
(1979) 01 BOM CK 0042
In the Bombay High Court
Case No : Spl. C.A. 893 of 1978

Association of Chemical Workers

APPELLANT

Vs

Wahid Ali and Others

RESPONDENT

Date of Decision : 15-01-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 12(3), 13(3), 18(1), 18(3), 19

Citation : (1980) 1 LLJ 276

Hon'ble Judges : V.S. Deshpande, J;N.B. Naik, J

Bench : Division Bench

Judgement

Deshpande, J.—Workmen of the respondent No. 2 concern-hereinafter referred to as the "employer" are represented by the petitioner No. 1 - Union (Trade Union) and also by the respondent No. 3 - Union (another Trade Union). Till 1st of November, 1977 a settlement dated 10-9-1974 reached between the respondent No. 3 - union and the employer was in operation. Respondent No. 3 terminated the said settlement by a notice dated 1st November, 1977, while the petitioner terminated the same by a notice dated 31st December, 1977. Respondent No. 3 served a fresh charter of demands on the employer on 2nd February, 1978 while the petitioner No. 1 served their charter of demands on 2nd January, 1978.

2. The respondent No. 1 is the conciliation officer duly appointed under S. 4 of the Industrial Disputes Act, 1947 - hereinafter referred to as the "Act". On being apprised of the disputes between the employer and the employees of this concern, a meeting between the petitioner No. 1 and respondent No. 1 was held on 7th March, 1978. There was then another meeting between them on 14th March, 1968 at which respondents 2 and 3 also were present. Justification statements in respect of their demands appear to have been filed at this meeting. At the meeting held on 3rd April, 1978, respondent No. 1 indicated as to which of the demands made by petitioner No. 1 and respondent No. 3, were being admitted by him for conciliation. A notice in writing to that effect was

served by him both on the petitioner as well as on the respondent 2 and 3. The respondent No. 1 had meetings with the employer respondent No. 2 and the petitioner on 14th April and then on 17th April, 1978 at which respondent No. 1 tried to explore the possibilities of settlement. The meeting was then adjourned to 24th of April, 1978. On 17th April itself respondent No. 1 had meeting with respondent Nos. 2 and 3. He appears to have fruitful meetings with them then and on the following days. This resulted in a settlement between respondent No. 3 union and the employer respondent No. 2. The same was signed on 22nd April, 1978. This also was countersigned by the respondent No. 1 as the conciliation officer. The meeting scheduled between the petitioner No. 1, respondent No. 2 and the respondent No. 1, could not be held on 24th April as respondent No. 1 was held up in connection with this official work at Kalyan. The same was, however, held on 25th April, 1978. At this meeting, respondent No. 1 suggested that petitioner also should accept the settlement on the same lines on which the respondent No. 3 has settled it with regard to the points admitted for conciliation. The respondent No. 1 gave a copy of his recommendations, as also a copy of the settlement dated 22nd April, 1978. He, however, did not furnish the petitioner with the copy of the recitals though the petitioner's representative was permitted to take note of the same. The meeting was then adjourned to 2nd May, 1978 to enable the petitioner No. 1 to consider the same.

3. In the meanwhile respondent No. 3 notified on the notice board of the company, the terms of settlement. The news papers dated 27th April, 1978 carried a news how the settlement between respondent No. 2 and respondent No. 3 was signed in the presence of the Chief Minister on 25th April, 1978. They carried a photo of the said ceremony. On 29th April the petitioner No. 1 protested to respondent No. 1 in writing against what they considered to be his objectionable conduct suggesting that the settlement was brought about behind their back in breach of the legal provisions in disregard of the interest of the workmen and indicating their unwillingness to sign the same. On 2nd May the petitioners filed this petition under Art. 226 of the Constitution challenging the validity of the settlement and claiming a declaration that it was not reached in the course of conciliation proceedings and was not binding on them and also requested this Court to restrain the respondents from acting on it as settlement.

4. It appears that on that very day respondent No. 1 submitted failure report as far as the negotiations with the petitioner are concerned.

5. In this case, principal facts are not in dispute. The allegations and insinuations made by the petitioners against the respondent No. 1 Conciliation Officer are, however, in dispute and respondent No. 1 has filed his affidavit to refute the same. Respondents Nos. 2 and 3 also have filed their affidavits.

6. Mr. K. K. Singhvi, learned advocate appearing for the petitioner No. 1 contends that a settlement reached in the course of conciliation has the statutory effect of preventing any agitation in respect of the demands for a few years and any reference of this dispute to the adjudication of the Court or the arbitration. Such

a binding settlement must comply with all the requirements of the law. He raised five points for our consideration. His first contention is that any settlement by the employer with only one of the two negotiating unions, cannot be said to be a settlement in the course of conciliation. His second contention is that in either case respondent No. 1 is guilty of misconduct and settlement brought about by him is no such settlement at all. His third contention is that a settlement without the active participation of one of the unions like the petitioner cannot be said to be such settlement. His fourth contention is that, respondent No. 1 has not applied his conscious mind to the fairness of reasonableness of the settlement. His fifth contention is that, recitals of the settlement show as if the respondent No. 1 has acted as an Arbitrator though respondent No. 1 has no power to so arbitrate.

7. Coming to the first contention of Mr. Singhvi, there is no doubt that the petitioner is not a party to the said settlement, though it had also served its charter of demands and admittedly it has taken some part in the negotiations. The petitioner has neither signed the said settlement nor has it accepted the said terms nor has it ever indicated its willingness to accept the same. Question then that arises for consideration is whether such a settlement can be said to be effective settlement arrived at in the course of conciliation so as to bind the workmen who are not members of the respondent No. 3 - union including those who happen to be the members of the petitioner-union.

8. Provisions of S. 18(3) are complete answer to this contention of Mr. Singhvi. Section 2(p) read with S. 18 contemplates two categories of settlement, one arrived at in the course of the conciliation proceedings and the other arrived at otherwise than in conciliation proceedings. Sub-section (1) of S. 18 expressly indicates that the settlement arrived at by an agreement between the employer and the workmen otherwise than in the course of conciliation proceedings can bind only the parties to such settlement, while sub-s. (3)(d) of S. 18 indicates that settlement arrived at in the course of conciliation proceedings bind not only the parties to the settlement but also other workmen who may be in the employment of the concern on the date of such settlement and also who join subsequently. The very fact that sub-s. (3) of S. 18 contemplates such settlement to be binding even on the workmen who are not parties to the settlement either individually or through their union indicates that the settlement arrived at between respondents 2 and 3 as a result of the conciliation efforts of the respondent No. 1 would bind all the workmen of the respondent No. 1 who happen to be members of the petitioner-union even through agreeable to the terms thereof.

9. Mr. Singhvi, however, contends that sub-s. (3)(d), covers only such other workmen who are either members of no union or whose union displays indifference either by not responding to the notice of the conciliation officer or otherwise. But it cannot cover the workmen whose union displays active interest and is opposed to the settlement or terms thereof. According to Mr. Singhvi, it

would be a misnomer to call it settlement when negotiating union representing a section of the workmen opposes it and insist for better terms Mr. C. J. Sawant, Mr. Damania and Mr. Shetye the learned advocates appearing for the respondents 1 or 3 on the other hand relied on the judgment in the case of Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others, and contend that a settlement even with one of the many unions, brought about by conciliating officer would be such a settlement even other union choose not to accept it or actively oppose it. Mr. Damania further relied on Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, , The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others, ; and Workers of B and C Company v. Commissioner of Labour, 1964 I L.L.J. 253; Anthony Gomez v. State of West Bengal; 30 L. F.L.R. 172; Workmen of Asbestos Cement Ltd. v. Asbestos Cement Ltd., 1965 II L.L.J. 554 : General Engineering Employers Union v. Bhagwath and others, 1966 I L.L.J. 568 and Jobanputra (B.K.) Vs. Kalelkar (B.S.), , in support of the same proposition.

10. The word settlement undoubtedly presupposes the participation and consent of all the interested parties. Where workmen are members of the different unions, every union without regard whether represents a majority or minority section cannot but be considered to be so interested. However, S. 18(3)(d) appears to have been designed to meet some difficulties implicit in the collective bargaining with a floating army of workmen a few of whom may not choose to be the member of any union and, one or more unions may, for reason of its own may not like to reach the settlement. Legislature contemplates making such settlement binding even on such indifferent or unwilling workmen if the conciliation officer brings about it bona fide to ensure industrial peace. Intervention of the conciliation officer, and his belief in the settlement being fair and reasonable appears to be the basis of this provision which presently taken into account the impossibility of satisfying every section. In the case before the Supreme Court, one of the unions after taking part in the negotiations had walked out, indicating no interest in the proposals. The conciliation officer, however, succeeded in persuading the other union securing to continue the talk and security or settlement of the dispute.

Tuesday, January, 16, 1979

11. Relying on the provisions of S. 18(3)(d) of the Act, the Supreme Court held that such a settlement with one of the unions where workmen happen to be represented by more than one union, is a valid settlement within the meaning of S. 12(3) of the Act, i.e., arrived at the course of the conciliation proceeding and the said settlement is binding not only on the workmen represented by the union, signatory to such settlement but also other workmen represented by other union and also other who may not be represented by any union whatsoever.

12. It is true that Ramnagar Cane and Sugar Co."s did not directly raise the question as to S. 18(3)(d) of the Act. The workmen went on strike after their

negotiations with the other union still going on. The said workmen were prosecuted for indulging in strike during the pendency of the conciliation proceedings in breach of S. 22 of the Act. The trial Court and High Court acquitted them on the ground that, conciliation proceedings failed as against them when they walked out and conciliation proceedings qua them cannot be said to be continuing after their walk out. Supreme Court negatived this contention and reversed their acquittal and convicted them. Supreme Court held that, the settlement so reached as a result of the efforts of the conciliation officer was binding on every workman including the workman of the union walking out under S. 18(3)(d) of the Act and conciliation proceedings must be deemed to have been still continuing even if the union of the few workmen walked out. This is how Supreme Court was required to interpret S. 18(3)(d) also. Ratio of this case in fact is affirmed in the latest judgment of the Supreme Court in Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, and relied on by Mr. Damania.

13. It is true that in the case before the Supreme Court the union with whom the settlement was arrived at happened to represent the majority of the workmen then employed in the concern. The union which has chosen to walk out of the negotiation proceedings or had not taken part in the said negotiation happened only to represent minority of the workmen. That, however does not appear to be the basis of the ratio of the judgment. According to all these cases, it is the intervention of the conciliation officer that makes difference to the settlement that is reached in the course of the conciliation proceedings and the one reached otherwise than in conciliation proceedings. The settlement is aimed at securing the industrial peace in the same manner in which the reference to the Industrial Court or arbitration, etc., are aimed at. It is assumed that the conciliating officer will not so persuade even one union to settle unless he is satisfied that it is fair and respondent and it is in the larger interest of the industrial peace and in the interests of the workmen as a whole. The Legislature appear to have given a statutory effect to same by preventing agitation of the same dispute by other workmen for a statutory period even if they do nor happen to be parties to such settlement and are found to have not been agreeable to the terms indicated therein. The circumstance sent majority of the workmen in a concern does not appear to be as long as the settlement whether the signatory union happens to represented happens to be bona fide and the conciliation officer and the terms thereof appear to be on the whole reasonable and fair.

14. The mere circumstances, therefore, that workmen represented by the petitioner union are not signatories to the settlement or have not participated in the discussion resulting in the ultimate settlement by itself cannot invalidate the said settlement or making the settlement otherwise than in the conciliation proceedings not can the same cease to be binding on other workmen who are not represented by the signatory union.

15. It is true that according to the petitioner, respondent No. 3 - union is a tool in

the hands of the employer and is not represented by any substantial section of the workmen employed in the concern. It is also true the conciliating officer has not been in a position to state before us that respondent No. 3 - union represented either a majority of the workmen in the concern or any substantial section thereof. However, he appears to have relied on the circumstance that (1) that the earlier effective settlement of 1974 was reached by the employer with the respondent No. 3 - union itself and (2) that the Code of discipline under which the unions were recognised for the purpose of collective bargaining before the Maharashtra Act No. 1 of 1972, viz., Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972 was brought into force hereinafter referred to as the Act No. 1 of 1972; and (3) that application by the petitioner to get itself recognised as a representative union under the Act No. 1 of 1972 was rejected on 30-6-1977, a few days before the present dispute arose.

16. Mr. Singhavi no doubt drew our attention to the fact that the application for such recognition was made in the month of October, 1975. According to him strength the union as in 1975 cannot be said to be reflecting the same strength as on April, 1978 when the negotiations for the impugned settlement took place. Secondly, he contends that the application for recognition was as rejected because the investigating officer to whom the investigation into the claim of the petitioner was entrusted was found not to have been duly authorised. Mr. Singhavi also relied on the rejection of the identical claim by the respondent No. 3 under the same order. None of these circumstances in our opinion can impair the effectiveness of the order dated 30-6-1977.

17. It is true that recognition was claimed on the strength of the membership as it reflected six months before the date of application in October, 1975. But then in the first place, there is no other material suggesting what the strength of the petitioner-union could be in April, 1978 or at any time earlier while admittedly the respondent No. 3 - union continued to remain as a recognised union under the Code of discipline. Secondly, the next of the order does not show that investigating officers lack of authority alone was the basis thereof. The learned Judge has expressly referred to the failure of the petitioner to prove its strength otherwise by any direct evidence. The order also indicated that the claim of the respondent No. 3 for recognition was rejected not any by reference to the evidence adduced by it as to its membership, but because of its non-compliance with the provisions of S. 19 of the said Act, which deals with the requirement as to the framing of the Constitution and certain other technical matters. If in these circumstances the conciliation officer found it safe to negotiate the settlement with in respondent No. 3 - union it is not possible to find any fault with the same. We have indicted how actual strength of the signatory union of the petitioner not being a signatory to the settlement cannot in any way go to impair the legal effect of the settlement and cannot make it settlement otherwise than in a conciliation proceedings.

18. Mr. Singhvi relied on the judgment of the Kerala High Court in the case of

Monthly-rated workmen of Peirce Leslie and Co. Ltd. Vs. Labour Commissioner and Others, Though the learned Chief Justice in his judgment referred to the observations of the Supreme Court case in Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others, , the conclusion appears to us to run counter to the ratio of the said case.

19. Reliance by Mr. Singhavi on the judgment of the Madras High Court in the case of Management of the Tiruchi, Srirangam Transport Co. (P) Ltd. Vs. Industrial Tribunal and Others, , appears to us equally to have been misconceived. In the first instance the authority of the said judgment is doubted by a Division Bench of the same High Court in a later case reported in Workers of B and C. Co. v. Commissioner of Labour, 1964 I L.L.J. 253. Secondly, the ratio also is distinguishable for the same reasons for which it has been so distinguished by the Madras High Court in the said case.

20. Mr. Singhavi then relied on the judgment of the Supreme Court in the case of The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others, Thus judgment only lays down as to what role the conciliation officer is required to play in bringing about the settlement contemplated under S. 12(3) of the Act. The ratio of this case has to relevance to the point under consideration though we have to consider its impact to see in the conciliating officer did apply his own mind as to the reasonableness and fairness of the settlement.

21. As to the alleged misconduct of the conciliation officer, Mr. Singhavis" contention is based on respondent No. 1 having negotiated with respondents No. 2 and (3) and without inviting the petitioner to participate in the same. The grievance of petitioner is that respondent No. 1 carried on the talks with the other union and the employer secretary behind his back and the petitioner was not even informed of the settlement and the signature thereon until 25-4-1978. That all negotiations were carried on with the two unions separately and the settlement was signed on 22-4-1978 without information to the petitioner is not disputed. In his affidavit the respondent No. 1 explains it by indicating how the respondent No. 3 - union was not prepared to recognise petitioner"s representative character and take part in any discussion at which the petitioner"s representative would be present. This is only indicative of the extent of the rivalry between the two unions. It was, therefore, agreed between the unions, the employer and himself according to respondent No. 1 that he would carry on negotiations separately with each one of the unions in the presence of the employer and the points discussed with either of the unions, will not be disclosed to the other till final settlement is arrived at. Respondent No. 1 admits that he did not disclose the gist of the talks of one union while carrying on then negotiations with the other as according to him apart from breach of the understanding involved such disclosure would merely have enabled each one of the unions to run into a race for making larger demands and make the settlement virtually impossible.

22. The petitioner stoutly denies the existence of any such agreement or

settlement as also propriety of such mode of negotiations. We are inclined to prefer the word of the officer as against the word of the petitioner. Admittedly at the talks held on 14th and 17th of April, 1978 between the petitioner-employer and the officer, representative of respondent No. 3 were not present. Petitioner does not claim to have protested nor abstained from negotiations. This acquiescence in the absence of the representative of respondent No. 3 by the petitioner lends considerable credence to the respondent No. 1's say of such understanding or agreement. Secondly, we also find substance in his view that presence of the representatives of both unions at the stage of negotiations would have prevented rather than promoted the settlement and premature disclosure of the points discussed would have marred the chances of settlement. We are not thus prepared to make much out of the mere circumstance that the talks were separately held by the respondent No. 1 officer with the employer and respondent No. 3 behind the back of the petitioner. In our opinion, this was inevitable in the circumstances in which they were placed and no other course could have been permissible.

23. It is true that Rules 11 to 13 on which reliance was placed in support of this procedure by the respondent No. 2 and respondent No. 3 by themselves do not support expressly carrying negotiations with the representative of one union in the absence of the representative of the other unions when such unions claim to represent workmen of the same concern. However, rules do not prevent such procedure. On the contrary the rules leave it to the discretion of the conciliation officer to adopt such procedure in this matter as would be just and fair. It is difficult to hold that the procedure adopted by the respondent No. 1 officer of carrying on negotiations separately with each one of the unions and not disclosing the text of the talks to the other till the settlement was reached with either of them, was in any manner improper unfair or unjust. In these circumstances, question of respondent having held any secret meeting with either of the unions cannot arise.

24. It is true that respondent No. 1 did not fix any earlier meeting with the petitioner after 17th of April till 24th of April, 1978 though the petitioner appears to have insisted on such early meeting. At the meeting held on 14th and 17th April with the petitioner and respondent No. 1, though there was agreement as to which demands out of the several demands admitted for conciliation should take priority there was no unanimity between the employer and the petitioner-union as to what additional burden the employer should bear to face these demands. While the employer indicated its willingness to bear the additional burden of Rs. 65 per month per workman, at the first meeting on 14-4-1978 the petitioner insisted that it should not be less than Rs. 400. Total annual burden on the concern would have been 40 lacs at this rate as against Rs. 8 lacs involved in the offer of the employer. The petitioner indicated its response at the adjourned meeting on 17-4-1978 and not on 14-4-1978 itself. The claim of the petitioner appeared to the respondent No. 1 to be unreasonable and he, therefore, pressed the petitioner to be more reasonable, and the meeting was required to be

adjourned to 24-4-1978.

25. It also appears on the other hand from his affidavit that on 17th April itself subsequently a meeting between the officer and respondents Nos. 2 and 3 was held and respondent No. 1 succeeded at the said meeting firstly in persuading respondent No. 3 to reduce their suggested such burden to 30 lacs and in persuading respondent No. 2 to increase the burden initially worked out at Rs. 8 lacs per annum to about Rs. 16 lacs per annum. On further persuasions both agreed to leave the matter of the quantum of burden to the officer and he also persuaded them to agree to discuss in between themselves how to spread on the said amount over these priority demands. In other words, negotiations carried on by the respondent No. 1 with respondent Nos. 2 and 3 with such responses appear to have indicated some hope and prospects of settlement on 17th April itself. In this encouraging atmosphere he pursued the talks with both of them which resulted ultimately in the final settlement. It was signed on 22nd April, 1978.

26. It would certainly have been better if respondent No. 1 had contacted the petitioner and ascertained its reaction before the settlement was signed by himself and respondents 2 and 3 on 22-4-1978. But then respondent No. 1 can be said to be the better judge of the situation as long as his bona fides are not open to doubt.

27. It is difficult to find any fault with him if against the above background he thought it proper to take full advantage of the co-operative and responsive attitude of respondents 2 and 3 and finalise their talks and sign the settlement so arrived without allowing it to be marred by waiting for the response from the petitioner. Having discussed the matter with the representatives of the both earlier and found the extent to which each one was responsive and co-operative, he may have thought it better to finalise and secure commitment of respondents 2 and 3 when they were still in a mood to sign it. The petitioner did not give any encouraging response when all of them had met on 17th April, 1978. One cannot be too dogmatic to ignore how some time chances of even genuineness of settlement can be blown up by entirely an irrelevant factor in such a sensitive field if the first available opportunity is not seized. This of course assume that the settlement was be fair and just according to the conciliation officer himself. Signing of the settlement behind the back of the petitioner without petitioner itself being a signatory thereof is thus logical result of these factors and not of any objectionable conduct on the part of the respondent No. 1. In the light of these facts it is not possible for us to hold either that the petitioner were deliberately excluded from being signatory to the said settlement or the officer was guilty of any misconduct.

28. It does appear that CAFI union published the text of their settlement in the morning of 25th of April even before the petitioner-union was apprised of it or a copy thereof was handed over by the officer at the meeting held subsequently on 25th April, 1978. It is also true that the meeting scheduled to take place on 24th

April could not take place because of the respondent No. 1 at his office. It is also true that on 25th itself a ceremony of putting the signatures on the settlement was performed in the presence of the Chief Minister though the settlement was already signed by the respondents Nos. 2 and 3 and countersigned by respondent No. 1 earlier on 22-4-78. We are, however, unable to smell any mischief in any of these circumstances or see anything to militate against the genuineness or legality of the said settlement nor we are in a position to infer any act of misconduct of the officer therefrom. The settlement was reached between respondents Nos. 2 and 3 on the persuasion of respondent No. 1 and 22nd and it was already signed. It is difficult to see what objection there can be if the respondent No. 3 thought it necessary to get it published on the notice board of respondent No. 2 for the benefit of the information of all its members, nor the conduct of respondent No. 2 in permitting such publicity appear to us to be open to any objection. This may be an attempt on the part of the respondent No. 3 to secure approval of as many workmen as possible. Suffice it to note that respondent No. 1 officer cannot be held responsible for the same.

29. According to respondent No. 1 he could not reach the office in time to have the scheduled meeting on 24-4-1978 because of his being held up at Kalyan for official work. We do not see any reason to doubt this explanation. We have not been able to see any objection in adjourning the meeting from 17th April to 24th April. The prospects of settlement between respondents 2 and 3 were not present to his mind when he adjourned the meeting from 17/4 to 24/4/1978. He also cannot be held responsible if some others thought it proper to have the publicity for this settlement by signing again on 25-4-1978 in the presence of Chief Minister. It may be that the Chief Minister might have agreed to so sign believing the same to be in the interest of the industrial peace as a whole. It is not knowing whether the Chief Minister was aware about the non-participation of the petitioner-union then and it may also be an act on the part of the respondents 2 and 3 to win the favour of the Chief Minister and get publicity for themselves. No allegations are made against the Chief Minister. It is also not alleged that the respondent No. 1 was influenced by any political consideration or official pressure. It is difficult to see how any adverse inference can be drawn against respondent No. 1 from all this in the absence of any specific allegations. Respondent No. 1 has denied any knowledge of what happened in the presence of the Chief Minister and we have no reason to doubt his statement.

30. The contention as to the petitioner-union having no opportunity to participate in the talk is wholly unfounded. The petitioner did take part in exploratory meetings before 3/4. The petitioner had discussed with the officer and the employer on 14/4 and 17/4. When they again met on 25/4, they did discuss. But the fact that settlement had been already reached between the employer and CAFI Union appear to have infuriated the petitioner and prevented thus be said to have been prevented from participation though their non-co-operative attitude appears to have prevented their effective participation.

31. Mr. Singhavi, however, contends that in either case the settlement cannot be said to be arrived at as a result of the active persuasion of the conciliation officer or the conciliation officer cannot be said to have applied his conscious mind to the said settlement we are unable to see any merit in this contention. The facts indicated by the affidavit of the respondent No. 1 would show that it was the respondent No. 1 officer who took the initiative in the matter of conciliation after admitting few out of many demands for conciliation. It was he who initiated and tried to have joint talks with both the unions and the employer but had to undertake separate negotiations when the respondent No. 3 refused to join talks at any meeting at which petitioner would be present. It is he who took the initiative in persuading the employer to indicate to what extent they were agreeable to bear the additional burden and it was he again who appears to have persuaded the employer to raise the said figure when he found respondent No. 3's representative co-operative. He could not press the employer to do anything when as against the willingness of the employer to bear the additional burden of Rs. 65 per workman per month the petitioner insisted on such burden being borne to the extent of Rs. 400 per month per worker. However, as soon as the respondent No. 3 was found to be co-operative and responsive at the next sitting on the same day, he persuaded the employer also to raise the figure and ultimately persuaded them to accept his figure as to the said additional burden and further persuaded them to suggest measures for apportioning the same over the priority demands. The affidavit of respondents also shows that the settlement results in the increase of Rs. 243 per month per workman, and the said wage structure is better than the wage structure of the comparative concern though it cannot be favourably compared with some of the concerns named by the petitioner as these concerns in the considered opinion of respondent No. 1 cannot be said to be comparable to the respondent No. 2's concern. It is true that the details of the apportionment appears to have been left to be worked out by the representative of the employer and the respondent No. 3 - union. But by leaving such details to them respondent No. 1 cannot be said to have abandoned his functions of conciliation officer. It is true that the figures finally worked out by themselves do not show as to what the basis thereof is, nor any attempt has been made before us to substantiate the same by giving details thereof. We do not, however, think that by itself could be fatal to the validity of the settlement as such. The petitioner also has not demonstrated how the same are unrelated to the relevant financial capacity of the respondent No. 2. We have no reason to assume that the respondent No. 3 is just a tool in the hand of the employer or that respondent No. 3 accepted blindly the offers made by the employer or that respondent No. 1 blindly allowed them to put their signatures to the settlement without application of mind.

32. The figures shown to us indicate that lowest grade of the employee amongst the unskilled categories was getting Rs. 790 per month. He will now get a minimum of Rs. 1,027 and maximum of Rs. 1,466, in the terms of the said settlement. The highest grade employee was getting minimum of Rs. 1,492 per

month and maximum of Rs. 2,489. As against that under the settlement he get minimum of Rs. 1,690 per month and Rs. 2,956 by way of maximum. It is difficult either to hold that the respondent No. 1 did not apply his mind or did not consciously exercised his persuading powers in the matter of settlement, or that settlement was arrived at is either not reasonable or fair.

33. It is also not possible to hold that petitioner was not permitted to participate in the said discussion. As held earlier, the petitioner could not be taken into confidence during the period when the negotiations were carried on between respondent Nos. 2 and 3 on the intervention of respondent No. 1 from 17th April, 1978 to 22nd April, 1978 when the settlement was finalised. We have indicated how this aspect of the matter cannot be held objectionable in any manner. The meeting of 24th could not be held because as indicated by respondent No. 1 in his affidavit, respondent No. 1 was held up at Kalyan in connection with his official work. On 25th April, 1978 when the respondent No. 2 and the petitioner met him, respondent No. 1 gave him the copies of his own recommendations for the settlement which he had given before the settlement was reached between respondent Nos. 2 and 3. He also gave a copy of the settlement that was entered into between respondents Nos. 2 and 3 and he recommended that petitioner also should accept the same in the larger interest of the industrial peace. According to respondent No. 1 in spite of unwillingness of the petitioner to consider the merits of the same, he persuaded them to consider the said terms on their merit and it is with a view to enable them to give their response that meeting was adjourned from 25th April to 2nd May, 1978. It, however, appears that publication of the signing ceremony in the presence of the Chief Minister by respondents 2 and 3, scared the petitioner and goaded them to protest against all this by writing dated 29th April charging the respondent No. 1 with unreasonable attitude and virtually indicated their refusal to discuss the terms of settlement any further. It is not possible to hold that the petitioner had no opportunity to participate and discuss as to merits or demerits of the said settlement. The petitioner's attitude did not appear to be responsive to the respondent No. 1. That prevented him from discussing the terms of the settlement reached by respondent 2 and 3 with the petitioner before their signature on the settlement in addition of their being excluded from the talks held with respondent Nos. 2 and 3 for the reasons already discussed. Once legally it is found permissible for the respondent No. 1 conciliating officer to persuade one of the many unions of the workmen to reach a settlement and once it is further found that such a settlement also can be a binding settlement as having been arrived at in a conciliation proceeding, absence of the petitioner from the negotiations brought about by their own uncooperative approach does not appear to be of any legal consequence whatsoever. Addition of the proviso of sub-s. (1) of S. 18 of the Act, by Schedule I of the Maharashtra Act No. 1 of 1972 is also point to the legislative policy in this behalf. It contemplates a settlement entered into with a recognised union as a binding settlement notwithstanding the fact that the union can be so recognised on proof of being representative of 30 per cent of the total workers

concerned.

34. It was also contended that the respondent No. 1 has no power of adjudication and he is only entrusted with the function of persuading the employer and employees to reach a settlement. This undoubtedly is so. But respondent No. 1 did not make any efforts to adjudicate. He has only brought the parties round a table. He indicated of the annual burden of Rs. 24 lacs to be reasonable against the claim of Rs. 30 lacs suggested by the respondent No. 3. But ultimately it is respondents No. 2 and 3 who were left with a choice to accept or reject it. The reference to this as "award" in the recitals of the settlement is misdescription of what he has actually proved to have done.

35. We thus are unable to see any merit in this petition. Rule is accordingly discharged. In the circumstances of the case, there will be no order as to costs.

36. Mr. Singhavi applies for leave to appeal to Supreme Court under Act. 133 of the Constitution. Leave refused.