TATA CHEMICALS LTD.

v.

ITS WORKMEN

March 23, 1978

[V. R. KRISHNA IYER AND JASWANT SINGH, JJ.]

Industrial Disputes Act 1947—*Sec.* 2(*k*)(*P*), 18—*Settlement not arrived at otherwise than in course of conciliation whether binds all workmen—Whether accepting benefit of a settlement amounts to acquiescence—Whether Govt. can refer a dispute at the instance of a minority union.*

Industry cum region—If no comparable concern in the region.

The appellant, a Public Limited Company has its factory at Mithapur in the State of Gujarat. It was carrying on its dealings with Sangh which was a recognised Union till 25-1-1973. Later on Employees Union came to be recognised under the Code of Discipline, in view of the fact that it had 55 per cent of the total number of employees as its members. The appellant accorded recognition to the Employees Union with effect from 25-1-1973. On 18-6-1973 the Employees Union submitted a charter of demands which, *inter alia*, included a demand for dearness allowance at 100 per cent of Ahmedabad Cotton Textile rate. Meanwhile, on 9-7-1973, the Sangh representing 800 workmen of the concern also submitted its charter of demands which included a demand for dearness allowance as paid to the workmen of the Cotton Textile Industry. The appellant arrived at an agreement with the Employees Union in respect of the demands submitted by the latter. It was agreed between the parties that the settlement would remain in force for a period of 3 years with effect from 1st January, 1974. On 21-1-1975 the State Government made a reference to the Industrial Tribunal for adjudication of the dispute raised by the Sangh. Before the Industrial Tribunal the Employees Union questioned the right of Sangh to raise the demand with regard to the variable dearness allowance as also the right of the Govt. to refer the demand for adjudication. Later on, the Employees Union abandoned its initial stand and supported the demand of the Sangh on the ground that the appellant had made huge profits. The appellant contended that in view of the settlement with the Employees Union, the Sangh was precluded from raising any dispute which was the subject matter of reference to the Tribunal. It also contended that as the benefit accruing from the settlement had been and was being taken by all the workmen the reference was incompetent. The demand for variable dearness allowance was also opposed by the appellant on the ground that the employees were being paid dearness allowance in accordance with the recommendation of the Central Wage Board.

On an examination of the material adduced before the Tribunal it came to the conclusion that the appellant Company was a flourishing and a highly integrated chemical complex of long standing whose profits were continuously rising; that no other unit in the Heavy Chemicals Industry in the region could be favourably compared with the appellant Company; that the industries in other parts of Gujarat which are included in the list of Heavy Chemicals Factories governed by Wage Board were paying 100 per cent of the dearness allowance linked to the Ahmedabad cost of living index. The Tribunal awarded dearness allowance varying from 85 per cent to 95 per cent of the Ahmedabad Textile dearness allowance.

In an appeal by special leave, the appellant contended :

(1) In view of the settlement with the Employees Union which covered the demand for variable dearness allowance and the fact that the benefit accruing from the settlement was taken by the entire body of workmen, the reference by the State Government as regards variable dearness allowance was invalid, and the Tribunal had no jurisdiction to adjudicate upon the same.

A (2) The Tribunal has erred in ignoring the industry-cum-region principle while fixing the variable dearness allowance.

The respondent contended :

(1) The settlement did not cover the demand regarding variable dearness allowance sponsored by the Sangh.

B (2) In any event, the said settlement was binding only on the parties thereto and the Sangh not being a signatory to the settlement was not bound by it.

(3) It was open to a minority Union to sponsor the demand and for the Government to make the reference on the basis of such demand.

(4) Since there were no comparable concerns in the region the Industrial Tribunal was right in taking into consideration the dearness allow-
C ance paid by concerns in other parts of Gujarat.

Dismissing the appeal

HELD : 1. An analysis of section 2(p) of the Industrial Disputes Act, 1947 which defines settlement and section 18 of the Act show that a settlement which is arrived at otherwise than in the course of conciliation proceedings is binding only on the parties to the settlement who have subscribed to it in the
D prescribed manner. [541 E-F, 542 E]

Bata Shoe Co. (P) Ltd. v. *D. N. Ganguly and Ors.,* [1961] 3 S.C.R. 308, referred to.

Ramnagar Cane and Sugar Co. Ltd. v. *Jatin Chakravorty & Ors.* [1960] 3 S.C.R. 966 and *The Jhagrakhan Collieries (P) Ltd.* v. *Shri G. C. Agrawal, Presiding Officer, Central Government Industrial Tribunal*-cum-*Labour Court, Jabalpur and Ors.,* [1975] 3 S.C.C. 613, referred to.

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2. In the present case since the agreement was not arrived at in the course of conciliation it could not bind any one other than the parties thereto. The fact that the Employees Union which had been duly recognised under the Code of Discipline arrived at the agreement with the appellant Company could not operate as a legal impediment in the way of the Sangh which was not a party to the agreement to raise a demand or dispute with regard to the variable dearness allowance limited to Ahmedabad cost of living index or affect the vali-
F dity of the reference by the Government or the jurisdiction of the Court to go into the dispute. [543 E-F]

3. A minority union can validly raise an industrial dispute is clear from section 2(k) [543 G]

Dharampal Premchand v. *M/s. Dharampal Premchand (Saughandhi)* [1965] 3 S.C.R. 394; relied on.

G 4. The acceptance of benefit under an agreement by workers who are not parties to the agreement cannot amount to acquiescence. Even if 99 per cent of the workers have impliedly accepted the agreement it will not put an end to the dispute before the Labour Court and make it *functus officio.* [544 C-D]

Jhagrakhan Collieries (P) Ltd. v. *Shri G. C. Agrawal, Presiding Officer, Central Government Industrial Tribunal*-cum-*Labour Court, Jabalpur and Ors.,* [1975] 3 S.C.C. 613, relied on.

H 5. It is a matter of common knowledge that the spiral of prices has been constantly rising and the basket of goods and services has been costing more and more day after day since the out-break of the Second World War in September 1939. The appellant Company holds a unique position in Heavy Chemicals in

the region. It is for this that the Industrial Tribunal was constrained to turn to similar industries in Gujarat and found that Sarabhai Chemicals Baroda was the nearest similar industry which can legitimately serve as comparable concern. [544 F, 545 A-B] A

Ahmedabad Mill Owners' Association etc. v. *The Textile Labour Association,* [1966] 1 S.C.R. 382, relied on.

6. When there is a large disparity between the two concerns engaged in the same line of business in a region with which the Industrial Court is dealing it is not safe to fix the same wage structure for the large flourishing concern of long standing as obtains in a small struggling concern. [546 A-B] B

Bengal Chemical and Pharmaceutical Works Ltd. v. *Its Workmen & Anr.,* [1969] 1 L.L.J. 751 a p. 758, *French Motor Car Company Ltd.* v. *Their Workmen,* [1962] 2 L.L.J. 744; relied on.

7. It cannot also be lost sight of that with the march of time narrow concept of industry-cum-region is fast changing and too much importance cannot be attached to the region. The modern trends in industrial law seem to lay greater accent on the similarity of industry rather than on the region. [546 B-C] C

Workmen of New Egerton Woollen Mills v. *New Egerton Woollen Mills and Ors.,* [1969] 2 L.L.J. 782, relied on.

8. As in the instant case, there was no comparable concern engaged in the line of business similar to that of the appellant in the Saurashtra region, the Industrial Tribunal did not commit any error in taking into consideration for the purposes of comparison Dearness Allowance paid by Sarabhai Chemicals and other concerns of the like or approximate like magnitude in other parts of the State of Gujarat. [546 E] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2160 of 1977.

(Appeal by Special Leave from the Award dated 21-2-77 of the Industrial Tribunal Gujarat in Reference I.T. No. 13 of 1975 published in the Gujarat Govt. Gazette dated 17th March, 1977). E

G. B. Pai, O. C. Mathur & K. J. John for the appellant.

V. M. Tarkunde, K. L. Hathi, P. C. Kapur & S. C. Patel for the respondent.

The Judgment of the Court was delivered by

JASWANT SINGH. J. This appeal by special leave is directed against the award dated February 21, 1977 of the Industrial Tribunal Gujarat in reference No. 13 of 1975 made on January 21, 1975, by the Government of Gujarat in exercise of its powers under section 10(1)(d) of the Industrial Disputes Act. 1947 (XIV of 1947) (hereinafter, called 'the Act') for adjudication of the dispute relating to five demands viz. Washing Allowance, Woollen Jersey, Unclean Allowance, Transport Allowance and Variable Dearness Allowance linked with Ahmedabad cost of living index and adequate dearness allowance equal to that of textile workers of Ahmedabad (which is 100% neutralisation) sponsored by the Chemicals Kamdar Sangh, Mithapur (hereinafter referred to as 'the Sangh'). F G

Briefly stated, the facts leading to the appeal are : The appellant is a public limited company registered under the Indian Companies Act and has its factory at Mithapur in the State of Gujarat. As per its practice and policy of recognising and negotiating with the Union H

A enjoying the support of largest number of its workers, it carried on its dealings with the Sangh (which was the recognised union) till January 25, 1973 when the Assistant Commissioner of Labour, Ahmedabad declared as a result of the verification made by him that the Tata Chemicals Employees' Union (hereinafter referred to as 'the Employees' Union) was entitled to be recognised under the Code of Discipline in view of the fact that 55% of the total number of the em-
B ployees of the concern were its members and addressed a communication to the appellant requesting it to recognise the said union. Pursuant to this communication, the appellant accorded recognition to the Employees' Union with effect from January 25, 1973. Thereupon the Sangh filed a Special Civil Application challenging the aforesaid order of the Assistant Commissioner of Labour in the High Court of Gujarat which was summarily rejected vide order dated April 3, 1973.
C On June 18, 1973, the Employees Union submitted a charter of demands to the appellant which included *inter alia* a demand for dearness allowance at 100% of Ahmedabad Cotton Textile Rate popularly known as the Textile Dearness Allowance. In respect of these demands, the Conciliation Officer summoned a conciliatory meeting for July 26, 1973. Meanwhile on July 9, 1973, the Sangh representing about 800 workmen of the concern submitted the aforesaid charter
D of demands before the management which also included a demand for Dearness Allowance as paid to the workers of the Cotton Textile Industry. The charter also contained an intimation to the management of the Sangh's intention to resort to strike for realisation of its demands. As negotiations between the parties for an amicable settlement did not prove fruitful, the Sangh wrote to the Conciliation Officer,
E Rajkot, on July 17, 1973 requesting him to intervene. After preliminary discussions with both the parties, the Conciliation Officer admitted the case for conciliation on August 30, 1973. As the conciliation proceedings held by him from time to time between September 7, 1973 and November 6, 1973 (to which the Employees' Union was also made a party at its request) did not lead to a settlement between the parties, the Conciliation Officer submitted his Failure Report to the State
F Government on December 14, 1973. On even date, the appellant arrived at an agreement with the Employees' Union in respect of the demands submitted by the latter on behalf of its daily rated and monthly rated members including clerical staff. It was agreed between the parties to this settlement that it would remain in force for a period of three years with effect from January 1, 1974. A notice with regard to the settlement with the Employees' Union was put up on
G general notice board by the appellant on December 17, 1973. On Janaury 21, 1975, the State Government made, as already stated, a reference to the Industrial Tribunal for adjudication of the dispute respecting the aforesaid demands raised by the Sangh. In the course of the reference proceedings, the Employees' Union adopted a nebulous and shifting stand. In its anxiety to maintain its status as the recognised majority union having the sole right of collective bargaining and
H settling industrial disputes, it insisted in the first instance on its right to actively participate in the proceedings and *inter alia* questioned the right of the Sangh to raise the demand with regard to V.D.A., as also the right of the Government to refer the demand for adjudication

alleging that earlier in 1968 when it raised a demand for 100% Textile Dearness Allowance, the Sangh resisted the same and entered into a settlement with the appellant Company on July 31, 1969 for a period of five years. Later on abandoning its initial stand, it supported the demand of the Sangh averring that having regard to the huge profits made by the appellant Company over the years, the workmen were entitled to payment of Dearness Allowance not only on the lines of the Textile Dearness Allowance but a still higher Allowance like that of the employees in the Bombay Head Office of the appellant Company

In the written statement filed by it, the appellant Company not only challenged the *locus standi* of the Employees' Union to raise any demand on behalf of the workmen or to support the demands raised by the Sangh in view of the aforesaid settlement dated December 14, 1973 but also maintained that in view of the said settlement which continued to be in operation, the Sangh was precluded from raising any dispute in respect of the demands which are the subject of reference to the Tribunal for adjudication. It further contended that as the benefit accruing from the settlement had been and was being taken by all the workmen, the reference was incompetent and the Tribunal had no jurisdiction to adjudicate upon the demands incorporated therein. While it resisted the first four demands raised by the Sangh on mere technicalities, with regard to the demand for Variable Dearness Allowance, the appellant company averred that in view of the fact that all the employees were being paid Dearness Allowance in accordance with the recommendation of the Central Wage Board for the Heavy Chemicals and Fertiliser Industry and that neutralisation in the increase in cost of living under the said scheme of payment in case of group-I factories was not cent per cent but was equivalent to 92 per cent, the demand for Variable Dearness Allowance was not valid. The appellant further urged that in the matter of fixation of Dearness Allowance, the formula of Industry-cum-Region was to be adhered to and the total pay packet of the comparable concerns in the region had to be taken into consideration.

On an examination of the material adduced before it including the facts and figures relating to the appellant Company's investments, reserves, production, percentage of wages of workers, profits and declared dividends etc., the Industrial Tribunal came to the conclusion that the appellant Company was a very flourishing and highly integrated chemical complex of long standing whose profits were continually rising; that no other unit in the Heavy Chemicals Industry in the region could be favourably compared with the appellant Company so far as the extent and nature of production, business and financial capacity were concerned; that the industries in other parts of Gujarat like Sarabhai Chemicals, Baroda, Anil Starch, Ahmedabad, Alembic Chemicals Works, Baroda, Attul Products Bulsar and Ahmedabad Manufacturing & Calico Printing Co. Ltd. Chemical Division, Ahmedabad which were included in the list of heavy chemicals factories covered by Wage Board were paying 100 per cent of the Dearness Allowances linked to the Ahmedabad cost of living index number known as

A Textile Dearness Allowance and that the total pay packet which was being paid to the workers of Mithapur where the prices of essential commodities were comparatively higher than at any other place in the district like Jamnagar, Dharangadhra, Porbandar, Bhavnagar was much less than Sarabhai Chemical, Baroda, and disallowing the objections raised by the appellant Company and considering the Textile Dearness Allowance as a scientific formula faithfully reflecting the B rise and fall in the consumer price index for working class which afforded maximum protection to the workmen in the lowest basic wage slab adopted the same and *inter alia* directed the appellant Company to pay to all the concerned employees including the daily rated workmen in different categories in Grades I, III, V, VI, VII & VIII and the monthly rated clerical, technical and supervisory staff falling in Grades V, VI & VII uniform Dearness Allowance varying from 85% C of the Ahmedabad Textile Dearness Allowance (old) to 95% of the Ahmedabad Textile Dearness Allowance as before the old revision phased over a period of three years beginning from February 1, 1975 that is to say at 85% from February 1, 1975 to December 31, 1976 and 95% from January 1, 1977 and onwards.

Appearing on behalf of the appellant, Mr. Pai has addressed us D only in regard to the Sangh's demand and the Tribunal's award in respect of Variable Dearness Allowance. He has contended that regard being had to the fact that the aforesaid settlement dated December 14, 1973 between the appellant Company and the Employees Union covered the demand regarding V.D.A. sponsored by the Sangh and the benefit accruing from the settlement was taken by the entire body of workmen, the aforesaid reference by the State Government as regards the E V.D.A. was invalid and the Tribunal had no jurisdiction to adjudicate upon the same. He has further urged that in fixing the V.D.A., the Tribunal has erred in ignoring the industry-*cum*-region principle which is well recognised in the industrial world.

Mr. Tarkunde has, on the other hand, urged that the aforesaid settlement dated December 14, 1973 did not cover the demand regarding F V.D.A. sponsored by the Sangh; that in any event, the said settlement was binding only on the parties thereto and the Sangh not being a signatory to the settlement, it was perfectly open to it even though it was a minority union to sponsor the demand in question and to the Government to make the reference. He has further contended that there being no comparable concern in the region, the Industrial Tribunal was right in taking into consideration the Dearness Allow- G ance paid by Sarabhai Chemicals and other concerns in other parts of Gujarat :

Five questions arise for consideration in this case.—(1) Whether the settlement of December 14, 1973 covered the demand with respect to Variable Dearness Allowance sponsored by the Sangh, (ii) whether the aforesaid reference by the Government was invalid and the Indus- H trial Tribunal was incompetent to make the award in question during the currency of settlement arrived at by the Employees' Union which had been duly recognised under the Code of Discipline, (iii) whether the acceptance of the benefits flowing from the aforesaid settlement not

only by the members of the Majority Union but also by the members of the Sangh operated as an implied agreement by acquiescence and debarred the Sangh from raising the demand, (iv) whether it was legal and proper for the Tribunal to link the scheme of Dearness Allowance with the Ahmedabad Dearness Allowance when the recommendation of the Wage Board set up for the industry in 1968 for adoption of All India Consumer Price Index as the basis of Dearness Allowance had been accepted and was being implemented and (v) whether in fixing the Dearness Allowance, the Industrial Tribunal was justified in going beyond the region and taking into consideration for the purpose of comparison the Dearness Allowance paid by Sarabhai Chemicals and other concerns in other parts of the State.

Before dealing with these points, we consider it necessary and proper to refer to a few provisions of the Act.

Clause (p) of section 2 of the Act defines "settlement" as under :—

> "2.(p) 'settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer."

An analysis of the above-mentioned clause would show that it envisages two categories of settlement.—(i) a settlement which is arrived at in the course of conciliation proceeding *i.e.* which is arrived at with the assistance and concurrence of the Conciliation officer who is duty bound to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute. See *The Bata Shoe Co. (P) Ltd.* v. *D. N. Ganguly & Ors.*(1) and (*ii*) a written agreement between employer and workman arrived at otherwise than in the course of conciliation proceeding.

For the validity of the second category of settlement, it is essential that the parties thereto should have subscribed to it in the prescribed manner and a copy thereof should have been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer.

The consequences of the aforesaid two categories of settlement which are quite distinct are set out in section 18 of the Act which reads as under :—

> "18. (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(1) [1961] 3 S.C.R. 308.

A (2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceeding under this Act or an arbitration award in a case B where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on—

(a) all parties to the industrial dispute;

C (b) all other parties summoned to appear in the proceeding as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect D of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed E in that establishment or part."

A bare perusal of the above quoted section would show that whereas a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceeding under the Act is binding not F only on the parties to the industrial dispute but also on other persons specified in clauses (b), (c) and (d) of sub-section (3) of section 18 of the Act. We are fortified in this conclusion by a decision of this Court in *Ramnagar Cane and Sugar Co. Ltd.* v. *Jatin Chakravorty & Ors.*(1) where it was held as follows :—

"When an industrial dispute is thus raised and is decided either by settlement or by an award the scope and effect of G its operation is prescribed by s. 18 of the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement; whereas s. 18(3) provides that a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the H parties specified in cls. (a), (b), (c) and (d) of sub-s. (3). Section 18(3)(d) makes it clear that, where a party referred

(1) [1960] 3 S.C.R. 960.

to in cl. (a) or (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part, would be bound by the settlement. .. .. .. In order to bind the workmen it is not necessary to show that the said workmen belong to the Union which was a party to the dispute before the conciliator. The whole policy of s. 18 appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceedings, and that is the object with which the four categories of persons bound by such settlement are specified in s. 18, sub-s. (3)."

Similar view seems to have been held by another Division Bench of this Court in *The Jhagrakhan Collieries (P) Ltd.* v. *Shri G. C. Agarwal, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur & Ors.*(1)

The legal position emerging from the afore-mentioned provisions of the Act being clear, we now proceed to tackle the questions set out above.

As the first two questions are inseparably linked up, we propose to deal with them together. Although, *prima facie* there seems to be considerable force in the Sangh's stand that paras 2.3, 3.1, 3.2 and 3.3 of the aforesaid agreement of December 14, 1973 arrived at between the Employees' Union and the appellant Company related only to the special pay and did not cover the Sangh's demand for Variable Dearness Allowance linked to the Ahmedabad cost of living index, we do not consider it necessary to go into this question, as the said agreement not having been arrived at during the course of a conciliation proceeding, it could not, according to section 18(1) of the Act bind any one other than the parties thereto. *A fortiori,* the fact that the Employees' Union which had been duly recognised under the Code of Discipline arrived at the aforesaid agreement with the appellant Company could not operate as a legal impediment in the way of the Sangh (which was not a party to the agreement) to raise a demand or dispute with regard to the Variable Dearness Allowance linked to Ahmedabad cost of living index or affect the validity of the reference by the Government or the jurisdiction of the Industrial Tribunal to go into the dispute. The conclusion that a minority union can validly raise an industrial dispute gains support from section 2(k) of the Act which does not restrict the ambit of the definition of 'industrial dispute' to a dispute between an employer and a recognised majority union but takes within its wide sweep any dispute or difference between employer and workmen including a minority union of workmen which is connected with employment or terms of employment or conditions of labour of workmen as well as the observations made by this Court in *M/s. Dharampal Premchand* v. *M/s. Dharampal Premchand (Saughandhi)* (2).

(1) [1975] 3 S.C.C. 613.
(2) [1965] 3 S.C.R. 394

A It may also be relevant to mention in this connection that both the counsel for the Employees' Union and the counsel for the appellant Company admitted before the Industrial Tribunal that the aforesaid agreement had been terminated by two months' notice (See p. 39 of the Industrial Tribunal's Award). We have, therefore, no hesitation in holding that neither the Sangh was precluded from raising the demand or the dispute, nor was the Government debarred from making B the reference nor was the Industrial Tribunal's competence to go into the dispute and make the award affected in any manner. The first two questions are decided accordingly.

Re : Question No. 3 :—This question is no longer *res integra.* In *Jhagrakhan Collieries (P) Ltd.* v. *Shri G. C. Agarwal, Presiding Officer, Central Government Industrial Tribunal*-cum-*Labour Court, Jabalpur & Ors.* (supra) Sarkaria, J. speaking for the Bench observ- C ed that "an implied agreement by acquiescence, or by conduct such as acceptance of a benefit under an agreement to which the worker acquiescing or accepting the benefit was not a party, being outside the purview of the Act, is not binding on such a worker either under sub-section (1) or under sub-section (3) of section 18. It follows, therefore, that even if 99% of the workers have impliedly accepted the D agreement arrived at by drawing V.D.A. under it, it will not—whatever its effect under the general law—put an end to the dispute before the Labour Court and make it *functus officio* under the Act."

Accordingly, the theory of implied agreement by acquiescence sought to be built up on behalf of the appellant on the basis of the acceptance of the benefits flowing from the agreement even by the workmen E who were not signatories to the settlement is of no avail to the appellant Company and cannot operate as an estoppel against the Sangh or its members.

Re : Question No. 4 : It is a matter of common knowledge that the spiral of prices has been constantly rising and the basket of goods and services has been costing more and more day after day since F the outbreak of the Second World War in September, 1939. It is equally well known and indeed is not disputed that in the relevant years the prices of essential commodities and cost of living have been comparatively higher at Mithapur that at other places in the districts like Jamnagar, Dharangadhra, Porbandar, Bhavnagar etc. and the appellant Company had not been maintaining uniform standard of Dearness Allowance and had been paying higher Dearness Allowance to the work- G men in its Head Office at Bombay than to its workmen at Mithapur. The statistics extracted from various annual reports etc. exhibited in the case particularly Exhibit 13(6) go to show that the appellant Company which was established more than 40 years ago besides being a highly integrated chemical complex based on the solar evaporation of sea water in India is the largest solar salt producing concern in the country. The statistics also show that production of soda ash in diverse H forms by the appellant Company for the relevant years is considerably higher than the combined production of soda ash of Dharangadhra Chemicals and Saurashtra Chemicals—the two other concerns in the Saurashtra region. The statistics also establish that there is no other

heavy Chemicals Concern in the region which can be favourably compared to the appellant Company in so far as the nature and extent of business, capital outlay, percentage of gross and net profits, strength of labour force, reserves, divindends on Equity Share prospects of future business are concerned. As in Chart (Exh. 13(26) shows that the percentage of wages in the appellant Company is the lowest amongst the seven companies listed therein. Considering all the relevant factors which are to be borne in mind in fixing the Dearness Allowance, it is evident that the appellant Company holds a unique position in heavy chemicals in the region. It is in these circumstances that the Industrial Tribunal was constrained to turn to similar industries in Gujarat and found in the light of the aforesaid guiding factors that Sarabhai Chemicals, Baroda was the nearest similar industry which could legitimately serve as a comparable concern. The statistics also establish that besides Sarabhai Chemicals, Baroda, Anil Starch, Ahmedabad, Alembic Chemicals Works, Baroda, Attul Products, Bulsar and Ahmedabad Manufacturing and Calico Printing Co. Ltd. which are included in the list of heavy chemical factories covered by the Wage Board were paying 100% of Textile Dearness Allowance to its workmen. It is also evident from Exhibit 23 that the total pay packet paid to Mithapur workers was much less as compared to the total pay packet of the workers in other chemical and pharmaceutical companies alluded to in Exhibit 23. The material on the record also makes it abundantly clear that the appellant Company has been making huge profits over the years and its financial position is so stable that it could not only give Variable Dearness Allowance on the basis of what was being paid to the workmen in the Textile Industry but could pay even higher allowance as was being paid to its workmen in the Head Office at Bombay. The Tribunal was, therefore, justified in linking the Dearness Allowance in question to the Textile Dearness Allowance paid to the industrial workers at Ahmedabad which is based on the Report of Family Living Survey among Industrial Workers at Ahmedabad, 1958-59, complied as a result of the joint investigation carried on in a rational and scientific manner by several institutions viz. Labour Bureau, Ministry of Labour & Employment. Government of India, Technical Advisory Committee on Cost of Living Index Numbers consisting of representatives of the Ministry of Labour & Employment, Food and Agriculture Finance, Planning Commission, the National Sample Survey Directorate, the Department of Statistics (C.S.O.), the Indian Statistical Institute and the Reserve Bank of India etc. leading to the construction of Consumer Price Index Number for the working class which was accepted as reliable by this Court in *Ahmedabad Mill Owners' Association etc.* v. *The Textile Labour Association.*(1) We are, therefore, of the opinion that notwithstanding the implementation of the recommendations of the Wage Board, there was nothing wrong about the linking of the scheme of the Dearness Allowance with the Ahmedabad Cost of Living Index Number known as Textile Dearness Allowance as before the revision in 1974.

Re : *Question No.* 5 : This takes us to determination of the last

(1) [1966] 1 S.C.R. 382.

A question. The decision of this Court in *Bengal Chemical and Pharmaceutical Works Ltd. and Its Workmen & Anr*(1) no doubt shows that in fixing wages and Dearness Allowance, the Industry-cum-region formula is *inter alia* to be kept in view. At the same time, it has to be borne in mind that there can be no comparison between a small struggling concern and a large flourishing unit. It follows, therefore, that when there is a large disparity between the two concerns engaged in the same B line of business in a region with which the Industrial Court is dealing is is not safe to fix the same wage structure for the large flourshing concern of long standing as obtains in a small struggling concern. (See *French Motor Car Company Ltd.* and *Their Workmen*(2). It cannot also be lost sight of that with the march of time, the narrow concept of Industry-cum-Region is fast charging and too much importance cannot be attached to region. The modern trends in industrial law seem to C lay greater accent on the similarity of industry rather than on the region. It was observed by this Court in *Workmen of New Egerton Woollen Mills and New Egerton Woollen Mills & Ors.*(3) that where there are no comparable concerns in the same industry in the region, the Tribunal can look to concerns in other industries in the region for comparison but in that case such concern should be as similar as possible and not disproportionately large or absolutely dissimilar. On D the parity of reasoning, it is reasonable to conclude that where there are no comparable concerns engaged in similar industry in the region, it is permissible for the Industrial Tribunal or Court to look to such similar industries or industries as nearly similar as possible in adjoining or other region in the State having similar economic conditions.

As in the instant case there was no comparable concern engaged in E the line of business similar to that of the appellant Company in the Surashtra region, the Industrial Tribunal did not, in our opinion, commit any error in taking into consideration for the purpose of comparison the Dearness Allowance paid by Sarabhai Chemicals and other concerns of the like or approximately like magnitude in other parts of the State of Gujarat.

F For the foregoing reasons, we do not find any force in this appeal which is dismissed with costs quantified at Rs. 2,000/-.

Appeal dismissed.

P.H.P.

(1) [1969] 1 L.L.J. 751, 758.
(2) [1962] 2 L.L.J. 744.
(3) [1969] 2 L.L.J. 782.