

(1965) 12 BOM CK 0004

In the Bombay High Court

Case No : Miscellaneous Petition No. 453 of 1965

General Engineering Employees" Union and Others

APPELLANT

Vs

T.R. Bhagwath and Others

RESPONDENT

Date of Decision : 20-12-1965

Acts Referred:

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

Citation : (1965) 12 BOM CK 0004

Hon'ble Judges : V.D. Tulzapurkar, J

Bench : Single Bench

Judgement

1. This petition has been filed by the General Engineering Employees" Union and four others (who are individual workmen of respondent 2) against the three respondents, being

(1) T. R. Bhagwath, Assistant Commissioner of Labour and Conciliation Officer,

(2) Crompton Parkinson (Works), Ltd., and

(3) the State of Maharashtra,

for issue of a writ of certiorari or a writ in the nature of certiorari quashing the settlement dated 31 October, 1964 arrived at between respondent 2 and its workmen in conciliation proceedings (copy whereof has been annexed as Ex. D to the petition) and for other incidental reliefs.

2. The short facts giving rise to this petition may be stated. Respondent 2 is a private limited company having its factories for manufacturing electrical and other goods at Kanjur and Worli in Bombay. Some of their workmen including petitioners 2 to 5, are members of petitioner 1 union (General Engineering Employees" Union), while some others are members of the Bombay Labour Union. Out of the several workmen working at the Worli factory of respondent 2, petitioner 1 claims that it has the majority of such workmen as its members, while the majority of the workmen out of the total number working at Kanjur

factory are members of the Bombay Labour Union. However, petitioner 1 claims that, taken together, it claims the loyalty of the majority of the workers of respondent 2. It further appears that an industrial dispute pertaining to the demand for bonus for the year 1 July, 1963 to 30 June, 1964 arose between respondent 2 on the one hand and its workmen or employees on the other. Both the unions, viz., the petitioner 1 union as well as the Bombay Labour Union entered into correspondence with respondent 2 company raising the said demand on behalf of the workmen and though initially respondent 2 by its letter dated 18 August, 1964 stated that the workmen should wait till its accounts for the relevant year had been finalized and certified, on 17 October, 1964 respondent 2 company addressed letters to both the unions stating that in view of the complex inter-union situation existing in the company it would not be possible for the management to discuss the question of bonus unilaterally with either union as that course would leave a large number of employees unrepresented and might not be acceptable to them and respondent 2, therefore, proposed that a joint negotiation committee consisting of four worker-representatives belonging to each of the said rival unions should be formed to undertake negotiations with the management. It was further stated by respondent 2 in the said letter that in case the said suggestion was not acceptable to either of the unions, the company would request the Government conciliation machinery to intervene and have the bonus question admitted into conciliation. It appears that this suggestion made by respondent 2 was not accepted by either of the unions and the question was, therefore, referred to respondent 1 as the conciliation officer. Petitioner 1 had even before respondent 2 had made its aforesaid suggestion, by its letter dated 7 October, 1964, approached the Deputy Commissioner of Labour, Government of Maharashtra, requesting him to intervene in the said dispute pertaining to the bonus and to bring about a conciliation and settlement but the Deputy Commissioner of Labour by his reply dated 16 October, 1964 stated that the demand of petitioner 1 union as mentioned in the letter dated 7 October, 1964 was not specific and that therefore, petitioner 1 union should forward a copy of their letter to the company which contained a specific demand for bonus for the year 1963-64. It appears that one day before, that is, on 6 October, 1964, the Bombay Labour Union, the rival union in the field, had forwarded a specific demand for bonus for the year 1963-64 to the Deputy Commissioner of Labour, Government of Maharashtra. Respondent 1 as the conciliation officer after holding preliminary discussions admitted the said dispute in conciliation on 23 October, 1964 and the management of respondent 2 company and the workmen were notified accordingly. It appears clear that respondent 1 admitted this dispute into conciliation at the instance of and on account of the demand made by the rival union, viz., the Bombay Labour Union. Even so, after admitting the said dispute in conciliation respondent 1 issued a notice to both respondent 2 company and all its workmen on 23 October, 1964 and the said notice was got displayed on the notice-board of respondent 2 company. This was done in pursuance of rule 11 of the Industrial Disputes (Bombay) Rules, 1957. Respondent 1, by the said notice, fixed the date of hearing of the conciliation

proceedings on 27 October, 1964. It may be stated that in the meantime respondent 2 company carried on negotiations with each of the two unions separately for the purpose of arriving at a settlement on the question of the demand for bonus for the year 1963-64. Respondent 2 company held negotiations with the first petitioning union and made attempts to bring about a settlement but the differences could not be bridged and, therefore, no concluded settlement could be arrived at between respondent 2 company on the one hand and the first petitioning union on the other. However, respondent 2 company was able to negotiate the said demand for bonus successfully with the Bombay Labour Union and on 30 October, 1964 a concluded settlement was arrived at between respondent 2 company on the one hand and the Bombay Labour Union on the other, whereby bonus at the rate of 30 per cent of the basic annual salary was agreed to be paid by respondent 2 company to its workmen on terms and in the manner indicated in the settlement. On 27 October, 1964 when the first meeting was held for holding conciliation proceedings before respondent 1 except preliminary discussions nothing else happened, inasmuch as at that time the parties, that is to say, respondent 2 company on the one hand and the two rival unions on the other were having negotiations for solving the dispute. On that day Sri Sodhi for respondent 2 company and six workmen appeared before respondent 1 and one of the workmen of six, informed him that their leader Sri Rao, who was the secretary of the Bombay Labour Union, was still having negotiations with the company and that the matter be adjourned. That worker as well as Sri Sodhi further told respondent 1 that they would inform him (respondent 1), the next convenient date for holding further conciliation proceedings after the said negotiations were completed. Respondent 1 thereupon adjourned the meeting but did not fix any date of the next hearing. As I have said above, on 30 October, 1964 the negotiations between respondent 2 company on the one hand and the Bombay Labour Union (rival union) on the other fructified and a settlement was arrived at between them and intimation was given to respondent 1 requesting him to hold the adjourned conciliation proceedings on the following day, i.e., on 31 October, 1964. Accordingly, respondent 1 fixed 31 October, 1964 at 11 a.m., in his office as the date, time and place for proceeding with the adjourned conciliation proceedings. On that day respondent 2 company through its officers and the workmen represented by the Bombay Labour Union and their leader Sri Rao appeared before respondent 1, and the settlement that was arrived at between the parties was put before respondent 1. After thoroughly discussing the various details such as the position of profits as per the balance sheet for the year, the available surplus for distribution of bonus as per the Labour Appellate formula and other allied matters respondent 1 came to the conclusion that the terms of the settlement were just and fair. He, therefore, sanctioned the said settlement and recorded the said settlement during the course of the conciliation proceedings as per the provisions of the Industrial Disputes Act, 1947. In pursuance of this settlement that had received sanction of respondent 1, the company commenced making payments of bonus amounts to its workmen and about 67 per cent of the

employees received the payment of the bonus amount on 31 October, 1964 itself and several others received their payments later on. It is this settlement sanctioned by respondent 1 on 31 October, 1964 under S. 12(3) of the Industrial Disputes Act, 1947, that is sought to be quashed or set aside by the present petition, on the ground that the same was sanctioned by respondent 1 in contravention of the provisions of the Industrial Disputes Act, 1947, and rules framed there under and that it was sanctioned behind the back of the first petitioning union and without any proper notice and as such it is not binding on such workmen of the company who are members of the first petitioning union.

3. The petition has been resisted by the three respondents on a couple of preliminary points as also on merits. In the first place, it has been contended by Sri Setalwad and Sri Sorabjee, appearing on behalf of the respondents 1 and 3 and respondent 2, respectively, that the petition is liable to be dismissed on the preliminary ground that it contains false statements on oath and the petitioners not having come with clean hands to the Court and not having displayed the requisite bona fides in such matters they are not entitled to any relief under any high prerogative writ like a writ of certiorari. Secondly, it is contended that the settlement dated 31 October, 1964 that was sanctioned during the course of conciliation proceedings has been accepted by an overwhelming majority of the workmen of respondent 2 company and 99.5 per cent of the workmen including petitioners 2 to 5 and several others who are members of the first petitioning union have received payment of the bonus amount due to them under the said settlement without any protest. It is therefore, urged that apart from the question of estoppel there is no justice in the first petitioning union's prayer for setting aside or quashing the said settlement under a writ of certiorari. It has been pointed out that this settlement pertained only to a period of one year of 1963-64 and, therefore, it would not be in the interest of industrial peace that the settlement that has received the sanction of respondent 1 under S. 12(3) of the Industrial Disputes Act, 1947, should be disturbed. On merits, it has been contended that there was nothing in the whole procedure that was adopted in the present case which was illegal or contrary to the provisions of the Industrial Disputes Act, 1947, or rules thereunder. The conciliation officer, viz., respondent 1, had after the dispute had been admitted into conciliation, issued the requisite notice as per rule 11 of the Industrial Disputes (Bombay) Rules, 1957, and by reason of the notice having been displayed on the notice-board of the company expressly stating that the dispute was "between Crompton Parkinson (Works), Ltd., Bombay, and the workmen employed under it" meaning all workmen, all such workmen, who were members of the first petitioning union, had also been duly notified of the date of the hearing that had been fixed for holding conciliation proceedings and if so advised they should have taken part in the conciliation proceedings. It is urged that all the provisions of the Act as well as rules have been complied with by respondent 1 in the matter of holding the conciliation proceedings and he sanctioned the settlement that had been arrived at between respondent 2 company on the one hand and its workmen on the

other, and therefore, the settlement could not be set aside. Sri Setalwad pointed out that it was perfectly open and legitimate for the company to negotiate a settlement of the bonus dispute with either of the rival unions and after such settlement was arrived at with Bombay Labour Union it was open to the parties to get it placed before the conciliation officer and if satisfied that it was a fair and just settlement the conciliation officer could sanction it as has been done by respondent 1 in this case. It has been urged further that since the settlement was arrived at during the course of conciliation proceedings and has been sanctioned as such, it is binding upon all workmen of respondent 2 company under S. 18(3) of the Industrial Disputes Act. Though in my view the petition is capable of being disposed of on the two preliminary points, particularly the latter, since it was argued at great length by Sri Singhvi on merits also, I propose to deal with all the points and decide the matter fully.

4. The main grievance made by petitioner 1 is that before the settlement that was arrived at between the company on the one hand and the Bombay Labour Union on the other was accepted and sanctioned by respondent 1 on 31 October, 1964, no notice of the said date of hearing had been given to the first petitioning union and even so the said settlement is being foisted upon the workmen represented by the first petitioning union. The basis of this grievance is that though it was the first petitioning union who had called upon the Deputy Labour Commissioner to intervene in this bonus dispute and commence conciliation proceedings in regard thereto, the settlement was sanctioned by respondent 1 behind its back. With a view to substantiate this grievance certain enclosures are stated to have been forwarded to the Deputy Labour Commissioner when in fact they were not forwarded and this conduct has given rise to the first preliminary point. In this context certain facts will have to be stated. By its letter dated 3 August, 1964 petitioner 1 made a specific demand for bonus for the workmen from the management of the company for the year 1963-64 and the demand consisted of six months' wages including dearness allowance as bonus. By its further letter dated 7 October, 1964 petitioner 1 again reminded the company of its demand for bonus for the year 1963-64 and on the very day, i.e., on 7 October, 1964, petitioner 1 approached the Deputy Commissioner of Labour, Government of Maharashtra, requesting him to intervene in the said dispute for bonus and to bring about conciliation and settlement. It is the petitioner's case that along with its letter dated 7 October, 1964 addressed to the Deputy Commissioner of Labour, Government of Maharashtra, copies of two letters were forwarded, viz. :

- (1) copy of the letter dated 7 October, 1964 addressed to the company, and
- (2) copy of the bonus demand dated 3 August, 1964.

5. At Ex. A collectively to the petition has been annexed a copy of its letters dated 7 October, 1964 addressed to the Deputy Commissioner of Labour and in that annexure at the foot thereof an endorsement pertaining to the enclosure is to the following effect :

"encluse : copy of letter to the company and copy of bonus demand of 3 August, 1964."

6. However, in fact, according to the respondent 1, the copy of the bonus demand dated 3 August, 1964 had never been forwarded by the petitioner 1 to the Deputy Commissioner, Labour, and because no such specific demand was received by him that the Deputy Commissioner by his letter dated 16 October, 1964 informed the general secretary of the first petitioning union that the letter or the copy of the letter which had been forwarded did not contain any specific demand relating to bonus and a letter containing specific demand for bonus for the year 1963-64 was asked for. According to respondent 1, no such specific demand was submitted by the first petitioning union to him or to his office till 31 October, 1964 when the actual settlement arrived at between the company on the one hand and the Bombay Labour Union on the other was sanctioned by him. According to respondent 1, since no such specific demand was received by him from the first petitioning union and since the Bombay Labour Union forwarded such specific demand for bonus for the year 1963-64 to him along with its letter dated 6 October, 1964, he admitted the dispute about bonus into conciliation on 23 October, 1964 at the instance of the Bombay Labour Union and not at the instance of the first petitioning union. Now, what has been urged by Sri Setalwad and Sri Sorabjee is that by annexing a wrong copy of the letter dated 3 August, 1964 as an annexure to the petition the petitioners have tried to create an impression upon the Court that they had initiated the conciliation proceedings by forwarding a specific demand for bonus to respondent 1 or to the Deputy Commissioner of Labour and as such the petitioning union was entitled to receive a notice of the further hearing that was fixed by respondent 1 on 31 October, 1964. The original letter dated 7 October, 1964 that was addressed by the first petitioning union to the Deputy Commissioner of Labour was produced by Sri Setalwad before me and it became clear that in that original letter the endorsement made at the foot thereof merely related to a copy of the letter to the company having been annexed but there was nothing to indicate that the copy of the bonus demand dated 3 August, 1964 had been annexed. In fact, it was not forwarded till 31 October, 1964. It was, therefore, urged that here was a case where the petitioners were trying to create a wrong impression on the mind of the Court for the purpose of getting relief by a high prerogative writ like writ of certiorari and since they had not disclosed all correct facts to the Court, that should disentitle them to any relief in this petition. Sri Singhvi appearing on behalf of the petitioners, pointed out that it might be through inadvertence that the copy of the bonus demand dated 3 August, 1964 had remained to be enclosed along with the original letter dated 7 October, 1964, but according to him the question whether the first petitioning union would be a party to the conciliation proceedings or not would not depend upon such specific demand being forwarded to the Deputy Commissioner of Labour. He urged that under S. 12 of the Industrial Disputes Act, 1947, where a dispute related to nonpublic utility concern jurisdiction of the conciliation officer to admit the said dispute into

conciliation depended upon where it appeared to him that an industrial dispute existed or was apprehended. In the present case, according to Sri Singhvi, apart from the question as to whether a specific demand had been forwarded by the first petitioning union to respondent 1 or not by its letter dated 7 October, 1964, the existence of industrial dispute pertaining to bonus demand generally had been duly communicated to the Deputy Commissioner of Labour and, therefore, it could not be said that the first petitioning union was not a party to the said dispute or the conciliation proceedings, which were commenced thereafter. In my view, the point which has been raised by Sri Singhvi is unnecessary to be decided in this case. Rightly or wrongly, respondent 1 took the view that since no specific demand had been forwarded to him by the first petitioning union, he could not admit the dispute pertaining to that demand made by that union into conciliation and in fact, he admitted that dispute into conciliation as a result of a specific demand having been forwarded to him by the rival union, viz., the Bombay Labour Union, and it was at the instance of the Bombay Labour Union that he had admitted that dispute into conciliation and therefore, since he had admitted that dispute into conciliation at the instance of the Bombay Labour Union, he properly felt that the parties to the conciliation proceedings, at any rate, were the company on the one hand and the Bombay Labour Union on the other. This is, of course, apart from the fact that even after admitting the said dispute into conciliation respondent 1, as required by rule 11 of the Bombay Industrial Disputes Rules, caused a proper notice being displayed on the notice-board of the company, wherein it was expressly stated that the conciliation proceedings were being undertaken by him in the dispute between the company on the one hand and all its workmen on the other. Therefore, the grievance that the proceedings of 31 October, 1964 were gone through behind the back of the first petitioning union and without any notice to them, could be made only on the basis that though they had initiated the conciliation proceedings, no notice had been given to them, and in order to canvass this aspect of the matter it was thought necessary to create an impression that the first petitioning union had initiated the conciliation proceedings as it had along with its letter dated 7 October, 1964 forwarded to the Deputy Commissioner of Labour a copy of the specific demand for bonus dated 3 August, 1964. As I have indicated above, from the original letter dated 7 October, 1964, which was produced before me, it is clear that no such enclosure had been enclosed along with that letter to the Deputy Commissioner for Labour. Respondent 1 in his affidavit has categorically averred that neither was any such specific demand dated 3 August, 1964 had been forwarded, but even the original letter did not contain the requisite endorsement which is to be found in the copy annexed to the petition at Ex. A collectively. It is, therefore, clear to me that the petitioners not having disclosed all the facts correctly and in fact having tried to create a wrong impression on the mind of the Court by annexing a wrong copy to the petition, have disentitled themselves to any relief in the present petition.

7. The second preliminary but permissible point on the basis of which it is

contended that the petitioners could not be granted any relief in the present case is that the settlement of 31 October, 1964, which is sought to be set aside or quashed has been accepted by an overwhelming majority of the workmen of respondent 2 company. In the affidavit filed in reply by Sri Devinder Singh Sodhi on behalf of respondent 2, it has been pointed that more than 99.5 per cent of the total workmen of respondent 2 company have accepted in full and final settlement their bonus under the settlement dated 31 October, 1964. It is further stated in the affidavit that on the very first day of the settlement more than 67 per cent of the workmen accepted the bonus and later on others also accepted the bonus payment. It was not disputed before me by Sri Singhvi that several members of the first petitioning union have also accepted the payment of bonus amounts due to them under the said settlement, including even petitioners 2 to 5 after the filing of the petition. At the hearing Sri Sorabjee pointed out that except three workmen, A. Hasan, Miss Gonsalves and N. R. Nair, all the rest of the workmen have accepted the payment of bonus amounts due to them under the said settlement. It was therefore, urged that the settlement, which has been accepted by an overwhelming majority of the workmen of respondent 2 company by receiving the payment of bonus amounts due to them under the said settlement, should not be set aside as to do so would amount to disturbing industrial peace for the achievement of which conciliation proceedings are to be initiated and settlements arrived at between the contending parties. I find considerable force in this contention of Sri Sorabjee. Sri Singhvi, however, urged that simply because several members of the first petitioning union including petitioners 2 to 5 accepted the payment of the bonus amounts made to them under the settlement, it does not mean that the settlement could be said to have been accepted by them as binding upon them. After all workmen did not occupy any dominating position in the circumstances of the case and they have no alternative but to accept such payment having regard to their economic conditions. He also pointed out that petitioners 2 to 5 and several others, who were members of the first petitioning union had accepted the payment of bonus amounts due to them under the said settlement after the petition had been filed. In my view, this position, far from being favourable to Sri Singhvi's clients, is prejudicial to them, for in this case it is not disputed that such acceptance of payments after the filing of the petition was not without prejudice to the petition which was pending in this Court. It is true that the workmen have to accept payments made to them by the management having regard to their economic conditions. It is also true that it may not be possible for such workmen to receive payments under protest, for if any protest were indicated, no payment would be made, but one fails to understand as to why after having filed the petition in the Court for relief in the shape of quashing of the settlement, several members of the first petitioning union, including petitioners 2 to 5 accepted the payments unconditionally and without indicating that acceptance was without prejudice to their petition, which they had filed in this Court. In my view, such unconditional acceptance by the several workmen, who were members of the first petitioning union, including petitioners 2 to 5, will have to be regarded as acceptance with

prejudice and such acceptance will have the effect of rendering their petition nugatory or ineffective. However, the main consideration is as to whether after nearly 99.5 per cent workmen of respondent 2 company having accepted the said settlement it would be proper for this Court to exercise its powers under writ jurisdiction to interfere with the said settlement, which in my view, would lead to breach of industrial peace rather than achieve the same. In the circumstances, I feel that the prayers for issue of writ of certiorari or a writ in the nature of certiorari should be rejected.

8. Turning to the merits of the case, I am of the view that the petitioners could not be said to have made out a proper case for quashing of the said settlement dated 31 October, 1964. As I have said above, petitioner 1 by its letter dated 7 October, 1964 indicated an existence of an industrial dispute in the form of demand for bonus for the year 1963-64 to the Deputy Commissioner of Labour without forwarding any specific demand in that behalf to him. On 6 October, 1964 the Bombay Labour Union forwarded a specific demand for bonus for the year 1963-64 to the Deputy Commissioner of Labour and since payment of such bonus was sought before Divali of 1964 and since grave consequence might have followed if the dispute had not been taken into conciliation immediately, respondent 1 admitted the said dispute into conciliation on 23 October, 1964 at the instance of the Bombay Labour Union. What has been urged by Sri Singhvi is that there is no provision in the Industrial Disputes Act, 1947, or any rules framed thereunder requiring a party to an industrial dispute to forward any such specific demand to the Deputy Commissioner of Labour and the intimation of the existence of the industrial dispute pertaining to the bonus demand for the year 1963-64 that was given by the first petitioning union was enough and on that basis respondent 1 should have admitted the dispute into conciliation at the instance of the first petitioning union. It may be that respondent 1 should have done so, but rightly or wrongly, as I have said above, he felt that a specific demand was necessary and therefore, he admitted the dispute into conciliation at the instance of the rival union, viz., Bombay Labour Union, but what one strikes most is that even after such dispute having been admitted into conciliation by respondent 1 on 23 October, 1964, no effective part was taken by the first petitioning union in the matter of the said conciliation proceedings. It has been pointed out by Sri Singhvi that after the notice under rule 11 of the Bombay Industrial Disputes Rules, 1957, had been displayed on the notice-board of the company, the general secretary of the first petitioning union, being preoccupied, sent his representatives, viz., four workmen, who were members of his union, to attend the meeting that had been fixed on 27 October, 1964, but there again it is curious that these four representatives, who had been sent by the general secretary of the first petitioning union did nothing at the said meeting. I have already said above, that according to respondent 1, on that day six workmen and Sri Sodhi of respondent 2 company were present and one of the workmen, presumably belonging to the Bombay Labour Union, told respondent 1 that its secretary Sri Rao was busy carrying on negotiations and both of them told him

that negotiations between the management and the workmen were going on and they also told respondent 1 that they would intimate to him the date on which the next meeting should be held after the negotiation, had been completed and, therefore, respondent 1 adjourned the meeting without fixing the next date of hearing. Respondent 1 has categorically averred in his affidavit in reply that none of the other workmen, who were present there, said anything, nor did any of them indicate that they were representing the first petitioning union or that they were interested in the conciliation proceedings, on behalf of the first petitioning union. It is a bit surprising that these four representatives, who were sent by the general secretary of the first petitioning union, did not even utter a word at the said meeting of 27 October, 1964. At any rate, when it was stated to respondent 1 that the company was having negotiations with the union of which Sri Rao was the secretary and that the next convenient date would be communicated to respondent 1 by the company and Sri Rao's union after the completion of the negotiations any of these representatives should have informed respondent 1 that the first petitioning union had nothing to do with those negotiations or with the settlement that might be arrived at between those parties and that a date convenient to their union, viz., the first petitioning union, should be fixed or that if any date was fixed after receiving intimation from the company and the Bombay Labour Union, such date should be communicated to the first petitioning union. Nothing of the kind was done by the representatives of the first petitioning union on this occasion. Respondent 1 in the his affidavit stated that he could not dream that the other workmen who had come there could be and were representatives of the first petitioning union. It was in these circumstances that the first meeting held on 27 October, 1964 was adjourned. It is further common ground that between 27 and 31 October, 1964 independent and separate negotiations were being carried on by the management of the company with the two rival unions and ultimately when the settlement between the Bombay Labour Union and the company fructified on 30 October, 1964 the same was placed before respondent 1 on 31 October, 1964. It is impossible to conceive that the first petitioning union or its general secretary or its members could not imagine that when negotiations between the Bombay Labour Union and the management of the company were going on a settlement might be arrived at and they should have imagined that such a settlement may not be to their liking or may be even detrimental to the interest of such of the workmen of respondent 2 company, who were members of the first petitioning union. In these circumstances, I feel that it was up to the first petitioning union to give a specific intimation to respondent 1 that if any settlement was arrived at between the company on the one hand and the Bombay Labour Union on the other, the same should not be given any sanction until the first petitioning union was heard and a notice was given to them of such settlement before respondent 1 accorded his sanction to such settlement. Nothing of the kind was done by the first petitioning union or its general secretary or any of its office-bearers. In these circumstances, it is difficult to accept Sri Singhvi's contention that respondent 1 should have issued a notice to the first petitioning union about the settlement that had been arrived

at between the company on the one hand and the Bombay Labour Union on the other and that he was going to give sanction to such settlement on 31 October, 1964. It was urged by Sri Singhvi that having regard to the prior correspondence which the company had with the two rival unions and of which respondent 1 was aware, respondent 1 could have known that there were two rival unions interested in this bonus dispute and therefore, before according his sanction to the settlement that had been arrived at between the company on the one hand and the Bombay Labour Union on the other, he ought to have given notice to the first petitioning union and should have heard that union before according his sanction thereto. In the behalf, it would be pertinent to note respondent 1's affidavit in reply. In Para. 10 of his affidavit in reply after stating that the first petitioning union had not raised the dispute and had not forwarded a specific demand in the matter of the demand for bonus, respondent 1 has referred to the telephonic conversation, which he had with the general secretary of the petitioning union, and he has indicated what he told the general secretary during the course of the conversation. This is what he has stated :

"I informed him that there was no demand from the said union (first petitioning union) and hence the question of admission of the demand of the said union did not arise. I say that even during this talk the general secretary did not inform me that he had handed over a copy of the aforesaid letter of 3 August, 1964 containing the specific demand on 19 October, 1964 as is now falsely alleged in Para. 3 of the said petition. I however advised him that since the dispute regarding bonus was between the company and all the workmen, the said union (first petitioning union) too could appear and take part in the conciliation proceedings. The general secretary did not want to accept this advice but insisted on the admission in conciliation of the alleged demand of the said union (first petitioning union)."

9. In Para. 11 of his affidavit respondent 1 has further averred as follows :

"In any event, I say that the said union admittedly knew about the commencement of the conciliation proceedings from the notice Ex. 2 hereto. I further say that since neither the said union nor any of its members appeared on 27 October, 1964, the question of informing them of the next date of hearing did not arise."

10. This averment is obviously based on the assumption, which respondent 1 made, that all the workmen who had appeared before him on 27 October, 1964 were the workmen belonging to the Bombay Labour Union. As I have said above, none of the four representatives of the first petitioning union uttered a word before respondent 1 in the meeting held on 27 October, 1964 and, therefore, it was not possible for respondent 1 to know whether any of them represented the first petitioning union or not. It is on the basis of this assumption of fact by respondent 1 that he has made the averments which I have quoted above from his affidavit in reply. From what I have said above, it will appear clear that the notice dated 23 October, 1964 had been displayed on the notice-board of the

company on 26 October, 1964 and therefore, the first petitioning union, its office-bearers as also the workmen attached to it, knew about the pendency of the conciliation proceedings and it was up to the first petitioning union to take effective steps to get them represented whenever occasion arose. Having regard to the attitude that was adopted by the general secretary of the petitioning union during the course of the telephonic conversation with respondent 1, it was but natural that the members of the first petitioning union showed no more interest in those conciliation proceedings before respondent 1 since the demand was not admitted in the conciliation proceedings by him at the instance of the first petitioning union and I do not think that any fault would be found with respondent 1 if he thought so. In these circumstances, I feel that it was the duty of the first petitioning union rather than of respondent 1 to take effective steps to get the union represented in the conciliation proceedings that were held on 31 October, 1964 and in my view, there were sufficient circumstances on record which warranted the office-bearers of the first petitioning union to forestall what might happen once the negotiations between respondent 2 company and the Bombay Labour Union had commenced and should have taken effective steps by giving intimation to respondent 1 that such settlement should not receive his sanction unless the first petitioning union was heard.

11. Sri Singhvi on behalf of the petitioners referred me to a decision of the Madras High Court, *Management of the Tiruchi, Srirangam Transport Co. (P) Ltd. Vs. Industrial Tribunal and Others*, in support of his contention that if there were two unions representing two sets of workmen in the same establishment, a settlement on a particular item of industrial dispute arrived at between the company on the one hand and one union on the other, even if made the rule of a conciliation officer, that is to say, even if sanctioned by the conciliation officer under S. 12(3) of the Industrial Disputes Act, 1947, it could not bind the workmen represented by the other union. The relevant headnote runs as follows :

"The question which arose in the instant case was whether, where there are two separate conciliation proceedings started in respect of the same industrial dispute at the instance of two unions of different workmen but all belonging to the same establishment and one of such conciliation proceedings ends in a settlement, such a settlement is binding upon the workmen who are members of the other union.

Answering the question in the negative, held, that :

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 is clear that they may be regarded as one dispute and looking into the substance of the matter, all the workmen belonging to both the union will in effect and substantially be the parts 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 said officer, so as to make the settlement come within the ambit of S. 18(3) of the Act."

12. In my view, the facts of the Madras decision are clearly distinguishable from the facts of the present case. In the Madras decision though the industrial dispute was identical, there were two conciliation proceedings initiated at the instance of two rival unions, each representing a particular set of workmen belonging to the same establishment and a settlement had been arrived at between one union and the management of the company in regard to that dispute and what was sought to be urged was that the said settlement would be binding upon the other union. In other words, the settlement that had been arrived at between one union and the company would in effect bring to an end the other conciliation proceeding, which had been initiated by the other union. This contention was negated by the Madras High Court. In the present case, as I have indicated above, rightly or wrongly, respondent 1 took the view that he could not admit into conciliation the demand put forward by the first petitioning union and he admitted into conciliation the demand put forward by the Bombay Labour Union. Therefore, in point of fact, there were no two conciliation proceedings pending before respondent 1, but only one conciliation was pending before him and there is no question in the present case of the settlement that has been arrived at between the Bombay Labour Union on the one hand and the company on the other, in the conciliation proceeding which was pending before the conciliation officer, having the effect of bringing to an end any other conciliation proceeding. Since in the present case the notice under rule 11 of the Bombay Industrial Disputes Rules, 1957, was issued by respondent 1, to the express effect that conciliation proceedings were being heard by him in the matter of a dispute between the company on the one hand and all its workmen on the other, it was open to the workmen claiming allegiance to the first petitioning union to take part in the one and the only conciliation proceeding which was pending before respondent 1. It was in these circumstances that the settlement that was arrived at between the Bombay Labour Union on the one hand and the company on the other, was put before respondent 1 and that respondent 1 accorded his sanction after applying his mind to all the relevant facts of the case under S. 12(3) of the Industrial Disputes Act. In these circumstances, in my view, the ruling relied upon by Sri Singhvi would not apply to the facts of the case and the settlement that has been sanctioned by respondent 1 on 31 October, 1964 would come under S. 18(3) of the Industrial Disputes Act, 1947, and would be binding upon the workmen, who owe their

allegiance to the first petitioning union.

13. Having regard to the aforesaid discussion, I feel that both on preliminary points as well as on merits the petition is liable to be dismissed and the rule to stand discharged.

14. The petition is, therefore, dismissed with costs.