High Court to give its findings on the said issues. The said issues had to be decided by taking the necessary evidence on the subject".

In view of the aforesaid decision and inasmuch as the strike in the present case in all the five undertakings at Bangalore has been held to be illegal, therefore, no wages for the strike period could have been awarded in favour of the workers.

As regards lock out is concerned, even if it is assumed that here was non-compliance with the provisions of Section 22 of the Act at the time when the lock out was declared, the conclusion of the Tribunal that the lock out, in the instant case, was legal is not incorrect. From the facts which have

been stated hereinabove, and as found by the Tribunal, it is clear that the provisions of Section 24(3) of the Act are attracted to the present case. The workmen had gone on illegal strike and even when the strike was officially called off, they continued to disrupt the working of the factories while being within the factory premises. The Tribunal held that:

> "The managements have placed on record sufficient evidence to substantiate their contentions that even though the strike was formally withdrawn and the workmen reported for duty, the workmen continued their agitational disruptive and violent activities from within and thus in fact continued their illegal strike".

In view of this, the Tribunal rightly held that the declaration of lock out must, therefore, be regarded as being in consequence of illegal strike and, therefore, the lock out would not be deemed to be illegal even if the provisions of Section 22 of the Act were not complied with by the managements. This being so and applying the ratio of the Constitution Bench decision in SYNDICATE BANK (Supra), the workmen would not be entitled to any wages in respect of the period of lock out. The award of the Tribuanl to this extent is, therefore, liable to be set-aside.

It was submitted by Mr. Shetye that the Tribunal having increased the minimum wage to Rs. 500/- it ought not to have directed that the payment of Rs. 25/- p.m. may not be set- off. It was contended that by increasing the wages to Rs. 500/- p.m. and also allowing the workmen to retain Rs. 25/- p.m. w.e.f. 1.9.1978, the effect would be that the wages of these workmen would be note than the wages of the lowest rank of workmen in BHEL. As this contention relates to the construction and effect of the settlement dated 9.6.1981, it would be appropriate, at this stage, to also consider the contention of Mr. Sharma on behalf of the workmen to the effect that the Tribunal ought to have revised the lowest scale and bring it at par with BHEL's scale of pay and thereafter, it should have revised the higher scales as well. This submission was based on the premise that the settlement of 1978 allowed the workmen to ask for revision of pay scale consequent on a settlement taking place in the case of any other public sector undertaking such as BHEL. When the settlement in BHEL had taken place in January, 1980, the workmen of these five public sector undertakings were entitled to contend and demand that their pay-structure should be revised so as to bring them at par with the revised scales of pay which were in existence in BHEL and that the settlement dated 9.6.1981 was without prejudice to this right and could not preclude the workers from demanding the said parity.

In the case of HMT and ITI, the clause relating to revision of pay was the one which was incorporated in the settlement dated 25.5.1978. Term No. 1 in the agreement dated 25.5.1978 does not postulate revision of pay scales in the event of higher wages being paid to the employees of BHEL or employees of any other public sector undertaking. This clause gives to union only a right to take up the issue regarding the minimum wages and enhancement of rate of neutralisation of dearness allowance with the Government of India if the Government agreed to the improvement in the minimum wages or the dearness allowance neutralisation rate. At best this clause only gives a right to the union to make a reference to the Government of India for revision of minimum wages but does not give any vested right of enhancement of wages or pay scales in the event of their being a revision in any other public sector undertaking. In the case of three other public sector undertakings namely; BEL BEML and HAL an additional clause in the settlement was inserted . In BAL the clause

was 1.1. In BEML, the clause was as follows:

> "If any comparable engineering industry in the Central Public Sector such as BHEL etc., revises the minimum pay and D.A. as well as the D.A. neutralisation rate beyond what is agreed to in this settlement, the issues will be negotiated bilaterally and consequential adjustment made in the wage structure".
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> In the case of HAL, the clause was as follows:
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> "If a higher minimum wage or higher rate of neutralisation of CPI is agreed to in any comparable engineering industry such as BHEL in the Central Public Sector, the management agrees to review the corresponding provisions in this settlement and make consequent adjustment in the wage structure in consultation with the Union".

The cause in BEML contemplated bilateral negotiations in case of revision taking place in the minimum pay of BHEL. In clause 1.1 of BEL, the management agreed to make necessary modifications in consultation with the union and in the case of HAL the management agreed to review the provisions of the settlement consequent on a higher rate being paid in BHEL. The latter three settlements no doubt make a reference to a revision of pay scales in case of revision of pay in BHEL but no such reference is contained in the settlements of HMT and ITI. The unions of these five public sector undertakings were taking a joint action. They raised the demand for the revision of wages after the settlement of BHEL had arrived at in June, 1980. The demands were raised by the joint action front on 12.9.1980 and the same were in the following terms:

> "1. The existing scales of pay should be restructured by adding Rs. 30/- at the minimum and at all stages in each case.
>
> 2. The irreducible minimum D.A. for Bangalore as on 1.9.1978 should be revised to Rs. 130/- as against Rs. 125/-.
>
> 3. For the existing employees, basic pay should be refixed in the following manner:
>
> (a) Add Rs. 30/-
>
> (b) Add one increment.
>
> (c) Add one more increment in lieu of next higher stage (to avoid anomalies) and to provide for consequential adjustment benefits.
>
> 4. City Compensatory Allowance should be paid at the rate of 6% (in all places).
>
> 5. The Fitment Benefit which is not extended to the employees joining after the date of agreement should be extended to them.

6. The arrears on account of the above should be worked and paid with effect from 1.1.1979".

The settlement of 9.6.1981 specifically dealt with the claim of the revision of scale demanded by the workers. The demand was for a revision at the rate of Rs. 30/- p.m. w.e.f. 1.9.1978. In view of this, in the settlement dated 9.6.1981 it was agreed between the workmen and the managements that all the workers on the pay rolls of the companies as on 9.6.1781 would be paid a lump sum of Rs. 700/-. This clause contained a benefit which was more than what the unions were asking for. The demand of the unions was for payment at the rate of Rs. 30/- w.e.f. 1.1.1979 which would have meant that the employees who had worked for a longer period would have got more than those who had joined the service later. Clause (ii) of the settlement dated 9.6.1981 gave a lump sum payment of Rs. 700/- to all the employees irrespective of the length of the service who were on the rolls of the Companies as on 9.6.1981. Calculated at the rate of Rs. 25/- p.m., this sum of Rs. 700/- would amount to payment in respect of 28 months i.e. w.e.f. 1.9.1978 to 31.12.1980. From 1.1.1981, the workmen were given an ad-hoc allowance of Rs. 25/- p.m. It is thus evident that the claim which was raised by the unions in their letter of demand dated 12.9.1980 relating to revision of pay scale stood concluded by the settlement of 9.6.1981. The demand of the union was more or less conceded inasmuch as Rs. 25/- p.m. were agreed to be paid w.e.f. 1.1.1981 instead of an addtional Rs. 30/- p.m..

It was submitted by Shri Sharma that the terms of the settlement dated 9.6.1981 specifically mentioned that this was "without prejudice to the contentions of either party" an expression which is used in the preamble of the said settlement. This settlement dated 9.6.1981 in our opinion has to be read as a whole. It has to be read in the background of the demand which was raised by the unions in their letter dated 12.9.1980. The main claim of additional amount of Rs. 30 P.M. at the minimum and at all stages in each case, as demanded by the workmen clearly stood settled with a lump sum payment of Rs. 700/- and ad-hoc allowance of Rs. 25/ w.e.f. 1.1.1981 as agreed to in the settlement of 9.6.1981. The use of words "without prejudice to the contentions of either party" can refer to only such other points or aspects which were not specifically covered by the terms of settlement which were arrived at on 9.6.1981.

The settlement of 1978 was with regard to pay scales, allowance and other monetary benefits. The settlement of 9.6.1981 brought about a change whereby a sum of Rs. 95/- was given w.e.f. 1.1.1981 in addition to lump sum payment of Rs. 700/-. Clause (iv) of the settlement dated 9.6.1981 stated in no uncertain terms that all other conditions relating to pay allowances and other monetary benefits were to "continue for the extended period of the settlement" i.e. up to 31.12.1982. This would clearly show that the original settlement of 1973 with regard to pay-scales as well as allowances and other monetary benefits were to continue upto 31.12.1982 subject to the increase of Rs. 25/- p.m. plus lump sum payment of Rs. 700/-. This settlement of 9.6.1981 was arrived at during the conciliation proceedings and, therefore, was binding on the parties under Section 18(3) read with Section 19(2) of the Act. The term of settlement dated 9.6.1981 did not contemplate that the payment of Rs. 25/- p.m. w.e.f. 1.1.198 as liable to be adjusted in any manner. It is no doubt true that the Tribunal by the impugned award has increased the minimum, wage to Rs. 50 p.m. because the Tribunal came to the conclusion that the settlement dated 9.6.1981 did not preclude the workmen from asking for a revision in the minimum wage consequent on the minimum wage consequent on the settlement

having been arrived at in the case of BHEL. This conclusion of the Tribunal, in our opinion, was incorrect but as leave had not been granted to the management on this point, the decision of the Tribunal reviewing the minimum wage at the lowest rank of Rs.500/- p.m. as contemplated by the settlement, is payable to all the workers in different scales of pay and the settlement does not contemplate the said amount being adjusted in any manner. This being so the contention of Mr. Shetye for adjustment of this amount cannot be accepted.

The last question which remains for consideration is with regard to city compensatory allowance to the workmen of I.T.I.. It is not in dispute that prior to the impugned award, C.C.A. @4% was being paid to the workmen of I.T.I.. By the impugned award the Tribunal increased the minimum wage to Rs. 500/- p.m, in respect of BEL, BEML, H.A.L and H.M.T.. The break up of this amount was basic pay of Rs. 335/- + irreducible D.A. of Rs- 129.90 + variable D.A. of Rs. 35.10, It was stated in the Award that in respect of these four companies, the variable D.A. shall be at the local consumer price index prevailing as on 1.19.1978 at different units, with quarterly adjustments at the rate or 1.39 per point or rise or fall in the local indices. It is not disputed that in the existing wage structure, city compensatory allowance was not being paid to the workmen of above-mentioned four companies because the local consumer price index used to be higher than the All India Consumer Price Index. In view of this difference in the price indices, C.C.A. was being paid to the employees of I.T.I. whose rise and fall in dearness allowance was controlled by the All India Consumer Price Index. The Tribunal while directing that city compensatory allowance will not be paid to the I.T.I. employees because it is not paid to the employees of other public sector undertakings at Bangalore, overlooked the fact that the local consumer price index was admittedly always higher than All India Consumer Price Index. It is for this reason that the city compensatory allowance was being paid to the employees of I.T.I. Mr. Shetye frankly conceded that if city compensatory allowance is not paid to the employees of I.T.I. then over a period of time, the salary of workmen of I.T.I. would be less than be salary of the workmen of other companies because the variable dearness allowance of employees of B.E.L, B.E.M.L and H.M.T. will increase at a higher rate than the variable dearness allowance of I.T.I. employees which is linked with the rise or fall in All India Consumer Price Index. In our opinion, therefore, the direction of the Tribunal dispensing with the payment of city compensatory allowance to I.T.I. employees was uncalled for.

From the aforesaid discussion, we conclude that the workmen would not be entitled to receive any wages during the period of illegal strike and lock out; the payment of Rs. 25/- as a result of settlement dated 9.6.1981 is not adjustable and the direction of the Tribunal not to allow demand of city compensatory allowance to the workmen of I.T.I. was not correct. The Award of the Tribunal directing payment of 35% of the wages during the period of illegal strike and lock out and the decision with regard to non- payment of city compensatory allowance to I.T.I. is accordingly, modified to that extent. The appeals are disposed of in the aforesaid terms. Parties to bear their own costs.