# Karnataka State Road Transport ... vs Ksrtc Staff And Workers' Federation And ... on 18 February, 1999

## Equivalent citations: (1999)ILLJ849SC, (1999)2SCC687A

## Bench: S.B. Majmudar, U.C. Banerjee

JUDGMENT

S.B. Majumdar, J.

1. Leave granted in these special leave petitions feeing S.L.P. (C) Nos. 19982-19983 of 1997 and S.L.P. (C) Nos. 22370-2237l of 1997. By consent of learned Counsel of the contesting parties, the appeals were heard finally and are being disposed of by this common judgment. The Management of Karnataka State Road Transport Corporation has filed the first two appeals arising out of Special Leave Petition Nos. 19982 and 19983 of 1997 being aggrieved by the common judgment and order rendered by the Division Bench of the High Court of Karnataka in Writ Appeal Nos. 8635 and 8491 of 1996 while the other two appeals arising out of Special Leave Petition Nos. 22370 and 22371 of 1997 are filed by the State of Karnataka, also aggrieved by the afore said common judgment and order in the very same two writ appeals. The appellants have the common cause of complaint against the impugned judgment of the Division Bench, while the respondent-KSRTC Staff and Workers' Federation, which is the common respondent in all these appeals, is the only contesting respondent, being the original writ petitioner whose writ petition was allowed by the learned Single Judge of the High Court and which judgment came to be confirmed by the impugned judgment of the Division Bench. We shall refer to the appellant-Management of Karnataka State Road Transport Corporation, the original Respondent No. 1 in the writ petition. as the 'Corporation', the appellant State of Karnataka in other two appeals, being original Respondent No. 2 in the writ petition as the 'State', while the contesting Union, Respondent No. 1 in these appeals in writ petition is the 'Union' for the sake or convenience in the (sic)tter part of this judgment. The question involved (sic) these appeals is as to whether the order passed by the State on September 10, 1993 and the consequential order passed by the Corporation on September 21, 1993 were legal and valid. Both these orders came to be set aside by the learned Single Judge in the writ petition filed by the Union, and as noted above, the said order of the learned Single Judge came to be confirmed by the Division Bench in the impugned common judgment. The order dated September 10, 1993 of the State instructing the Corporation to withdraw the Pay Roll Check-off Facility given to the Union and the consequential order dated September 21, 1993 issued by the Corporation withdrawing this facility came to be challenged on various grounds in the writ petition which, as noted above, succeeded in the hierarchy of proceedings before the Karnataka High Court. The short question, therefore, which falls for our consideration is whether the impugned orders of the State and the consequential order issued by the

Corporation could be sustained in law?

2. In order to appreciate the rival contentions centering round the aforesaid controversy between the parties, it is necessary to note a few relevant facts leading to these proceedings.

INTRODUCTORY FACTS:

3. The Corporation is formed under Section 3 of the Road Transport Corporation Act, 1950 (for short the 'Corporation Act'), for providing efficient, economical and properly co-ordinated transport services to the travelling public and the KSRTC has framed Service Regulations by deriving powers under Section 45(2)(c) of the Corporation Act. At the relevant time the Union was the sole bargaining agent for the 'employees of the Corporation. On December 11, 1987 a referendum was held to choose the collective bargaining agent on behalf of the employees of the Corporation. The Union was elected as the recognised agent with 53% of the votes polled by way of Official Memorandum dated December 24, 1987. The Corporation thus granted recognition to the Union as sole bargaining agent. Consequent on choosing the Union as the collective bargaining agent, a Memorandum of Settlement under Section 18(1) read with Section 2(p) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'ID Act') was entered into by the Corporation and the Union on July 28, 1988. Under this settlement it was agreed between the parties that the Corporation shall deduct the subscription of the members of the Unions affiliated to the respondent Federation from their wages on obtaining individual authorisations. The said settlement was agreed to be followed till the recognition accorded to the Federation lasted or until both the parties terminated the terms by mutual consent earlier. This system was popularly known as Pay Roll Check off Facility. A Memorandum of Settlement regarding the wages payable to the employees was also entered on January 1, 1988 between the Corporation and the Union. The settlement was for a period of four years commencing from January 1, 1988 till December 31, 1991. As the recognition given to the Federation had come to an end, election had to be conducted again to choose the sole bargaining agent by way of referendum. The Union emerged successful as the sole bargaining agent and was chosen as such. The Corporation by its order dated July 16, 1992 accorded recognition to the Union as the sole bargaining agent as per the Memorandum. It is not in dispute between the parties that as four years' period expired with effect from July 16, 1996 a fresh referendum had to be held for finding out as to whether the Union still commanded majority membership of workmen so as to be re-designated as a recognised Union. But the said referendum has still not been held because of writ petitions pending in the High Court and the Stay granted therein, with which we are not concerned in the present proceedings.

4. During the time, admittedly, the Union was functioning as a recognized Union, it submitted a charter of demands on various disputed items concerning service conditions of the employees. Consequently, negotiations were held between the Corporation and the Union and on May 10, 1993 a Memorandum of Understanding was reached. The same was subject to approval by the Board of Directors and the State Government. The Board of Directors of the Corporation accepted the Memorandum and thereafter it was submitted to the Government for its approval. The State, by its order dated September 10, 1993, accorded approval to the Memorandum of Understanding suggesting certain alterations to the service conditions subject to other terms and conditions. One of

such conditions was that the Management of the Corporation would not take up the responsibility of collecting donations or monthly subscriptions from the employees on behalf of the recognised Federation or Union of employees. It was pursuant to the aforesaid Government Order that the Corporation issued a Notification dated September 21, 1993 withdrawing the Pay Roll Check off Facility. As noted earlier, the aforesaid G.O. issued by the State and the consequent Notification issued by the Corporation were brought in challenge in the writ petition by the Union. The said writ petition was filed on September 21, 1993. The learned Single Judge, who heard the writ petition having considered the rival contentions of the parties took the view that there was no occasion for the Government to issue such a direction under Section 34 of the Corporation Act on September 10, 1993. Hence, the consequential Notification issued by the Corporation could not survive. It was also held that the said Notification of the Corporation was violative of the provisions of Section 19(2) of the ID Act. By his order dated July 25, 1996, the learned Single Judge held that the settlement dated July 28, 1998 occupied the field as authoritative settlement under Section 18(1) of the ID act and was binding on the parties. It was also held that the exercise of power by the State under Section 34 was not proper. Consequently, the order of State dated September 10, 1993 and the subsequent Notification by the Corporation withdrawing Pay Roll Check off Facility on September 21, 1993 were held to be invalid. The writ petition was accordingly allowed. As noted earner, the aforesaid order of the learned Single Judge was made the subject matter of two separate appeals, one by the State and another by the Corporation and both these appeals were dismissed by the Division Bench by the impugned judgment and order and that is how the Corporation and the State are before us in these appeals on grant of Special Leave to appeal under Article 136 of the Constitution of India.

RIVAL CONTENTIONS:

5. Shri G.L. Sanghi, learned senior counsel appearing for the Corporation, vehemently contended that the settlement of July 28, 1988 could not survive after July 16, 1996 when the Union ceased to be a recognised Union of employees and till a new bargaining agent emerged by way of recognition, the respondent Union could not rely upon the terms of the earlier settlement of July 28, 1988. It was next contended that in any case the said settlement had ceased to operate and was validly terminated by the Corporation by the impugned Notification dated September 21, 1993 as the State had already directed the Corporation to withdraw the Pay Roll Check off Facility given to the Union by the earlier agreement dated July 28, 1988. It was alternatively contended that in any case the said earlier settlement dated July 28, 1988 ceased to operate also on the ground that subsequent to the said Notification, a second settlement was arrived at between the parties on the subject matter on September 8, 1994 and later on December 5, 1994 and even (hereafter in the light of the latter settlements between the parties on February 16, 1995, October 10, 1995 and December 27, 1995. Because of these settlements the parties agreed to get clearance and approval from the State on the question of continuance of Pay Roll Check-off Facility to be given to the members of the Union and as such approval was not forthcoming, the earlier right flowing from the Settlement of July 28, 1988 to the Union did not survive any further. The State did not approve the continuance of the said Pay Roll Check off facility to the respondent Union. Consequently, there remained no binding settlement between the parties or. the subject. Hence, the writ petition was required to be dismissed and was wrongly allowed by the learned Single Judge and the said decision was erroneously confirmed by the Division Bench of the High Court. It was also contended by Shri Sanghi that after 1996 the

Corporation itself got trifurcated into three independent statutory Corporations and hence also the earlier settlement or 1988 did not survive any further.

6. Shri S. Vijay Shankar, learned Advocate General appearing for the State of Karnataka, in support of the appeals of the State, contended that the learned Single Judge had patently erred in law in taking the view that under Section 34 of the Corporation Act, the State could not issue the impugned order dated September 10, 1993 and tot it was not the general order contemplated by the said Section. He further submitted, placing reliance on various provisions of the Corporation Act, that the State Government is the monitoring authority so far as the functioning of the Corporation is concerned and it could not be said that the State had no role to play in regulating the working of the Corporation or in issuing appropriate instructions to the Corporation on relevant points to be placed for consideration of the Corporation. He, therefore, contended that the Government Order dated September 10, 1993 could not have been found fault with by the High Court.

7. Shri M.C. Narsimhan, learned Counsel for the Union, on the other hand, submitted that once there is a binding settlement regarding the Pay Roll Check off Facility holding the field between the parties from July 28, 1988, till the said settlement was legally terminated as required by Section 19(2) of the ID Act, it remains binding on the Corporation. That whether the Corporation subsequently got trifurcated or not becomes irrelevant as even to the successors of the Corporation the settlement would be binding. It was next submitted that the Notification of the Corporation dated September 21, 1993 cannot be treated to be a notice as contemplated by Section 19(2) of the ID Act. Even assuming that it was such a notice, the binding effect of the settlement of 1988 would not come to an end automatically till a fresh settlement on the topic is substituted by negotiations between the parties, as was clearly laid down in the decision of three Judge Bench of this Court in The Life Insurance Corporation of India v. D.J. Bahadur and Ors. 1981-1-LU-l. It was then submitted that the Memorandum of Understanding dated May 10, 1993 was in connection with entirely different demands put forward by the Union for consideration of the Corporation. That it had nothing to do with the Pay Roll Check off Facility which was already governed by a binding Settlement of July 28, 1988. Consequently, there was no occasion for the State to pass the impugned order dated September 10, 1993 in connection with withdrawal of the said facility by the Corporation. It was also contended that in any case the said order could not be covered by Section 34 of the Corporation Act. That the State had no power to direct the Corporation to commit breach of statutory provisions of Section 19(2) of the ID Act. Nor could it issue any general directions under Section 34 in connection with those industrial matters which were already covered by binding settlements or awards under the ID Act. That such general directions, if any, could be issued by the State for consideration of the Corporation only on industrial matters which were not covered by any such binding agreements or awards under the ID Act and when the field was open for negotiations between the employees' Union and the Corporation wherein the parties could take independent decisions in the first instance without violating any of the provisions of the ID Act. It was, therefore, contended that both Government Order dated September 10, 1993 and Notification dated September 21, 1993 were rightly set aside by the learned Single Judge and that decision was rightly confirmed by the Division Bench of the High Court. It was also submitted that the Union had not ceased to be the sole bargaining agent, as upto July 16, 1996, it was already operating as a Union recognised by the Corporation itself and thereafter it was not the case of the Corporation that at any

time by fresh referendum it had lost the majority of the membership of the workers of the Corporation nor was it replaced by any other recognised Union. That the question of locus standi of the Union to maintain the proceedings was neither raised before the learned Single Judge when he passed the impugned judgment nor before the Division Bench which confirmed the decision of the learned Single Judge.

8. In the light of the aforesaid rival contentions, the following points arise for our determination:

> 1. Whether the Union has locus standi to maintain the writ petition as well as the present proceedings on behalf of the workmen;
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> 2. If it has, whether the Government Order dated September 10, 1993 was legal and valid and/or was called for;
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> 3. Whether the impugned Notification issued by the Corporation on September 21, 1993 was legal and valid; and
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> 4. What final order?

9. We shall deal with these points seriatim.

Point No. 1:

10. So far as the locus standi of the Union in the present proceedings is concerned, it must be kept in view that the Corporation itself by in order dated December 24, 1987 granted recognition to the Union as the sole bargaining agent for its members. It was noted by office memorandum of the Corporation dated December 24, 1987 that the Federation having secured 53.04% of the votes polled at the Corporation level in the referendum held on December 11, 1987, the Corporation was pleased to accord recognition to the respondent Federation as sole bargaining agent at the Corporation level. However, this was subject(sic) the conditions stipulated under Notification dated April 30, 1987 which prescribed four years' period from the date of such conferment of right of collective bargaining with the employer by the Union concerned. It is also not in dispute between the parties that even in the subsequent referendum, the respondent Federation/Union secured 61.07% of votes polled at the Corporation level and the Corporation by its Office Memorandum dated July 16, 1992 continued recognition to the Union as sole bargaining agent subject to the conditions stipulated in the earlier Notification dated December 3, 1991. It is, therefore, not in dispute between the parties that till July 16, 1996 respondent Federation/Union remained a recognised Union. We fail to appreciate how the said Union cannot challenge the Government Order dated September 10, 1993 and the Consequent Notification issued by the Corporation on September 21, 1993. On both these occasions the respondent Union was admittedly a recognised Union of the employees and had got the benefit of Pay Roll Check-off Facility under the settlement of July 28, 1988. It is also interesting to note that before the learned Single Judge only three questions; were posed for consideration in the light of the contentions of rival parties. They were as under

(i) Whether this petition under Article 226 of the Constitution of India is not maintainable in view of the question in controversy relates to the breach of the Settlement',

(ii) Whether the Government has lawful authority to interfere with the Settlement validly made between the petitioner and the Corporation by issuing directions under Section 34 of the Act?

(iii) Whether Annexure-A is a direction under Section 34 of the Act?

The question of locus standi of the writ petitioner-the respondent Union, was not even Drought in issue. But even that apart, in appeals filed by the State and the Corporation before the Division Bench which came to be decided by the impugned common judgment dated June ill, 1997, no such contention appears to have been canvassed. It is also pertinent to note that it is not the case of the Corporation that by any fresh referendum the respondent Federation has lost its recognition as a sole bargaining agent on account of its membership getting depleted and any other rival Union has emerged as a recognised Union having mustered sufficiently larger membership. Consequently, the first point for determination as canvassed for our consideration by the learned Counsel for the appellants is found to be totally devoid of any substance and stands rejected. To say the least, such objection appears to have been waived by both the appellants before the learned Single Judge as well as before the Division Bench and, therefore, also cannot be countenanced. This point for determination, therefore, is answered in affirmative in favour of the respondent Union and against the appellants.

Point No. 2:

11. That takes us to point No.2. So far as this point is concerned, it has to be kept in view that the Pay Roll Check off Facility was made available to the respondent-Union by a binding settlement between the parties dated July 28, 1988. This settlement was current when the Memorandum of Understanding dated May 10, 1993 came to be entered into between the respondent Union and the Corporation. The said Memorandum of Understanding dealt with various demands including revision of pay scales. They are listed at item Nos. 1 to 23. In none of these demands, there is any whisper about the then existing Pay Roll Check-off Facility covered by the settlement of July 28, 1988. Paragraph 24 of the Memorandum on which strong reliance was placed by learned senior counsel Shri Sanghi for Corporation, deserves to be noted in extenso. It is, therefore, extracted as under:

24 SAVINGS:

Benefits already granted under earlier Settlements excepting those covered under this Settlement, facilities continuing by way of conventions and or practices to be continued in respect of the employees who are in the services of the Corporation as on the date of signing of this Settlement.

An understanding has been reached on the above mentioned points in anticipation of approval of the Board of Directors and the State Government. However, the issue regarding free duty facility to R.Federation/R.Unions is left to the decision of the State Government.

The caption of paragraph 24 clearly indicates that it provides a saving clause. Meaning thereby, it seeks to continue the benefits and facilities which might have been available to the workmen and their Union under the earlier settlements. It is obvious that the demands for which Memorandum of Understanding was reached between the parties were pertaining to the workmen for whom they were raised by their Union and the benefits of the understanding about these demands were to be made available to the workmen concerned. It has to be kept in view that the earlier settlement of 1988 between the parties regarding facility of Pay Roll Check-off was not a benefit to the workmen but was a facility given to the Union to directly get its membership contribution from the member-workers' wages by their consent. This facility imposed no additional burden on the workmen nor gave any additional benefit to them but grant of this facility only resulted into an easy method made available to the Union to collect its subscription from its members through the intervention of the Corporation. To illustrate the point, if a member-employee was to get hundred rupees by way of monthly wages and if he agreed with the Corporation that out of hundred rupees payable to him, five rupees may be deducted at source and paid over to his Union for discharging his obligation to pay monthly membership fee, the Corporation would not suffer any additional financial burden thereby as it had the obligation to pay full hundred rupees by way of wages to the workmen having taken work from him for the month. Similarly, the workmen also would not get any benefit thereby as he had earned rupees hundred in full and on his own request five rupees were to go directly to the Union by way of membership fee which, otherwise, he would have been required to pay from his wages after receiving Rs. 100/-. Therefore, the scheme of Pay Roll Check-off conferred a facility to the Union of workmen without conferring any extra benefit to the workmen or imposing any greater financial burden on the Corporation. In the light of the aforesaid scheme, the Pay Roll Check-off Facility was made available to the respondent Union pursuant to the binding settlement of July 28, 1988 by way of a tripartite agreement amongst the Union, worker Member concerned and the Corporation. We have to see as to what is the scope and ambit of aforesaid Clause 24 of the Memorandum of Understanding dated May 10, 1993 vis-a-vis this scheme. The first part of Clause 24 deals with benefits already granted under earlier; settlements but excepting those covered by the settlement at hand, namely, the Memorandum of Understanding. These benefits were to be continued for the employees who were in the service of the Corporation on the date of signing of the settlement. They were obviously benefits already made available to the workmen under any earlier settlement. Pay Roll Check-off facility, as noted earlier, cannot be considered to be a benefit available to the workmen. At the most, it will be a facility to the Union to get an ensured method of securing membership fees from its members on regular basis. The first part of paragraph 24

states that facilities continuing by way of conventions and or practices will be continued. It is obvious that such facilities may include any of the then available facilities to the Union or even to workmen. However, facility given to the Union of getting benefit of the scheme of Pay Roll Check- off is obviously not a facility available to workmen. It is available only to the Union, that too under a binding settlement and not by way of convention or practices. Such a facility will not be covered by latter part of first paragraph of Clause 24 as the facilities contemplated therein refer to only those which were continuing by way of conventions and or practice. Hence, this facility was not contemplated even by the first part of paragraph 24 of the Memorandum of Understanding. If that is so, the second part of paragraph 24 also would be out of picture so far as Pay Roll Check-off facility available to respondent Union under the agreement of July 28, 1988 was concerned. The second part of paragraph 24 provides for an understanding which had been reached on the earlier mentioned points in anticipation of approval of the Board of Directors or me State Government. It is difficult to appreciate how it could be said that any understanding was reached on Pay Roll Check-off Facility covered by any of the points mentioned in the Memorandum of Understanding. Understanding reached on the points mentioned in second part of paragraph 24 naturally referred to the points mentioned from paragraphs 1 to23 of the Memorandum of Understanding, It cannot refer to the saving clause mentioned in the very same paragraph 24. We, therefore, cannot accept the contention of learned senior counsel Shri Sanghi that the phrase "the above mentioned points" as referred to in second part of paragraph 24 of the Memorandum of Understanding would also cover the first part of paragraph 24. But even that apart, assuming that what Shri Sanghi contends is right, even then the first part of paragraph 24 does not cover any understanding regarding the Pay Rot Check-off Facility given to the Union by settlement as seen earlier. Thus, neither first part of paragraph 24 nor its second part can apply to the question of Pay Roll Check-off facility. For all these reasons, therefore, reliance placed on paragraph 24 of the Memorandum of Understanding dated May 10, 1993 by Shri Sanghi, learned senior counsel for the Corporation, for subjecting the earlier granted Pay Roll Check-off facility to the future approval of the State is not of any avail.

12. We, accordingly hold that paragraph 24 of the Memorandum of Understanding, did not touch or cover in its sweep the Pay Roll Check-off Facility available to the respondent Union as per the binding settlement of July 28, 1988. If that is so, there was no occasion for the State in the light of the aforesaid Memorandum of Understanding to pass the impugned Government Order dated September 10, 1993, on a wrong assumption that it was called upon to make any observations or convey its decision whether it approved or did not approve the grant of Pay Roll Check-off Facility to the respondent Union. The proceedings of the Government of Karnataka which are at page MO of Vol. I of the paper book clearly mentioned as its subject, List of demands submitted by KSRTC Staff & Workers Federation and also referred to the D.O. Letter dated July 13, 1993 from the Chairman and Managing Director of the Corporation. The Preamble of the impugned G.O. issued by the State recites that the Memorandum of Understanding arrived at between the Chairman and Managing Director of the Corporation, and the Management of Corporation and KSRTC Staff & Workers

Federation had been signed on May 10, 1993 in: anticipation of approval of the Board of Directors of the Corporation and the Government. It is in that light that the scope of the Government Order dated September 10, 1993 is to be appreciated. It states that after examining in detail the proposal of the Corporation, the Government had accorded approval to the understanding between the parties with modifications and subject to the conditions mentioned in the said order. It becomes at once clear that even the State of Karnataka thought that it was called upon to consider whether to approve or not to approve the settlement oh various demands as proposed lit the Memorandum of Understanding dated May 10, 1993. Twenty two such items are listed in the Government Order dated September 10, 1993. Nowhere we find a whisper about the Pay Roll Check-off Facility which was already made available to the respondent Union by the binding settlement of July 28, 1988. However, when we come to conditions mentioned in the impugned Government Order dated September 10, 1993, we find Condition No.2, to the effect that the Management shall not take the responsibility of collecting donations or monthly subscriptions from the employees on behalf of the recognised Federation or Unions. Condition No.2 as mentioned in the impugned Government Order dated September 10, 1993, to say the least, was clearly uncalled for and de hors the very scheme and ambit of the Memorandum of Understanding dated May 10, 1993 as the said Memorandum, as noted earlier, had nothing to do with the Pay Roll Check-off Facility already made available to the Union by a binding settlement between the Corporation and the Union and it was holding the field at least by the time the order dated September 10, 1993 saw the light of the day. It must, therefore, be held that Condition No.2 as imposed in the impugned Government Memo dated September 10, 1993 was totally ultra vires and uncalled for and that the State had no occasion to lay down such a condition in connection with existing binding Pay Roll Check-off Facility. Once this conclusion is reached, it becomes obvious that the aforesaid condition contained in the impugned Memo must be held to be null and void and inoperative at law. Consequently, it is not necessary for us to examine the wider question canvassed by learned Advocate General for the State of Karnataka whether the State could issue such general directions under Section 34 of the Corporation Act. The decision of the learned Single Judge as confirmed by the Division Bench can be sustained on the short ground that the Government Order dated September 10, 1993 laying down the aforesaid impugned Condition No. 2 in connection with Pay Roll Check-off Facility was ex-facie uncalled for and, therefore, the said Government Memorandum in so far as it referred to Condition No. 2 was not required to be acted upon by the Corporation. We keep the wider question about the applicability of Section 34 open for consideration in an appropriate caste. We hold that it was not necessary for the learned Single Judge to go into this wider question for voiding the Government Memorandum dated September 10, 1993 by interpreting Section 34 of the Corporation Act.

13. Before parting with the discussion on this point, we may briefly refer to written submissions filed on behalf of the State of Karnataka and the Corporation.

14. We may consider in the first instance the written submissions filed on behalf of the State of Karnataka along with the Cabinet Note in connection with the charter of demands submitted by K.S. R.T. C. Staff and Workers Federation. So far as Pay Roll Check-off Facility is concerned, it has to be kept in view that Free Duty Check-off Facility remained in force till 1989 as stated in paragraph 4 of the written submissions. Thereafter, admittedly Free Duty Check-off Facility was substituted by settlement dated July 28, 1988 where-under the then existing Free Duty Check-off Facility was

substituted by a scheme of direct deduction from the employees' wages the amount of subscription for direct payment to their union, which became Pay Roll Check-off Facility in place of duty free facility. It is this Pay Roll Check-off Facility which remains binding as a settlement under the ID Act between the parties. As admitted in paragraph 7 of the written submissions, the said facility which became a part of the statutory settlement of July 1989 was approved by the State Government. However, it is not correct to submit, as mentioned in paragraph 9 of the written submissions, that the Memorandum of Understanding dated May 10, 1993, specially paragraph 24 dealing with Free Duty Facility covered Check-off Facility which was an off shoot of Free Duty Facility. Free Duty Facility had ceased to have any connection with the subsequent Pay Roll Check-off Facility as per the aforesaid settlement. Subsequently, paragraph 24 of the Memorandum of Understanding referred to different types of facility wherein Union's office bearers were to be given Free Duty Off for conducting their Union's activities which has nothing to do with Pay Roll Check-off Facility. Consequently, the rest of the contentions in the written submissions regarding the question of Pay Roll Check-off Facility being placed for consideration of the Government would not survive. As noted earlier, the Federation's agreement to discuss demands including Check-off Facility at the Government level would not amount to substitution of the already binding settlement regarding Pay Roll Check-off Facility, Consequently, it cannot be said, as tried to be submitted on behalf of the State of Karnataka in the written submissions, that the Cabinet Note imposing Condition No.2 regarding not undertaking the responsibility of collecting the monthly subscription from employees on behalf of the recognised Federation or Union by the Corporation amounted to substitution of the earlier binding settlement. At the highest it remained in the realm of a mere suggestion for future guidance of the Corporation. It must be held to be beyond the scope of the demands put forward under the Memorandum of Settlement for approval of the State Government. It has to be noted that Duty Free Facility covered by item No.24 of the Memorandum of Settlement pertained to giving duty free work for trade union's activities as clearly mentioned by| Condition No. 3 referred to in Cabinet Note itself. Hence, the written submissions filed a behalf of the State of Karnataka do not advance its case any further. It is also easy to visualise that in exercise of powers conferred under Section 34 of the Corporation Act, the State of Karnataka could not have directed the Corporation to commit breach of any binding settlement operative between the parties under Section 18(1) of the ID Act or to make the Corporation liable for criminal action in this connection. It has to be noted that under Section 29 of the I.D. Act any party who commits breach of a binding settlement would be liable to be prosecuted and the punishment may extend even to six months' imprisonment It is also not possible to agree with the. contention canvassed in the written submission that because by way of an interim order of this Court the parties were directed to arrive at some amicable settlement of the dispute and which did not fructify, it can be said that the said order of the Government declining to restore the Check-off Facility had put an end to the entire controversy in the present case. If the Government had approved a modified settlement in this connection and if that had resulted into a fresh agreement between the parties regarding Pay Roll Check-off Facility then it could have become a new binding settlement between the parties. But that eventuality had never occurred. Hence, the efficacy and binding nature of the earlier settlement did not get whittled down in the least. It must, therefore, be held that the Government Order dated September 10, 1993 was neither legal nor was it called for in the facts and circumstances of the case.

15. So far as the written submissions filed on behalf of the Corporation are concerned, they seek to reiterate what was submitted earlier and which has been considered and rejected in the earlier part of this judgment. Reliance placed on the settlement dated December 27, 1995 for replacing the earlier binding settlement of 1988 cannot be countenanced for the simple reason (feat all that was agreed to between the parties in the said settlement of December 1995 was to the effect that the Federation was to discuss the demand relating to Check-off Facility at the Government level. Thus, it was merely an agreement to discuss but it had not culminated any fresh settlement so as to supersede the earlier settlement. The submission that after July 15, 1996, recognition of Respondent No. 1 came to an end cannot be countenanced for the simple reason that it is not the case of the Corporation that in a fresh referendum any other Union had emerged as the majority Union and got recognition.

16. It has also to be kept in view that even assuming that settlement of 1988 had thereby come to an end, its binding effect as contractual (Obligation continued till it was replaced by other settlement as ruled by this Court in The Life Insurance Corporation of India v. D.J. Bahadur and Ors., (supra). It is also difficult to appreciate how the case of Check-off Facility is not termed as condition of service as by the said facility the Management had agreed to deduct from the wages of the employees the requisite amount to be paid to the Union by way of subscription of the employees. Such permissible deduction from the wages cannot but be treated as condition of service. The contention that from September 21, 1993 Check-off Facility has been given up by the Corporation cannot be of any assistance to the Corporation for the simple reason that it would amount to violation of a binding settlement by the Corporation which as per Section 29 of the ID Act would be penal. No advantage in law, therefore, can be taken by the Corporation from its unilateral withdrawal of binding Check-off Facility as per settlement of 5988. It is also not possible to countenance the submission that though the Check-off Facility may continue to exist de jure it would cease to exist de facto. Such unilateral withdrawal of Check-off Facility by one of the parties cannot be treated to be an act which is legal and valid. Minutes of the meeting held between the representatives of the Corporation and Respondent No. 1 - Union held on October 18, 1995 also cannot amount to substitution of a fresh settlement on the Pay Roll Check-off Facility. To reiterate, the Federation's only agreement was to discuss demands relating to check off and trade union facilities at the Government level. So long as the said discussion had not culminated into any other binding settlement on the topic, the earlier settlement cannot be said to have been replaced or substituted by any otter validly binding, settlement. Consequently, the aforesaid written submissions do not advance the case of the appellant.

17. We, therefore, answer point No.2 by holding that the Government Order dated September 10, 1993 in connection with the impugned Pay Roll Check-off Facility was neither legal nor valid and was totally uncalled for. This point is, therefore, answered against the appellants and in favour of the respondent Union subject to the clarification that the submission canvassed by the learned Advocate General for the State of Karnataka about the correct interpretation of Section 34 of the Corporation Act in support of the Government appeals is not required to be answered. Question of law on this aspect is kept open for consideration in an appropriate case as and when the occasion arises.

Point No. 3:

18. So far as this point is concerned, it is obvious that the impugned Notification dated September 21, 1993 issued by the Corporation was based solely on the State of Karnataka's order dated September 10, 1993. Once that order is held by us to be uncalled for and inoperative in law, the consequential Notification dated September 21, 1993 issued by the Corporation must fall through as a logical corollary of our aforesaid decision. Therefore, no fault can be found with the ultimate decision rendered by learned Single Judge voiding not only Government Order dated September 10, 1993 but also the consequential Notification of Corporation dated September21, 1993.

19. But even that apart, the said Notification is liable to be set aside also on a different ground. It has to be kept in view that Pay Roll Check-off Facility was made available to the respondent Union by a binding settlement between the Corporation and the union dated July 28, 1988. It is true that in para 7 of the said settlement it was mentioned that the settlement was valid till the recognition accorded to the Federation existed or would continue to be in force until both the parties terminated the terms by mutual consent earlier. It is not in dispute between the parties that the settlement of July 28, 1988 remained in force as the recognition granted to the respondent Union continued at least till July 16, 1996. It is also pertinent to note that there is no evidence that the Union lost such recognition subsequently by any further referendum. Be that as it may, the date on which the impugned Notification dated September 21, 1993 was issued by the Corporation, the said Settlement was fully operative and binding between the parties. In order to salvage the situation for the Corporation, Mr. Sanghi, learned senior counsel submitted in the alternative that as per para 7 of the said settlement it had to continue until both the parties terminated the settlement by mutual consent earlier. Mr. Sanghi submitted that the impugned Notification issued by the Corporation on September 21, 1993 itself resulted into termination of the said settlement as contemplated by second part of para 7. The said submission is to be stated to be rejected. The contingency contemplated by second part of para 7 of the settlement dated July 28, 1988 could apply only when both the parties, namely, the Corporation as well as the respondent Union, by mutual consent, terminated the said settlement earlier i.e. during the time the Union remained a recognised Union. It obviously could not be submitted by Shri Sanghi for the Corporation that the unilateral Notification dated September 21, 1993 issued by the Corporation brought about the termination of the settlement of July 28, 1988 by mutual consent of Corporation and the respondent Union. Consequently, the second part of para 7 of the said settlement could never have applied to the facts of the present case. Having realised this difficulty, Mr. Sanghi, learned senior counsel for the Corporation, submitted that, in any case, the impugned order dated September 21 1993 of the Corporation can be treated to be Notice under Section 19(2) of the ID Act. In the connection, it is necessary to refer to Section 19 Sub-sections (1) and (2) of the ID Act. They read as under:

> 19. Period of operation of Settlements ml awards (1) A Settlement shall come into operation on such date as is agreed upon by the partly to the dispute, and if no date is agreed upon on the date on which the Memorandum of Settlement is signed by the parties to the dispute.

(2) Such Settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months [from the date on which the Memorandum of Settlement is signed by the p arties to the dispute], and shall continue to be binding on the parties

after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in| writing of an intention to terminate the Settlement is given by one of the parties to the other party or parties to the Settlement.

xxx xx xx It cannot be disputed that the settlement in question came into force on July 28, 1988 when it was signed by both the parties. A question arises as to how far the binding effect of that settlement may continue between the parties. As seen earlier, Section 19(2) clearly provides, that such settlement shall be binding for such period as is agreed upon by the parties. Para 7 of the said settlement, as seen earlier, lays down the period of the currency of the settlement ask clearly provides that the settlement would be valid till the recognition accorded to the Federation existed. As we have seen earlier, the recognition to the respondent Federation continued all throughout and as on date event it is not shown that its recognition has stood superseded by any recognition given to any rival and competing recognised Union. In any case, by the time of the impugned Notification dated September 21, 1993 that period had never aided. Similarly, there was no earlier lamination of settlement by mutual consent. Neither of these eventualities occurred, there was no occasion for the Corporation to (sic)minate the settlement under Section 19 Sub-section (2) by any notice as it is clearly laid down herein that the settlement shall be binding between the parties for the agreed period and shall also continue to be binding even after the expiry of the period until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the tier party. So, even assuming that the Corporation could have unilaterally terminated such settlement it could not have clone so during the time the settlement was operative on its own terms, meaning thereby, till the recognition accorded to the Union continued or till any earlier termination by mutual consent. As seen wiser, by September 21, 1993 none of these (sic)gencies had occurred. Consequently, the (c)called unilateral termination or the settlement by the Notification of Corporation dated September 21, 1993 must be held to be completely ultra vires the powers of the Corporation under Section 19 Sub-section (2). But even that apart, it has to be observed that the Corporation had not given two months notice in any case as contemplated by Section 19 Sub-section (2) for terminating the said binding settlement, though such an occasion had still not arisen for the Corporation as the binding effect of the settlement during the period provided therein as per Clause 7 had not come to an end by then. Even on that ground the notification dated September 21, 1993 fell foul on the touchstone of Section 19(2) of the ID Act, having not complied with the said provision.

20. But even on an assumption that the aforesaid notification satisfied the requirements of Section 19 Sub-section (2) for terminating the settlement dated July 28, 1988, even then till a new settlement laying down fresh terms of settlement on the question of Pay Roll Check-off facility saw the light of the day, the binding effect of the 1988 settlement has to continue to bind the parties by way of contractual obligations. This aspect is well-settled by a three Judge Bench decision of this Court in The Life Insurance Corporation of India v. D.J. Bahadur and Ors., (supra) Krishna Iyer, J., speaking for the Supreme Court at page 1114 of the Report, has made the following pertinent observations:

> The core question that first falls for consideration is as to whether the Settlements of 1974 are still in force. There are three stages or phases with different legal effects in

the life of an award or Settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or Settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given under Section 19(2) or 19(6) then the third stage opens where the award or the Settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated Settlement takes its place. Like Nature, law abhors a vacuum and even on the notice of termination under Section 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate Settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former Settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the Section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or Settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end-order in society-can it commit functional harakiri by leaving a conflict situation to lawless void?

In view of the aforesaid settled legal position, therefore, if any unilateral notice to terminate the binding settlement of July 28, 1988 was issued by the Corporation which, on the facts of the present case, is found not to have been issued, even then till any new settlement on the question of grant of Pay Roll Check-off Facility was substituted by parties, the legally binding effects of the earlier settlement of 1988 would continue to operate and the Corporation will then be contractually bound to confer pay roll check-off facility to the Union. Consequently, there was no occasion for the Corporation to issue the impugned Notification dated September 21, 1993 even on this ground as it was clearly violative of the mandatory requirement of Section 19 Sub-section (2) and was contrary to the settled legal position as aforesaid. It was, therefore, a still-born Notification and was rightly set aside by the learned single Judge on that ground and also by the Division Bench of the High Court.

21. We may now refer to one last ditch effort made by Shri Sanghi, learned senior counsel for the Corporation. He submitted that at least by latter settlements dated September 8, 1994, December 5, 1994, February 16, 1995, October 10, 1995 and December 27, 1995, the earlier settlement of July 28, 1988 was given a complete go by so far as the Pay Roll Check-off Facility was concerned and even on that ground the earlier settlement should be taken to have Income non est. In our view, this valiant attempt on the part of learned senior counsel Shri Sanghi, is completely futile. When we turn to

these latter settlements, it becomes at once clear that the impugned Notification of September 21, 1993 which is found to have directly conflicted with Section 19(2) of the ID Act and, therefore, was a still born one could not get life because of any subsequent settlements as the subsequent settlements in terms had not provided for a new scheme of Pay Roll Check-off Facility to be binding between the parties. Let us try to see what these other settlements had done. Settlement of September 8, 1994 under Section 2(p) of the ID Act between the respondent Union and the Corporation recites the various demand! annexed to the strike notice given by the respondent Union on August 29, 1994. Out of the listed demands are demand Nos.4 & 5. So far as demand No,4 is concerned, it deals with "Collection of donations to the recognised Unions in terms of the Memorandum of settlement dated July 17, 1989". We are not concerned with this demand in the present case, Demand No.5 deals with "Collection of Union subscription through check-off facility in terms of the Settlement dated July 28, 1988". This demand clearly shows that despite there being? settlement of July 28, 1988, the Corporation, because of its impugned stand reflected by its Notification dated September 21, 1993, had withdrawn the check-off facility. Therefore, it was the contention of the respondent Union that the said withdrawal was contrary to the settlement dated July 28, 1988. This demand therefore, in respect of giving a go by to the settlement dated July 28, 1988 regarding collection of subscription through the check-off facility tried to reiterate the said binding terms of the settlement and only grievance was that these binding terms of settlement were being violated by the Corporation and hence the demand was to recall such withdrawal. The Federation in para 2 of the said settlement clearly mentioned that, out of the nine demands made by the Federation, for the demands at? Nos. 1 to 5, the Federation would reserve its right to pursue with the Government of Karnataka. Meaning thereby, the Federation agreed with the Corporation to take up the matter with the Government of Karnataka and to persuade it to call upon the Corporation to withdraw its impugned order dated September; 21, 1993 and to restore the facility available under binding terms of settlement dated July28, 1988. To say the least, this agreement between the parties as per the settlement of September 8, 1994 cannot be said to have whittled down the settlement dated July 28, 1988 nor can it be said! to have substituted it by any fresh scheme of check-off facility. Ali that the Union can be said to have agreed with the Corporation was to pursue the matter with the Government foil enforcement of the terms of the earlier settlement of 1988 and for doing the needful in (sic) connection. Consequently, the said Settlement of September 8, 1994 does not touch the core question, namely, whether there was my subsequent binding Settlement between the parties giving a go by to or modifying the settled terms of Pay Roll Check-off Facility as managing from the binding Settlement or July 28, 1988. Shri Sanghi, learned senior counsel, then took us to the second settlement dated December 5, 1994. It appears that the said settlement was also in connection with the same demands which were mentioned in the earlier (sic) notice referred to in the Section 2(p) settlement dated September 8, 1994 and on these demands also no fresh settlement had ben arrived at between the parties. Thus, the parties appear to have been trying to arrive at an (sic)able settlement in connection with the grievances of the Union. That the check-off polity was wrongly withdrawn though they (sic) available in terms of settlement dated July 28, 1988. In fact, it appears that the said demand of the Union which resulted into the aforesaid (sic) settlements dated September 8, 1994 and December 5, 1994 centerd round the question of enforcement of the terms of settlement dated July 28, 1988 against the Corporation rathe; than giving a go by to them. That demand had wiling to do with any modification of the terms (sic) settlement dated July 28, 1988. The revenue of the Union was against non-implementation of the terms of the settlement and (sic)

further modification. Even at Annexure-A (sic) thc said settlement of December 5, 1994 was the very same settlement that was arrived at on September 8, 1994. Our observations in connection with settlement of September 8, 1994 would, therefore, ipso facto apply to the terms of settlement dated December 5, 1994. In short none of these two settlements ever whispered about any agreed settlement between the parties for modifying any of the terms of the settlement dated July 28, 1988 pertaining to the Pay Roll Check-off facility made available to the Union by the Corporation as per the said settlement. It is, there/ore, not possible to agree with Shri Sanghi, learned senior counsel for the Corporation that by these (sic) two settlements, the earlier settlement of July 28, 1988 was given a go by/by consent of parties. On the contrary, as we have seen earlier, instead of giving a go by to the terms of the settlement, the Union was insisting upon complying with the terms of the said settlement. It was not the case of substituting the terms of the said settlement but it was a case of reiterating those terms so far as the Union was concerned. We then turn to settlement dated February 16, 1995. A mere look at the said settlement shows that it has nothing to do with the Pay Roll Check-off Facility made available to the respondent Union by the settlement of July 28, 1988. Therefore, this settlement is miles away from the terms settled on July 28, 1988 between the parties regarding Pay Roll Check-off Facility. It is totally irrelevant for deciding the question as tried to be raised by Shri Sanghi regarding substitution of the terms of settlement of 1988 by the settlement of February 16, 1995. Same is the position regarding the settlement of October 10, 1995 on which reliance was placed by Shri Sanghi. The said settlement also does not deal with the question of Pay Roll Check-off Facility. That takes as to the last settlement dated December 27, 1995 strongly pressed in service by Shri Sanghi for the Corporation. It is true that in the short recital of the case as found in the settlement dated December 27, 1995, it has been mentioned that the Federation reserves its right to pursue with the Government in respect of these demands, one of which was regarding restoration of Pay Roll Check-off Facility, collection of donations to the recognised Unions in terms of Memorandum of Settlement dated July 17, 1989 and earlier settlements. But that only shows that the grievance of respondent Federation that despite the earlier settlement the Pay Roll Check-off Facility was withdrawn by the Corporation and was required to be restored. Meaning thereby, the binding effect of the earlier settlement was sought to be reinforced. Coming to the express terms of the settlement as mentioned in the said settlement dated December 27, 1995, we find in para 5 a recital that Federation agreed to discuss about the said facility at the Government level. We fail to appreciate how this agreement to discuss the demands amounts to any express or implied substitution of the terms of binding settlement dated July 28, 1988 in connection with already granted Pay Roll Check-off Facility to the respondent Union. It appears clear that on account of the issuance of the impugned Government Order dated September 10, 1993 and the consequential Notification dated September 21, 1993 by the Corporation, the Corporation had unilaterally withdrawn the Pay Roll Check-off Facility granted to the Union and that too without following the due procedure of Section 19 sub- section (2) of the ID Act. On account of such illegal act on the part of the Corporation, strike notices were given by the Respondent Union and the Union has shown agreement to discuss the matter across the table. This agreement clearly showed that the respondent Union was amenable to an amicable settlement of the dispute so that a fresh settlement could be entered into in substitution of the settlement dated July 28, 1988. But that eventuality never occurred. Result was that the earlier settlement dated July 28, 1988 never got substituted by a fresh settlement on the topic and the binding effect of the earlier settlement dated July 28, 1988 in regard to Pay Roll Check-off Facility continued to operate all throughout. Consequently, it must be

held that none of the latter settlements on which strong reliance was placed by Shri Sanghi, learned senior counsel for the Corporation, to cull out any express or even implied substitution of the earlier settlement dated July 28, 1988 or for exhibiting any conduct on the part of the respondent Union of giving a go by to the terms of the earlier settlement which gave it the said facility of pay roll check-off can be of any avail to Shri Sanghi. It must be held that the settlement of July 28, 1988 granting pay roll check-off facility to the respondent Union has continued to operate all throughout without in anyway being substituted by any fresh settlement between the parties in this connection.

22. The submission made by Shri Sanghi, learned senior counsel for the Corporation, that the Corporation has now undergone trifurcation into three Corporations also cannot be of any avail to him for the simple reason that such a contention was not canvassed either before the learned single Judge or before the Division Bench. It is also not brought out on the record a to how this trifurcation has taken place and whether the subsequent successors-in-interest of the Corporation have undertaken the liability of earlier existing settlements entered into by their predecessor Corporation with the erstwhile Union. All these vexed questions of fact cannot be permitted to be raised for the first time in these present proceedings before us Hence the contention canvassed by learned senior counsel for the Corporation on this additional ground also is found to be devoid of any substance and cannot be entertained and is therefore, rejected. The third point, accordingly, is answered in negative against the appellant and in favour of the respondents.

23. Before parting with these proceeding, we may mention that an attempt was made by us during the pendency of these proceedings at the SLP stage to enable the parties to find some amicable solution of the problem with a view to ensuring industrial peace and, therefore, by interim order dated February 27, 1998 it was suggested that the State Government may have a fresh discussion with the respondent Union as well as the Corporation in connection with the disputed item of check-off facility. But unfortunately, no concrete result ensued and the parties could not come to any amicable solution of the problem by arriving at a fresh settlement on the question. Consequently, the appeals were heard on merits anal are being disposed of by this judgment.

Point No.4:

24. As a result of our findings on the aforesaid three points, the inevitable result is that these appeals fail and are dismissed subject to the limited clarification that the question of applicability of Section 34 of the Corporation Act to the impugned Government Order of September 10, 1993 is kept open. There will be no order as to costs in the facts and circumstances of the case.