
(1982) 11 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 10837 of 1981

Britannia Biscuit Co. Ltd. Employees' Union

APPELLANT

Vs

Assistant Commissioner of Labour, Head Quarters and Others

RESPONDENT

Date of Decision : 05-11-1982

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 32
Industrial Disputes Act, 1947 — Section 10A, 11(2), 11(4), 11(6), 12
Penal Code, 1860 (IPC) — Section 21
Tamil Nadu Industrial Disputes Rules, 1958 — Rule 10, 10A, 23

Citation : (1983) 1 LLJ 181

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Judgement

1. The petitioner in this writ petition is the Britannia Biscuit Company Ltd. Employees Union (for short the petitioner-union). It has prayed for the issue of a writ declaration that the settlement, dated 14th October, 1981, entered into between the Britannia Industries Employees' Union, the third respondent, (for short the recognized union) and the Britannia Industries Ltd., the second respondent (for short management) is null and void. The facts leading to the filing of the writ petition may be set out as follows :

2. The management is engaged in the manufacture of biscuits and breads. It has been declared to be a public utility service within the meaning of the Industrial Disputes Act, 1947 (for short the Act). It employs about 950 workmen. It is an admitted fact that the third respondent was recognized as the proper bargaining agent of the workmen by the management as per the recommendations of the State evaluation and implementation committee. It is also an admitted fact that some of the workmen of the management are members of the petitioner-union. The total strength of the workmen of the management consisted of permanent, temporary and about 439 casual employees. While so, in or about the beginning of 1979 both the recognized union and the petitioner-union made a demand on the management that the casual workmen should be made permanent. The

management resisted the demand on the ground that in view of the fact that the Government of India had fixed the production capacity of the Madras unit of the management for the manufacture of biscuit as 3,600 tonnes per annum and it called upon the management to reduce the production gradually within the period of three years it would not be possible to regularize the casual workers. Ultimately, the matter was taken up for conciliation by the Deputy Commissioner of Labour, Madras. The conciliation proceedings resulted in two separate settlements being entered into between the management and the petitioner-union and the recognized union on 6th April, 1979. By the said settlement the management agreed to make 439 casual workers as temporary with effect from the date of their joining duty. It is not necessary for purpose of this writ petition to refer to the other terms of the agreement. There is no dispute that this settlement was not implemented by the management. On 28th January, 1980, the recognized union made a demand on the management claiming that the temporary workers should be confirmed. The management, however, took the stand that they wanted to reduce the total number of workmen from 978 to 761 on the ground that the management needed only 575 workmen on a permanent basis and the rest on a temporary or casual basis. To this effect the management addressed a letter to the Deputy Commissioner of Labour as early as on 30th August, 1980. Further, on 8th September, 1980, they wrote to the Deputy Commissioner of Labour that the management would be prepared to consider the confirmation of the temporary employees, but that before the branch capacity was finalized neither the confirmation of the temporary workers nor an increase in wages could be considered. On 6th January, 1981, the management wrote to the recognized union that it would not be possible to consider any permanency for any temporary worker since the branch capacity was in question in addition to the problem of excess labour on hand. On 20th February, 1981, the petitioner-union called upon the management to confirm forthwith 396 temporary workmen. On 14th April, 1981, the recognized union addressed a letter to the Prime Minister of India stating that the management had informed them that 394 workmen would not be confirmed and that their services would be terminated with effect from July, 1981 onwards due to the capacity restraint placed by the Government of India on the management at Madras. The communication requested the Prime Minister of India to intervene and advise the management to regularize the said 394 temporary workers and also to advise the Ministry of Industries to allow the management to continue with the then allowed capacity and not to effect a drastic cut in the production capacity. A copy of this letter was sent among others to the Commissioner of Labour, Madras. On 27th April, 1981 the petitioner-union addressed a letter to the Labour Officer, Chengalpattu, stating that the stand of the management was not correct and that in view of the policy of the State Government to make compulsory permanency to all those who have put in 480 days of service, the dispute should be referred for adjudication. On 30th May, 1981, the Labour Officer, Chengalpattu, issued a notice to the parties to appear for conciliation on 15th June, 1981. On 24th July, 1981, the petitioner-union addressed a further letter to the Labour Officer,

Chengalpattu, stating that the management had suspended certain workers and consequently the dispute regarding confirmation should be settled immediately. On 2nd July, 1981, the petitioner-union served a strike notice on the management in terms of S. 22(1)(c) of the Act notifying that they would organize a strike with effect from 20th July, 1981. A copy of this was sent to the Commissioner of Labour, Madras, and the Labour Officer, Chengalpattu. On 7th July, 1981, the recognized union addressed a letter to the Labour Officer, Chengalpattu. The said communication stated that the petitioner-union has no locus standi to issue any strike notice, that after verification of membership it was found that the recognized union represented the majority of the workmen and that with regard to the issue for which the strike notice had been given the recognized union was negotiating with the management and hoped to come to a reasonable settlement. The letter further requested the Labour Officer, Chengalpattu, that no conciliation talk should be held in view of the fact that the recognized union was already carrying on negotiations with the management. On 15th July, 1981, the management made a representation to the Labour Officer, Chengalpattu, with regard to the strike notice. It stated that the recognized union was the proper bargaining agent to negotiate with the management and that the management and the recognized union were negotiating the issue of temporary workmen and they expected to arrive at a settlement soon. The management also questioned the locus standi of the petitioner-union to raise the dispute or to issue a strike notice. A further representation was presented by the management to the Assistant Commissioner of Labour, Chengalpattu, on 24th September, 1981, as regards the confirmation of the temporary workmen. This letter stated that as a result of negotiations before the Deputy Commissioner of Labour, Madras, in March 1979, the casual workers had been made temporary since the Government of India was insisting that the management should reduce its production level, the temporary workmen could not be made permanent, and that negotiations are being carried on with the recognized union and that the management was confident of a mutual agreeable settlement within a short time. Ultimately, the letter stated that none of the demands made by the petitioner-union could be countenanced. On 6th October, 1981, the Assistant Commissioner of Labour, Chengalpattu, submitted a failure report to the Government under S. 12 of the Act. While so on 14th October, 1981, the management signed a settlement with the recognized union before the Assistant Commissioner of Labour, Headquarters, Madras. On 15th October, 1981, the Government received the failure report from Assistant Commissioner of Labour, Chengalpattu. On 22nd April, 1982, the Government passed G.O.Ms. No. 845 stating that the Government considered that there was no case to raise a dispute for adjudication. The writ petition was filed on 20th November, 1981.

3. Sri N. G. R. Prasad, the learned counsel for the petitioner-union, raised the following contentions :

(1) The Assistant Commissioner of Labour, Headquarters, had no jurisdiction to give concurrence to a settlement between the management and the recognised

union when the Assistant Commissioner of Labour, Chengalpattu, had already held conciliation proceedings and had submitted a failure report. There was no transfer of the file from the Assistant Commissioner of Labour, Chengalpattu, to the Assistant Commissioner of Labour, Headquarters.

(2) When there are more than one union in an industrial establishment, the Assistant Commissioner of Labour would have no jurisdiction to countenance a settlement only between one union and the management, particularly so when the other union or union has not agreed to the terms of the settlement. Further, the function of the conciliation officer is only to promote and persuade the management and the workmen to come to a settlement and not to adjudicate on the rights of parties. By allowing the management to enter into the impugned settlement with the recognised union, the Assistant Commissioner of Labour, Headquarters, has adjudicated upon the dispute between the parties.

(3) The impugned settlement must be declared to be null and void as being not in conformity with S. 12(3) of the Act for the following reasons :

(a) No notice was given to the petitioner-union prior to the signing of the impugned settlement between the management and the recognised union. The petitioner-union was entitled to notice in view of the fact that the conciliation officer had already held conciliation proceedings between the management and both the unions and submitted a failure report. Principles of natural justice required that the petitioner-union should have been given an opportunity before the Assistant Commissioner of Labour, Headquarters, gave his approval for the impugned settlement. Under the impugned settlement fifty-one workmen were allowed to be discharged from service. The recognized union had no power to give up the rights of the fifty-one workmen. The fifty-one workmen should have been heard before the management signed a settlement with the recognised union which resulted in the termination of the services of fifty-one workmen.

(b) The Assistant Commissioner of Labour, Chengalpattu, did not verify the strength of the workmen who are members of the recognized union. It was a mandatory duty on his part to have verified the strength of the members of the recognized union and satisfy himself that the recognized union represented the majority workmen of the management. According to Sri Prasad the petitioner-union represented the majority of the workmen.

(c) Under S. 12(2) of the Act the function of the conciliation officer is to induce the parties to come to a fair amicable settlement of the dispute. In this case, the management and the recognized union had already arrived at a settlement without the help of the Assistant Commissioner of Labour, Headquarters, and what the letter did was to give his stamp of approval to a settlement which had already become a *fait accompli*. Consequently, the impugned settlement could not be deemed to be a settlement entered into between the management and the recognized union in the course of conciliation proceedings and, therefore, at the worst the settlement could be held to be only binding on the actual parties to the

settlement and will have the effect of a settlement as contemplated under S. 18(3) of the Act. Further, even assuming that the Assistant Commissioner of Labour, Headquarters, was competent to hold conciliation proceedings he did not hold any conciliation proceedings as could be evident from the fact that no date for conciliation was fixed as required by Rule 23 of the Tamilnadu Industrial Disputes Rules (for short rules).

(4) The impugned settlement was also in violation of S. 25J of the Act.

4. Sri K. K. Venugopal, on behalf of the management, while advancing a contention that the writ petition was not maintainable in view of the fact that the petitioner-union had its remedy under the provisions of the Act, did not want to rest his case on the technical plea of maintainability and invited a decision on the merits. The learned counsel pleaded that this was not a case for intervention under Art. 226 of the Constitution of India, though the management would be benefited if the writ petition were to be allowed in view of the fact that result of such a decision would be that 332 workmen who had been made permanent would be rendered temporary. However, the learned counsel argued that the settlement was entered into by the management with the recognized union which had been found to represent the majority of workmen by the evaluation committee. Further, as a result of the impugned settlement the management had entered into separate and individual contracts with the 332 workmen. If this Court were to hold that the settlement was null and void, the result would be to render in turn the 332 individual contracts entered into by the management with the 332 workmen pursuant to the settlement equally null and void. This Court should not issue any writ which may have such a far reaching consequence. Further, as a result of the impugned settlement the management had agreed to make permanent the service of 332 workmen notwithstanding their definite stand that those 332 workmen were surplus from the point of view of the management. Even as regards the fifty-one workmen who were to be discharged they were chosen not at random but on the basis of certain norms agreed to by the management and the recognized union, with reference to their performance in the discharge of their duties. Even in the case of those fifty-one workmen, the recognized union bargained for and the management agree that they should be paid a lumpsum of Rs. 6500 each as compensation which sum would be much more than what each of the fifty-one workmen would have been entitled to if he had been further additional benefits were also conferred on the 332 workmen. In view of the fact that the settlement had been entered into by the management with the recognized union on a fair and reasonable basis in view of the fact that the Assistant Commissioner of Labour, Headquarters, himself found that the settlement was fair and reasonable this Court should not interfere with the settlement in exercise of its power under Art. 226 of the Constitution. On the merits, Sri Venugopal contended that there was no basis at all in the contention urged on behalf of the petitioner-union that the Assistant Commissioner of Labour, Headquarters, had no jurisdiction to sign a settlement. Even before conciliation proceedings were started by the Assistant Labour Commissioner,

Chengalpattu, at the instance of the petitioner-union the recognized union had made a demand that the casual workers should be made permanent while the management resisted the same. Negotiations were going on. The recognized union wrote to the Prime Minister of India with a copy to the Commissioner of Labour, Madras. Thereupon, the Commissioner of Labour, addressed the Assistant Commissioner of Labour, Headquarters, to deal with the matter. Before the Assistant Commissioner of Labour, Chengalpattu, both the management and the recognized union made it clear that negotiations were being carried on between the management and the recognized union, that a settlement was likely to be reached and the petitioner-union has no locus standi to intervene and raise a dispute. No doubt, the Assistant Commissioner of Labour, Chengalpattu, sent a failure report on 6th October, 1981. However, before the report reached the Government on 15th October, 1981, the impugned settlement had been entered into between the management and the recognized union on 14th October, 1981. The learned counsel also repudiated the contention of Sri Prasad that the settlement was arrived at without the help and concurrence of the Assistant Commissioner of Labour, Headquarters, and that the latter did not play any role in promoting the settlement between the parties. The very fact that the recognized union had addressed a letter to the Prime Minister of India and also to the Commissioner of Labour, would show that even though talks were going on no finality was being reached and consequently the recognized union wanted the assistance of the labour authorities to effect a final settlement. It was accordingly that the impugned settlement was arrived at with the concurrence and assistance of the Assistant Commissioner of Labour, Headquarters. The learned counsel also contended that inasmuch as the Commissioner of Labour had overall jurisdiction throughout the State it was open to him to direct the Assistant Commissioner of Labour, Headquarters, to deal with the matter and it could not be said that the Assistant Commissioner of Labour, Headquarters, had no power to sign a settlement. Nextly, Sri Venugopal argued that there was no necessity to issue any notice of conciliation as required by rule 24 of the rules. The management being a public utility service, the moment the petitioner-union has issued a strike notice, conciliation proceedings must be deemed to have commenced. Consequently, it was open to the recognized union to sign a settlement in the presence of the Assistant Commissioner of Labour, Headquarters. It was the further contention of Sri Venugopal that no principles of natural justice were either involved or called for in this case. The management was bound to negotiate only with the recognized union, it was not necessary on the part of the Assistant Commissioner of Labour, Headquarters, to issue a notice to the petitioner-union before he gave concurrence to the settlement between the management and the recognized union. All that he had to be satisfied was that the agreement was fair and reasonable, and in this case the Assistant Commissioner of Labour has recorded that the settlement was fair and reasonable. Apart from this, as a matter of fact, the Assistant Commissioner of Labour, Headquarters, had heard representations of the petitioner-union also before he signed the impugned settlement.

5. Sri Kanakaraj, the learned Additional Government Pleader, adopted the arguments of Sri Venugopal for the management and further contended that in this case before the impugned settlement was signed by the Assistant Commissioner of Labour, Headquarters, the petitioner-union was also heard and that since the petitioner-union was not co-operative and since the officer thought that the terms of the settlement were fair and reasonable, he signed the settlement. The learned Additional Government Pleader further repudiated the argument of Sri Prasad that the settlement was not promoted by the Assistant Labour Commissioner, Headquarters, and stated that but for the latter's assistance the settlement would not have been arrived, at, as the parties were negotiating over the dispute for quite a long time.

6. Sri Somayajee, the learned counsel for the recognized union, stated that at the relevant period the management was facing difficulties such as shortage of raw materials, and restrictions regarding the production capacity placed by the Government of India and that consequently they has taken a definite stand that it would not be possible for them to make permanent any of temporary workmen and that the temporary workmen were really constituted surplus labour. Naturally, therefore, the recognized union had to fight on behalf of the 383 temporary workmen and at last with the assistance of the Assistant Commissioner of Labour, Headquarters, the management was persuaded to agree to retain at least 332 workmen. Even with regard to the fifty-one workmen the recognized union saw to it that the management agreed to pay a lumpsum of Rs. 6,500 which was much more than what each one of the workmen would have got if he had been retrenched from service. Further, the management agreed to a revision of salary. In view of these circumstances, the recognized union felt that the offer of the management was fair and reasonable and was advised by the Assistant Commissioner of Labour, Headquarters, to accept the same as in his opinion the terms were reasonable and fair. The learned counsel, then argued that before a settlement was entered into under S. 12(3) of the Act it was not necessary that notice should be given to any person. The learned counsel, further stated that even assuming the settlement was for any reason vitiated the petitioner-union must be driven to seek the remedy available to it under the provisions of the Act and not seek a declaration from this Court that the settlement is null and void. In this connection, the learned counsel made reference to the fact that subsequently the Government have found it inexpedient to refer the dispute for adjudication by the Labour Court. Both Sri Venugopal and Sri Somayajee also emphasized upon the fact that before the settlement was signed, the officer verified the numerical strength of the recognized union and that the same was disclosed in the counter-affidavit filed on behalf of the Government. Further, out of the fifty-one workmen many of the workmen has accepted the compensation amount and had acquiesced in the settlement.

7. The first question that arises for consideration in this case is whether the writ petition for a declaration that the settlement entered into between the

management and the recognized union in the presence of the Assistant Commissioner of Labour, Headquarters, is null and void, is maintainable. It is necessary at this stage to refer to certain provisions of the Act. The Act was intended to make provision for the investigation and settlement of industrial dispute and for certain purpose. A conciliation officer is defined as meaning a conciliation officer appointed under the Act. A conciliation proceeding is defined under S. 2(e) of the Act as any proceeding held by a conciliation officer or Board under Act. Settlement is defined in S. 2(p) of the Act as meaning a settlement arrived at in the course of conciliation proceedings including 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 authorized in that behalf by the appropriate Government and the conciliation officer. S. 4(1) of the Act enables the appropriate Government by notification in the official gazette to appoint such number of persons as it thinks fit to be conciliation officers charged with the duty of mediating in and promoting the settlement of industrial disputes. S. 4(2) provides that a conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for limited period. S. 11(2) of the Act empowers a conciliation officer to enter the premises after giving reasonable notice for the purpose of inquiry into any existing or apprehended industrial dispute. S. 11(4) of the Act empowers the conciliation officer to call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, in respect of compelling the production of documents. S. 11(6) of the Act deems a conciliation officer to be a public servant within the meaning of S. 21 of the Indian Penal Code. S. 12 deals with the duties of conciliation officers. Under S. 12(1) of the Act where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under S. 22 has been given shall hold conciliation proceedings in the prescribed manner. Under S. 12(2) it is the duty of the conciliation officer for the purpose of bringing about a settlement of the dispute to investigate without delay the dispute and all matters affecting the merits and the right settlement thereof and do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. Under S. 12(3) if a settlement is arrived at in the course of conciliation proceedings, the conciliation officer shall send a report to the appropriate Government or an officer authorized in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. If no such settlement is arrived under S. 12(4) the conciliation officer shall after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for

ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at S. 12(5) deals with the power of the Government to refer or to decline to refer a dispute for adjudication. S. 12(6) states that a report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. The proviso confers power for extension of time for the submission of the report. S. 18(1) states that a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. S. 18(3) of the Act reads thus :

"18. (3) A settlement arrived in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Ss. (3A) of S. 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 :

(b) all other parties summoned to appear in the proceedings 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 of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or cl.(b) is composed of workmen, all persons who were 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."

Section 22 reads thus :

"22. (1) No person employed in a public service shall go on strike in breach of contract -

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings."

Rule 59 of the rules deals with the notice of strike which has to be given in Form O. Rule 22 of the rules provides that the conciliation officer, on receipt of a notice

of strike given under Rule 59 shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question. Rule 23 of the rules provides that where the conciliation officer receives any information about an existing or apprehended industrial dispute which does not relate to a public utility service dispute, he shall give formal intimation to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein. Under Rule 23(2) the conciliation officer may hold a meeting of the representatives of both the parties jointly or of each party separately.

Rule 23(3) enjoins that the conciliation officer shall conduct the proceedings expeditiously and in such manner as he may deem fit. Rule 24 of the rules provides for submission of statements by the party representing the workmen involved in the industrial dispute in respect of which no notice has been given under Rule 59. Rule 25(1) states that a settlement arrived at in the course of conciliation proceedings or otherwise shall be in Form B. Rule 25(2) provides that the settlement shall be signed by -

"(a) in the case of an employer, by the employer himself or by his authorized agent or when the employer is an incorporated company or other body corporate, by the agent, manager or other principle officer of the corporation; and

(b) in the case of workmen, either by the president or secretary of a registered trade union of workmen or by two office-bearers of the union authorized by the president or secretary or by five representatives of workmen duly authorized in this behalf at a meeting of the workmen held for the purpose and attended by a majority of the workmen concerned.

Provided that where the number of workmen affected is not more than two, the settlement may be signed by the workman concerned. Form B provides for the signature of the conciliation officer/Board of conciliation.

8. From the above it is clear that S. 12 makes a clear distinction between disputes relating to non-public utility service and public utility services. In the case of non-utility service a discretion is vested in the conciliation officer to hold conciliation proceedings or not.

But in the case of a public utility service like the present management, it is mandatory, on the part of the conciliation officer to hold conciliation proceedings. Similarly, S. 12 makes a distinction between a settlement arrived at in the course of conciliation proceedings and a settlement arrived at otherwise than in the course of conciliation proceedings. The legal effects of both kinds of settlement are not identical. Under S. 18(3) of the Act a settlement arrived at in the course of conciliation proceedings will be binding on all parties to the industrial dispute referred to in cls. (a) to (d) of S. 18(3) which in the case of workmen will include all persons who are employed in the establishment or part of the establishment to which the dispute relates on the date of the dispute and all persons who

subsequently become employed in the establishment or part. But a settlement arrived at between the management and workmen otherwise than in the course of conciliation proceedings, will bind only the actual parties to the agreement in accordance with S. 18(1) of the Act. The power of a conciliation officer is only to promote a settlement. His power is not adjudicatory. He is not competent to decide finally the various points at issue between the opposing parties. All that he can do is to persuade the parties to agree upon a fair and reasonable settlement. If the settlement is arrived at in the course of conciliation proceedings he is bound to send a report to the appropriate Government together with a memorandum of settlement signed by the parties to the dispute in the form prescribed. If the parties do not agree to come to a settlement, then the conciliation officer has to submit a failure report to the appropriate Government, setting forth the steps taken by him to bring about a settlement of the dispute, a full statement of the facts and circumstances relating to the dispute and the reasons on account of which the settlement could not be arrived at. Therefore, it will be for the Government to consider whether on the basis of the failure report of the conciliation officer and other relevant materials, they should refer the dispute for adjudication or not. At the same time, the conciliation officer has a special role to play in the matter of bringing about a settlement under S. 12(3) of the Act. This is because by reason of S. 18(3) the settlement arrived at between the management and workmen in the course of conciliation proceedings will be binding not only on the parties to the agreement but also all others mentioned in S. 18(3), viz., the workmen, present and future, and the employer, present and future. Consequently, a special responsibility is placed on the conciliation officer to see that the settlement arrived at is fair and reasonable and he has to satisfy himself that it is so and then give his concurrence accordingly. It is only such a settlement which will be a settlement arrived at in the course of conciliation proceedings and which will have the legal effect as contemplated under S. 18(3) of the Act which consequence is entirely different from the legal effect of an agreement entered into between the management and the workmen otherwise than in the course of conciliation proceedings.

9. A recent judgment of the Kerala High Court in *Madhavan Kutty v. Union of India* 1982 II L.L.J. 212, highlights the powers of the conciliation officer. Khader, J., has observed as follows in Para 5, at page 214.

"..... That apart, a conciliation officer is not competent to decide, the various points at issue between the opposing parties. All that he can do is to try to persuade the parties to come to a fair and amicable settlement. Under the Act, he is given power to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute." The functions and duties of a conciliation officer are crystal clear from the provisions in S. 12 of the Act. Although wide powers are given under this section to a conciliation officer depending upon his resourcefulness and power of persuasion, to try to induce and persuade the parties to come to a fair and amicable

settlement of the dispute, he has no power to decide anything at all. After having commenced the conciliation proceedings under S. 12 of the Act, the conciliation officer exceeded his power and acted beyond his jurisdiction by passing Ext. P3 order"

10. The scope of a settlement arrived at in the course of conciliation proceedings under S. 12(3) of the Act came up for consideration before the Supreme Court in *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, . In the course of conciliation proceedings in respect of a dispute between the Bata Shoe Company (Private) Ltd., and its workmen a settlement was arrived at between the parties on 18th February, 1954. Notwithstanding the settlement some of the workmen went on strike which was eventually called off on 19 and 20th March, 1954. Thereupon, the management dismissed some workmen after holding an enquiry against them on the charge that they had participated in an illegal strike. Again there were conciliation proceedings in respect of the dismissal of the workmen before the Labour Commissioner and in agreement was arrived at between the management and the union on 2nd September, 1954. The Labour Commissioner when informed of the settlement found that the union was opposing the retrenchment of certain workmen and he wanted to hold conciliation proceedings. Since the management was not in favour of further conciliation steps the Labour Commissioner submitted a failure report to the Government under S. 12 of the Act. Thereafter, the Government made a reference of the dispute to the Industrial Tribunal. The Industrial Tribunal gave an award directing that all the discharged workmen should be reinstated. Before the Supreme Court the management took the stand that the settlement had been arrived at during the course of the conciliation proceeding on 2nd September, 1954, the reference itself was incompetent in view of S. 18 of the Act. It is in this context, the question arose whether the settlement, dated 2nd September, 1954, was a settlement arrived at in the course of conciliation proceedings. The Supreme Court after referring to Ss. 18 and 19 of the Act and the words "in the course of conciliation proceedings" appearing in S. 18 of the Act posed this question :

"Do these words mean that any agreement arrived at between the parties during this period would be binding under S. 18 of the Act ? Or do they mean that a settlement arrived at in the course of conciliation proceedings postulates that settlement should have been arrived at between the parties with the concurrence of the conciliation officer ? As we read this provision we feel that the Legislature when it course of conciliation proceedings binding not only on the parties thereto but also on all present and future workmen intended that such settlement was arrived at with the assistance of the conciliation officer and was considered by him to be reasonable and therefore, had his concurrence. Section 12 of the Act prescribes duties of the conciliation officer and provides that the conciliation officer shall for the purpose of bringing about settlement of the dispute without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he may think fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

[vide S. 12(2)]. Then comes S. 12(3), which provides, "If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. Reading these two provisions along with S. 18 of the Act, it seems to us clear beyond doubt that a settlement which is made binding under S. 18 on the ground that it is arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the conciliation officer, for it is the duty of the conciliation officer 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. It is only such a settlement which is arrived at while conciliation proceedings are pending that can be binding under S. 18."

On the facts of that case the Supreme Court held that the mutual agreement was arrived at between the appellant and the union without the assistance of the Labour Commissioner and it did not receive his concurrence even later; on the contrary evidence shows that the Labour Commissioner did not approve of the settlement which excluded the reinstatement of a large group of workmen and so he did not act under S. 12(3). In the circumstances, the Supreme Court held that the agreement could not be called a settlement arrived at in the course of conciliation proceedings even though it may be accepted that it was arrived at a time when conciliation proceedings were pending. The Supreme Court observed thus :

"A settlement which can be said to be arrived at in the course of conciliation proceedings is not only to be arrived at during the time the conciliation proceedings are pending but also to be arrived at with the assistance of the conciliation officer and his concurrence; such a settlement would be reported to the appropriate Government under S. 12(3)."

11. From this it is clear, that a settlement will not have the effect of a settlement under S. 12(3) unless it is brought about with the assistance and concurrence of the conciliation officer. In this case, the stand of the petitioner-union is that the impugned settlement was brought about without the assistance and concurrence of the conciliation officer and that consequently it will not have the effect of a settlement under S. 12(3) of the Act. In any event, according to the petitioner-union it will have only the effect of a settlement under S. 18(1) of the Act and it will be binding on the parties to the agreement only. If as is contended by the learned counsel for the petitioner-union this Court can come to the conclusion on the basis of the materials available that the impugned settlement was arrived at without the assistance and concurrence of the conciliation officer in the course of the conciliation proceedings as explained by the Supreme Court in Bata Shoe Company case (vide supra), I do not see why there should be any difficulty in the Court granting a declaration as prayed for by the petitioner-union. If the question that is agitated by the petitioner-union can be resolved only by reference to

complicated question of fact, then certainly it will be open to the Court to direct the petitioner-union to resort to the alternative remedies that might be available to it. Wade in his Administrative Law 4 Edn., page 499, has stated thus :

Declaratory judgments pay a large part in private law and are a particularly valuable remedy for setting disputes before they reach the point where a right is infringed. The essence of a declaratory judgment is that it states the rights or legal position of the parties as they stand, without changing them in any way, though it may be supplemented by other remedies in suitable case."

The learned author at page 500 observed as follows :

"In Administrative Law the great merit of the declaration is that it is an efficient remedy against ultra vires action by Government authorities of all kinds including the Crown. If the Court will declare that some action, either taken or proposed, is unauthorized by law, that concludes the point as between the plaintiff and the authority."

12. Prof. De Smith in his Judicial Review of Administrative Action, 4th Edn., at page 475, has observed as follows :

"The power of a Court to render a purely declaratory judgment is particularly valuable in cases where a legal dispute exists but where no wrongful act entitling either party to seek coercive relief has been committed. By making an order declaratory of the rights of the parties the Court is able to settle the issue at a stage before the status quo has been disturbed. Inconvenience and the prolongation of uncertainty are avoided

It is equally for the public benefit that an individual whose interests are immediately liable to sustain direct impairment by the conduct of the administration should be able to obtain in advance a judicial declaration of the legal position."

Lord Denning in *Pyx Granite v. Ministry of Housing and Local Government* (1958) 1 Q.B. 554 , has observed as follows :

If a substantial question exists, which one person has a real interest to raise and the other to oppose, then the Court has a discretion to resolve it by a declaration which it will exercise if there is good reason for so doing."

It can, therefore, be taken as settled that the Court can issue declaratory judgments.

14. The next question then arises is whether a relief in the form of a declaration can be given in a proceeding under Art. 226 of the Constitution of India. It is now settled that the powers under Art. 226 of the Constitution of India are wide enough to make even a declaratory order where that is the proper relief to be given to the aggrieved party. In *Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others*, , the validity of the Madras Act 32 of 1955, was challenged and a declaration was sought that the legislation was invalid. It

was contended before the Supreme Court that the impugned Act was merely a piece of a declaratory legislation and did not contemplate or require any action to be taken by the State or any other person and, therefore, none of the well known prerogative writs could afford an adequate or appropriate remedy to a person whose fundamental right had been infringed by the mere passing of the Act, and that if such a person challenged the validity of such an enactment, he must file a regular suit in a Court of competent jurisdiction for getting a declaration that the law was void and, therefore, could not did not affect his right. Dealing with this question the Supreme Court after referring to certain decision observed as follows :

"But on consideration of the authorities it appears to be well established that the Court's power under Art. 32 are wide enough to make even a declaratory order where that is the proper relief to be given to the aggrieved party. The present case appears to us precisely to be an appropriate case, if the impugned Act has taken away or abridged the petitioners' right under Art. 19(1)(f) by its own terms and without anything more being done and such infraction cannot be justified. If therefore, the contentions of the petitioners be well founded, as to which we say nothing at present, a declaration as to the invalidity of the impugned Act together with the consequential relief by way of injunction restraining the respondents and in particular respondents 2 to 17 from asserting any rights under the enactment so declared void will be the only appropriate reliefs which the petitioners will be entitled to get under Art. 32 we must, in appropriate case, exercise our discretion and frame our writ or order to suit the exigencies of this case brought about by the alleged nature of the enactment we are considering."

15. In *Abdulkadir v. State of Kerala* AIR 1962 S.C. 1922, a writ petition had been filed in the Kerala High Court challenging the validity of the rules framed under the Cochin Act and the Travancore Act. The prayer was that the rules were ab initio void. The High Court dismissed the writ petition. Against the decision of the High Court the aggrieved party filed an appeal before the Supreme Court. The Supreme Court allowed the appeals, set aside the judgment of the High Court and granted a declaration that the new rules purporting to be framed either under the Cochin Act or under the Travancore Act in August, 1950, and thereafter in January, 1951, were invalid ab initio and have no force and effect.

16. In *Bidi, Bidi Leaves" and Tobacco Merchants Association Vs. The State of Bombay*, , the Supreme Court declared that certain clauses of a notification issued by the Government in pursuance of the power conferred under S. 5 of the Minimum Wages Act, 1948, as invalid on the ground that the said clauses were beyond the purview of the section

17. If this be the position with regard to Art. 32 of the Constitution the same principle will apply all the more to Art. 226 of the Constitution under which a writ can be issued not only for the enforcement of any of the rights conferred by Part III but also for any other Purpose. Here the question that is raised is whether the

conciliation officer has acted in terms of S. 12(3) as explained by the Supreme Court in Bata Shoe Company case (vide supra). In other words, the point for determination is whether the impugned settlement was brought about with the assistance and concurrence of the conciliation officer or whether he merely put his stamp on an agreement entered into by the parties behind his back, and had given it a seal of approval so as to bring it within the scope of S. 12(3) and confer it with the legal effect as contemplated under S. 18(3) of the Act. In short, the question is whether the conciliation officer has been guilty of a colourable exercise of his power. Viewed in that light, I am of the opinion that the writ petition for a declaration as prayed for is maintainable. I am supported in this respect by two decisions of the Karnataka High Court. The first decision is that of I.T.C. Employees Association and Others Vs. State of Karnataka and Others, . There a writ petition was filed challenging the validity of a settlement deed said to have been entered into between the I.T.C. and a union of workers. The writ petition was filed by the I.T.C. Employees' Association challenging the validity of a settlement entered into between the management of the I.T.C. Ltd., and another union which according to the management was the majority union recognized under the Code of Discipline. The contention of the minority union before the Karnataka High Court was that the conciliation officer ought not to have certified the settlement under S. 12(3) and that prior to certifying the conciliation officer had not investigated the dispute and did not even grant time to the petitioner-union to consider the fairness and reasonableness of the settlement. One of the objections that was taken before the Karnataka High Court was that the writ petition was not maintainable. Bopanna, J., held that though the petitioners are not entitled to the writ for quashing the impugned settlement, they could pray for a declaration that the settlement was not one under S. 12(3) of the Act but one attracting S. 18(1) of the Act and, therefore, the impugned settlement was not binding on them. The learned judge further observed thus in Para 8 at page 438;

".... A fortiori the conduct and action of the conciliation officer in impressing the settlement with the stamp of a settlement in the course of conciliation proceedings is open to scrutiny in petition under Art. 226 of the Constitution but the relief in such petition would be of a declaratory nature which may, in appropriate cases, necessitate the granting of consequential reliefs."

However, on the facts of that case the learned Judge held that the settlement impugned before him was a settlement in the course of conciliation proceedings and the petitioners had not made out a case for the grant of a declaratory relief prayed for by them.

18. In Writ Petition No. 204/5 of 1981, the MICO Employees' Association and its office bearers filed a writ petition before the Karnataka High Court against the management of Motor Industries Company Ltd., and others questioning the validity of a settlement entered into between the management and the MICO Employees' Association represented by F. M. Khan. The same learned Judge

Bopanna, J., found that the conciliation officer did not perform the duties of the conciliation officer as required under S. 12(3) of the Act and Rule 10 and 10A of the rules framed thereunder and, the proceedings were not proceedings in the course of conciliation and therefore, the settlement did not satisfy the requirements of S. 12(3) of the Act. In other words, the learned Judge held that the settlement in question was not a settlement in the course of conciliation proceedings. However, the learned judge did not grant a declaration that the settlement was invalid because he felt satisfied from the material on record that a quite majority of the workmen had taken the benefits under the settlement and thereafter resumed normal production and maintained industrial peace for the achievement of which the management had negotiated with F. M. Khan and that consequently the facts and circumstances of the case did not warrant the exercise of the extraordinary jurisdiction of the Court under Art. 226 of the Constitution of India. This decision, in this context, is only important for the fact that the learned judge did not hold that a writ petition for a declaration that a settlement arrived at between the management and the workmen had not the effect of a settlement under S. 12(3) of the Act in view of the fact that the statutory authority, viz, the conciliation officer did not perform the duty enjoined on him under S. 12(3) of the Act was not maintainable.

19. I am, therefore, of the view that the writ petition praying for a declaration that the settlement entered into between the management and the recognized union is not a settlement within the meaning of S. 12(3) of the Act and that it does not have the effect contemplated under S. 18(3) of the Act is maintainable. I do not agree with the contention of Sri Somayajee that the writ petition is directed against the management which is a private incorporated company. The writ petition is filed on the basis that the conciliation officer did not perform his duty as enjoined under S. 12(3) of the Act in the sense that he did not certify a settlement which was arrived at with his assistance and concurrence but that he merely put his stamp of approval to a settlement which had already been entered into between the parties behind his back, and that he did not satisfy himself about the fairness and reasonableness of the settlement.

20. The next question to be considered is whether the impugned settlement had been arrived at in the course of conciliation proceedings. At the very outset it has to be stated that Sri Prasad conceded that the Commissioner of Labour had overall jurisdiction with regard to conciliation proceedings throughout the State. It is borne out by the evidence produced on the side of the management that the Commissioner of Labour directed the Assistant Commissioner of Labour, Headquarters, to conduct an enquiry. Consequently, it cannot be said that the Assistant commissioner of Labour, Headquarters, had no Jurisdiction to investigate the dispute and induce the parties to come to an amicable settlement.

21. The next question is whether the fact that the conciliation officer, Chengalpattu, had filed a failure report to the Government would bar a settlement being entered into between the management and the recognized

union under S. 12(3) of the Act. As a matter of fact, the failure report though, dated 6th October, 1981, reached the Government only on 15th October, 1981. However, the impugned settlement was arrived at between the parties in the course of conciliation proceedings on 14th October, 1981. Apart from this, before the Assistant Commissioner of Labour, Chengalpattu, both the management as well as the recognized union took the clear stand that the petitioner-union had no locus standi, it was not the recognized union and that negotiations were being carried on between the management and the recognized union regarding the question of confirmation of temporary workmen. Therefore, it is not as if the Assistant Commission of Labour, Chengalpattu, had come to the conclusion that no settlement at all was possible between the management and the recognized union. In fact, the failure report of the Assistant Commissioner of Labour, Chengalpattu, refers to the fact that the management has made representation that negotiations were being carried on between the management and the recognized union and that consequently the management was not in a position to concede the demands of the petitioner-union. It is therefore, clear that even on the date on which the Assistant Commissioner of Labour, Chengalpattu, sent his failure report as regards the dispute raised by the petitioner-union, he had made it clear that according to the stand of the management negotiations were being carried on between the management and the recognized union regarding the confirmation of temporary workmen. I have already referred to the fact that the recognized union had addressed a letter to the Prime Minister of India on 14th April, 1981, with a copy to the Commissioner of Labour and the fact that the Commissioner of Labour had directed the Assistant Commissioner of Labour, Headquarters, to investigate the dispute. In the counter-affidavit filed on behalf of the State Government it is made clear that at the request of the management and the recongnized union, talks were held before the Assistant Commissioner of Labour, Headquarters, and a settlement, was arrived at on 14th October, 1981. I am therefore, of the view that the petitioner-union has not been able to establish that the Assistant Commissioner of Labour had no jurisdiction to hold a conciliation proceeding and certify the impugned settlement.

22. The next question to be considered is whether the impugned settlement is vitiated by reason of the fact that no notice was given to the petitioner-union before the conciliation officer certified the settlement between the management and the recognized union. This contention has to be negated for two reasons. Firstly, there is no basis at all for this contention. In Para 9 of the counter-affidavit filed on behalf of the Government it is stated that the petitioner-union had participated in the conciliatory talks held on 12th and 13th October, 1981. Secondly, there is no legal obligation on the part of the conciliation officer, viz, Assistant Commissioner of Labour, Headquarters to issue notice to the petitioner-union. Sri Prasad has not been able to bring to my notice any provision in the Act which made it obligatory on a conciliation officer to issue notice to any party before a settlement is signed under S. 12(3) of the Act, between the workmen and the management. So far as the individual workmen are concerned it is not

necessary that each individual workman should know that implications of a settlement which is known the implications of a settlement which is because industrial jurisprudence is based on collective bargaining and in the matter of collective bargaining and the workmen as individuals do not come into the picture at all. The question whether individual workmen should be given notice or are entitled to know the implications of a settlement entered into between the management and the recognized union was considered by the Supreme Court in *Herbertsons, Ltd., v. Their workmen*. The Supreme Court in that case observed as follows :

"When a recognized union negotiates with an employer, the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognized union, which is expected to protect the legitimate interests of labour, enters into a settlement, in the best interest of labour. This would be the normal rule. We cannot altogether rule out exceptional case where there may be allegations of mala fides, fraud or even corruption or other inducements"

23. Sri Prasad contended that since the petitioner-union had already raised a dispute before the Assistant Commissioner of Labour, Chengalpattu, before the Assistant Commissioner of Labour, Headquarters certified the impugned settlement he should have heard the petitioner-union. In other words, the contention of Sri Prasad in substance was when there are more than one union, in an industry, the management cannot enter into a settlement under S. 12(3) with one union alone which will be binding on all the workmen under S. 18(3) of the Act. In this connection the learned counsel relied on a decision of Veeraswami, J., (as he then was), in *Management of the Tiruchi, Srirangam Transport Co. (P) Ltd. Vs. Industrial Tribunal and Others*, , where the learned Judge has observed as follows :

"..... Once an industrial dispute has been raised by a substantial or appreciable section of the workmen concerned, it has to end in a conciliation or an adjudication, as the case may be. But where there are two identical industrial disputes which are the subject-matter of conciliation before the same officer, there appears to be no warrant in the provisions of the Act to hold that the settlement reached in the course of the conciliation between the management and one set of workmen or their union will automatically bring to an end the conciliation pending with reference to the other, but identical dispute before the same officer. Where there are two identical disputes raised by two sets of workmen or their relative unions before the same conciliation officer, it seems to me that they should be regarded as one dispute and looking into the substance of the matter, all the workmen belonging to both the unions will in effect and substantially be the parties to the industrial dispute, so that any settlement in such a situation will have to be arrived at, not between the management and some only of such workmen, but between the management and the entirety of the workmen who are parties to the dispute either by themselves or through

their unions before the same officer, so as to make the settlement come within the ambit of S. 18(3)"

On the basis of this decision, Sri Prasad vehemently contended that the impugned settlement was invalid. This decision, if I may say so with great respect to the learned Judge, is contrary to the decision of the Supreme Court in *Ramnagar Cane and Sugar Company, Ltd., v. Jatin Chakraborty* 1961 I L.L.J. 224. In *Ramnagar Cane and Sugar Company, Ltd., Calcutta*, there were two unions, viz., the employees' union and the workers' union. On 9th December, 1953, the workers' union presented a charter of demands to the management. A similar charter of demands was also made by the employees' union on 20th January, 1954. On the same day, the workers' union issued a strike notice to the management which was declared a public utility service. It may be stated that the workers' union was a minority union and the employees' union was a majority union. The conciliation officer issued a notice of a conciliation meeting to be held on 1st February, 1954. On 2nd February, the employees' union wanted the conciliation officer to hold separate conciliation proceedings which was objected to by the workers' union. The workers' union accordingly informed the conciliation officer that it assumed that the conciliation had failed. On 3rd February, 1954, the conciliation officer sent his report under S. 12(4) of the Act about the failure of the conciliation with the workers' union. On 25th February, 1954, the management and the employees' union arrived on a settlement and it was recorded in the form of a settlement which was duly signed by the parties. In the meanwhile on 13th February, 1954, the workers' union commenced a strike. Consequently, a complaint was filed by the management against eleven of the striking workmen and a charge memo was filed. The Magistrate acquitted the workmen. The High Court also dismissed the revision petition. Thereupon, the management took the matter before the Supreme Court on special leave. The question that the Supreme Court had to consider was whether the strike held at the instance of the workers' union was legal or illegal. The Supreme Court observed as follows :

"It is now well settled that an industrial dispute can be raised in regard to any matter only when it is sponsored by a body of workmen acting through a union or otherwise. When an industrial dispute is thus raised and is decided either by settlement or by an award the scope and effect of 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 workmen otherwise than in the course of conciliation proceedings 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 parties specified in cls. (a) to (d) of sub-s. (3). Section 18(3)(d) makes it clear that, where a party referred to in clause (a) of clause (b) is composed of workmen, all persons who were 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 other words, there can be no doubt that the settlement arrived at between the appellant and the employees' union during the course of conciliation proceedings on 25th February, 1954, would bind not only the members of the said union but all workmen employed in the establishment of the appellant at that date. That inevitably means that the respondents would be bound by the said settlement even though they may belong to the rival union. 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)."

24. IN *Workers of Buckingham and Cornatic Company Ltd. v. Commissioner of Labour* 1964 I L.L.J. 253, a Division Bench of this Court speaking through Ramachandra Ayyar, C.J., doubted the correctness of the judgment of Veeraswamy, J., (as he then was). The learned Chief Justice observed as follows :-

"But we may in passing observe that the view taken in that case might require further consideration. For one thing the principle laid down appears to be opposed to the rule underlying the sanctity of collective bargaining and of the provisions of S. 18(3) as interpreted by the Supreme Court in *Ramnagar Cane and Sugar Company, Ltd. v. Jatin Chakraborty* (supra). A settlement reached in the course of conciliation proceedings has been placed by the statute on a higher footing than a mere agreement between the parties. The fact that one union did not join in such a settlement on the identical subject-matter of dispute, cannot obviously affect its binding character on all the employees, irrespective of their participation, or non-participation; the binding nature of the settlement depends on the statute."

25. In this connection, I may also dispose of the contention of Sri Prasad that there was actually no verification of the strength of the petitioner-union by the Assistant Commissioner of Labour, Headquarters. It is an admitted fact that the third respondent has been recognized on the basis of the recommendations of the evaluation committee. Further, in the counter-affidavit filed on behalf of the Government it is stated that the Assistant Commissioner of Labour had verified the records of the third respondent relating to membership and satisfied that the third respondent-union had enjoyed convincing majority among the workmen and had been duly authorized to represent the workers. I have perused the file and I find that the Assistant Commissioner of Labour had made a note that the recognized union enjoyed a membership of 720. I therefore, reject the contention that the impugned settlement is vitiated by reason of the fact that the Assistant Commissioner of Labour, Headquarters, did not verify the numerical strength of the recognized union.

26. We now come to the contention of Sri Prasad that the Assistant

Commissioner of Labour, Headquarters, did not issue any notice regarding the initiation of conciliation proceedings. Under rule 22 of the rules once a strike notice is issued in respect of a public utility service conciliation proceedings must be deemed to have commenced. Further, during the narration of fact I have referred to the fact that the recognized union had addressed a letter to the commissioner of Labour inviting him to intervene in the matter and it also had taken the stand before the Assistant Commissioner of Labour, Chengalpattu, that the petitioner-union had no locus standi and negotiations were being carried on between the management and the recognized union. The failure report submitted by the Assistant Commissioner of Labour, Chengalpattu, related only to the demand made by the petitioner-union. Consequently, the proceedings before the Assistant Commissioner of Labour, Headquarters, must be deemed to be a continuation of the proceedings initiated by the Assistant Commissioner of Labour, Chengalpattu, who acted under instructions from the Commissioner of Labour who had overall jurisdiction over the State and, therefore, it could be said that the proceedings conducted by the Assistant Commissioner of Labour, Headquarters, was without jurisdiction. Even assuming that the Assistant Commissioner of Labour, Headquarters, had held independent proceedings at the instance of the recognized union notwithstanding the fact that no notice was required to be given to the petitioner-union according to the averments in the counter-affidavit, the representatives of the petitioner-union were given a hearing by the Assistant Commissioner of Labour, Headquarters, on 12th and 13th October, 1981. Consequently, Rule 23 of the rules is not attracted to the facts of the case.

27. The next point which deserves attention is the contention of Sri Prasad that the impugned settlement is not a settlement in the course of conciliation proceedings and that the conciliation officer had merely acted as a rubber stamp by giving his approval to an agreement which had already become a *fait accompli*. The learned counsel referred to certain passages in the counter-affidavit filed on behalf of the management wherein it is stated that the nucleus of an agreement had already been arrived at by the parties and certain differences were ironed out in the presence of the Assistant Commissioner of Labour, Headquarters. The learned counsel for the petitioner-union did not bring my notice any decision which says that all the terms of the agreement must be suggested only by the conciliation officer. As already stated, the duty of the conciliation officer is not to decide the rights of parties or to impose any settlement of his own on the parties but to induce the parties to come to a fair and amicable settlement. In this connection, it is necessary to again refer to the decision of the Supreme Court in Bata Shoe Company case (*vide supra*), where the Supreme Court has observed that a settlement which can be said to be arrived at in the course of conciliation proceedings is not only to be arrived at during the time the conciliation proceedings are pending but also to be arrived at with the assistance of the conciliation officer and his concurrence; such a settlement would be reported to the appropriate Government under S. 12(3). Sri

Prasad heavily relied on the judgment of Bopanna, J., in Writ Petition No. 20435 of 1981, already referred to, while dealing with the maintainability of the writ petition for the relief of declaration. That case can be distinguished on its own facts. On the facts of that case, the learned Judge came to the conclusion that the conciliation proceedings were not properly held because there was no notice for initiation of conciliation proceedings, no statements were called for from the parties as contemplated under the relevant rule, that discussions were held between the parties before the Minister, Commissioner of Labour or the Joint Commissioner of Labour regarding the charter of demands and that such a discussion did not amount to conciliation proceedings and that the authorities did not investigate the dispute and all matters affecting the right settlement thereof. In this case, there is absolutely nothing to show that the Assistant Commissioner of Labour, Headquarters, put his signature to an agreement which had already been entered into and did not play any role at all as required by S. 12(3) of the Act. In the letter addressed to the Assistant Commissioner of Labour, Chengalpattu, and in the letter addressed to the Prime Minister of India and also the Commissioner of Labour, the recognized union had made it clear that negotiations were being carried on but no finality could be reached and that, therefore, official intervention was necessary in the matter. From the counter-affidavit it is clear that discussions were held before the Assistant Commissioner of Labour, Headquarters, and then the settlement was arrived at after he was satisfied that the terms of the settlement were reasonable and beneficial to the workmen. In fact, the agreement itself contained the following recital :

"After protracted bypartite and at the end through tripartite discussions before the Assistant Commissioner of Labour, Headquarters, the parties to this settlement have decided that the required temporary workmen would be put on a period of probation with revised wages and service conditions to be absorbed as permanent workmen."

In view of this, the onus would lie heavily on the petitioner-union to prove that the Assistant Commissioner of Labour, Headquarters, did not assist or give his concurrence to the settlement after having been satisfied about the reasonableness and fairness of the terms of the settlement. There is no such proof. I, therefore, reject this contention.

28. The only other contention that has to be considered is whether the terms of the settlement are reasonable. It is an admitted fact that initially nearly 439 workers were casual workers. Both the petitioner-union as well as the recognized union made a demand that they should be made permanent. The management took the stand that it was not possible to regularize their services. Ultimately, the dispute resulted in two separate agreements being entered into by the management with the petitioner-union and the recognized union, on 6th April, 1979, by which the management agreed to make 439 casual workers as temporary with effect from the date of their joining duty. Even in January 1980, the recognized union made a demand claiming permanency for the temporary

workmen. The management took the stand that it was not possible to make permanent the temporary workmen, they were suffering from surplus labour, particularly in view of the fact that the Government of India had placed a restraint on their production capacity and that they were contemplating retrenchment of the surplus labour. We have already seen how talks were going on between the recognized union and also the management and how the petitioner-union itself made a demand. The recognized union was, therefore, confronted with the question whether they should come to an understanding with the management on their demand with regard to making these 439 temporary workmen permanent or face their being retrenched from service. The management was equally interested in purchasing peace. Accordingly, with the assistance of the Assistant Commissioner of Labour, Headquarters, they agreed that 331 workmen should be made permanent and fifty-one workmen should be discharged from service. In fact, the agreement contains a recital that the management has on rolls 950 operatives and as such a minimum of 150 workmen were not required for its operations. It is also seen that the parties took into account the fact that casual workmen in excess of operatives actually required were taken under the settlement, dated 6th April, 1979, as temporary workmen and those temporary workmen were given an increase in their wages with effect from 1st January. They have also taken into account the necessity on the part of the management to provide equitable wages and service conditions to the workmen, the primary constraints of capacity and escalating wage cost. Further, the settlement contains clauses with regard to a revision of wages and service conditions; there is a revision of basic wages, dearness allowance, house rent allowance. The management agreed to pay Rs. 3.50 to the workmen towards lunch reimbursement. There are clauses regarding productivity levels and incentive bonus plan. There is a further clause stating that the temporary workmen who are not required for service in the company shall be paid at the request of the union a lumpsum terminal compensation of Rs. 6,500 inclusive of all the statutory eligibilities due to them. The statement made by the learned counsel for the management that the sum of Rs. 6,500 payable to a workmen would far exceed the amount payable to him by way of retrenchment compensation has not been disputed by the learned counsel for the petitioner-union. Taking all the factors into consideration, I am of the opinion that the terms and conditions of the settlement are fair and reasonable and beneficial to the workmen in general. The fact that in the process of bargaining fifty-one workmen happened to be discharged from service cannot go to show that the settlement is neither fair nor reasonable. These fifty-one workmen had no right to be made permanent. Further, each one of them has been given a terminal compensation of Rs. 6,500. There is no basis in the contention of Sri Prasad that these fifty-one workmen were chosen at random as an act of victimization because they happened to be members of the petitioner-union. As a matter of fact, it is recited in the settlement itself that it has been agreed that surplus temporary workmen whose record of discipline, productivity and attendance are unsatisfactory could be terminated as their continued presence is not conducive

both on the grounds of their being surplus and their record of service being unsatisfactory. I am inclined to accept the argument advanced by Sri Venugopal that it is in the light of certain norms that the fifty-one persons were selected for being terminated from service. As early as on 13th March, 1981, the management issued a circular to the effect that the question of making permanent temporary hands would depend upon the following norms, viz., record of discipline, record of attendance and productivity and efficiency level. In the absence of any proof regarding collusion between the recognized union and the management, I am inclined to accept the contention on behalf of the management and the recognized union that the fifty-one workmen were chosen on the basis of the application of the norms. In the counter-affidavit filed on behalf of the first respondent it is clearly stated that he was satisfied that the terms of the settlement were reasonable. It has been held by the Supreme Court in *Herbertsons, Ltd. v. Their workmen* case.

"Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a Court proceeding. When therefore, negotiations take place which, have to be encouraged, particularly between labour and employer, in the interest of general peace and well being, there is always give and take. Having regard to the nature of the dispute, which was raised as far back as 1968, the very fact of the existence of litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust.

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29. We should point out that there is some misconception about this aspect of the case. The question of adjudication has to be distinguished from a voluntary settlement. It is true that this Court has laid down certain principles with regard to the fixation of dearness allowance and it may be even shown that if the appeal is heard the said principles have been correctly followed in the award. That, however, will be no answer to the parties agreeing to a lesser amount under certain given circumstances. By the settlement, labour has scored in some other aspects and will save all unnecessary expenses in uncertain litigation. The settlement, therefore, cannot be judged on the touchstone of the principles which are laid down by this Court for adjudication.

30. There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is always a

likelihood of further advance in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which Courts and Tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinizing an award in adjudication. The Tribunal fell into an error in invoking the principles that should govern in adjudicating a dispute that regarding dearness allowance in judging whether the settlement was just and fair.

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31. It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject as a whole as unfair and unjust. Even before this Court respondent 3 representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the the company have accepted the settlement. Besides the period of settlement has since expired and we are informed that the employer and respondent 3 are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement.

In *Tata Engineering and Locomotive Company Ltd. v. Their workmen*, the following dictum has been laid down by the Supreme Court in Para 10, at page 31.

"..... If the settlement had been arrived at between the company and the union of the workers by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored merely because a small number of workers were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emolument than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial disputes is under adjudication."

32. I am satisfied that the settlement in this case satisfies the test laid down by the Supreme Court. Even before this court the recognized union has appeared and stood by the settlement which it had already entered into with the management. There is ample evidence to show that the recognized union enjoys a membership of 750 out of 900 odd of the workmen of the management. As

against this, the petitioner-union has not been able to place before me any demonstrable evidence that it enjoys the confidence of the majority of the workmen. The only complaint of the petitioner-union is that the services of fifty-one workmen have been terminated. Even out of these fifty-one workmen admittedly many received the compensation amount of Rs. 6,500 and acquiesced in the settlement. Therefore, the question whether settlement has been fair and reasonable has to be decided in the light of the situation as it existed on the date of the settlement. considering the fact that out of 383 workmen, 332 were made permanent and only fifty-one workmen were agreed to be discharged and that those fifty-one workmen were chosen on the basis of certain definite norms with regard to their performance, it could not be said that the settlement is in any way unreasonable or unfair. There is the further fact that even with regard to fifty-one persons terminal compensation at a very high rate was given and with regard to the workmen further benefits were conferred by the management in the form of dearness allowance, revisions of wages, etc. I am, therefore, of the view that the Assistant Commissioner of Labour, Headquarters, was perfectly justified in certifying the settlement as fair and reasonable under S. 12(3) of the Act. I cannot also overlook the fact that the petitioner-union as well as some of the discharged workmen attempted to get the dispute referred for adjudication by the Labour Court and the Government declined to grant an order of reference. I am also definitely of the opinion that in any view of the matter on the basis of the conclusion reached by me that the terms of the settlement are fair and reasonable and have been accepted by the majority of the workmen of the management, this is not a fit case where the intervention of this Court is called for in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution of India.

33. There is the further fact as rightly pointed out by Sri Venugopal, if a declaration is granted as prayed for by the petitioner-union, it will benefit only the management and it will result in 332 workmen who have been made permanent being rendered temporary. I do not think the jurisdiction of this Court under Art. 226 of the Constitution can be exercised to bring about such an unjust result.

34. In the result, the writ petition fails and is dismissed. No costs.