

(1980) 07 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 6598 of 1980

I.T.C. Employees Association and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 23-07-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Trade Unions Act, 1926 — Section 12 (3), 18 (3)

Citation : (1981) 1 LLJ 431

Hon'ble Judges : P.P. Bopanna, J

Bench : Single Bench

Judgement

Bopanna, J.—This writ petition was originally filed by the workmen of I.T.C. Ltd., which is respondent No. 4 herein and will be referred to as the company in this order. The first two workmen had described themselves as office-bearers of the I.T.C. Employees Association in the cause-title, the third workman as a member of the I.T.C. Workers Union, which is respondent-5 herein and is referred to as the union in this order, and the fourth workman as a worker of the company. By application (I.A. No. I) dated 24-4-1980, those four workmen prayed for amendment of the cause-title to the petition in so far as it related to the first two workmen and amendment of the petition by adding an additional paragraph to the petition. That application was allowed by this Court at the stage of issuing notice to the respondents by order dated 25-4-1980. As per that order, petitioners 1 and 2 are the I.T.C. Employees Association (in short the Association) represented by its Vice-President and the Assistant Secretary respectively and the additional paragraph to the petition is treated as para 14 of the petition.

2. The case of the petitioners is that the Association consisting of the workmen of the company was registered in the year 1978 as a trade union under the Indian Trade Unions Act. 1926. On 20-8-1979, it presented a charter of demands as per Annexure-A filed with the writ petition to the company and since these demands were not considered by the company, the Association served on the company a

notice dated 24-10-1979 of its intention to go on strike (Annexure-B filed with the writ petition) followed up by a reminder dated 13-12-1979 (Annexure-C filed with the writ petition). Since the company did not consider the charter of demands, the Association raised an industrial dispute by submitting a petition to the Labour Commissioner for initiating proceedings under the Industrial Disputes Act, 1947 (In short "the Act"). Their further case is that the union is a company dominated union and its office-bearers are not the representatives of the workers but all the same it entered into a settlement with the company on 15-3-1980 (Annexure-D) under Ss. 12(3) and 18(3) of the Act in collusion with respondent No. 3, who is the Joint Labour Commissioner and Conciliation Officer, with an ulterior motive of making this settlement binding on all the workmen of the company and without examining whether the terms of the settlement were beneficial to the workmen or not. Even though the Association was called upon to participate in the conciliation proceedings between the company and the union which led to the settlement and it opposed the settlement and submitted that the Association will put the settlement before its general body on 17-3-1980 and, therefore, wanted time till 18-3-1980 and stated that the settlement was entered into on 15-3-1980 with a view to cause huge wrongful loss to the workmen, Respondent-3 without applying her mind to the fairness and reasonableness of the terms of the settlement has certified the same under S. 12(3) of the Act without complying with the provision of the Act. Further, respondent - 3 and the company have acted hastily, arbitrarily and in utter violation of the provisions of S. 12 of the Act in bringing about the settlement with the union purporting to be under S. 12(3) of the Act. Respondent - 3 had not investigated the dispute between the workers and the company prior to certifying the settlement and she should not have certified the settlement when the Association which was a party to the conciliation proceedings had not accepted the proposal of the company and had not agreed to enter into the settlement under S. 12(3) of the Act. What she should have done was to submit a failure report to the Government or granted time till 18-4-1980 to the Association to ascertain the opinion of the General Body on the terms of the settlement. By certifying the settlement consisting of 89 pages within 10 minutes, respondent - 3 has amply demonstrated that she did not apply her mind and investigate whether the terms of the settlement were fair and reasonable to all the workmen. Therefore, she had no jurisdiction to certify the settlement as one under S. 12(3) of the Act and sign the same as such binding all the workmen of the company, who were not agreeable to the terms of the settlement. Respondent 3's failure to grant time to the Association to consider the fairness of the settlement and her acceptance of the settlement in the absence of the Association, under S. 12(3) of the Act was in utter violation of the provisions of the Act. The petitioners have also given certain illustrations of unfairness in the terms of the settlement in comparison with the settlement entered into by the union in the year 1976 to demonstrate that respondent 3 did not apply her mind and investigate the reasonableness and fairness of the settlement. I will deal with them while discussing the arguments of their counsel. According to them, on these facts the settlement cannot attract

S. 18(3) of the Act but as the company is contending that it is binding on all its workmen and initiating disciplinary proceedings on the basis of that settlement against workers who are on strike, the petitioners have approached this Court challenging the validity of the settlement.

3. The petitioners have further asserted in support of their challenge to the settlement that the office-bearers of the union who were signatories to the "unfair, anti-worker, undemocratic settlement" have been removed by Special General Body of the union in its meeting held on 17-4-1980 and in support of this assertion, they have produced Annexure-H purporting to be resolution passed by the members of the union in the special general body meeting held on 17-4-1980. On theses allegations, they have prayed that the impugned settlement be quashed or, in the alternative, a direction be issued by this Court declaring that the impugned settlement, produced as Annexure-D with the petition, is not binding on the workmen of the Association and other workmen who are not parties to it. The alternative prayer was made in the course of the arguments by an application I.A. No. II which was allowed by this Court on 2-7-1980.

4. The company in its statement of objections, has denied all the averments of the petitioners save those admitted therein. Apart from questioning the maintainability of the petition against the action of respondent - 3, it has asserted that the petition should be dismissed in limine as the petitioners have raised complicated and disputed questions of fact which could not be gone into under Art. 226 of the Constitution. On merits, it has stated inter alia, that the Association is a minority union and as such cannot raise an industrial dispute and even otherwise, under the Code of Discipline, it is only the majority union that has the right to be admitted in conciliation proceedings. The union being the majority union recognised under the Code of Discipline, the company, consequent on the termination of the 1976 settlement by the union on 21-3-1979, considered the charter of demands presented by it on 15-5-1979 and made its (company's) proposal on 27-7-1979. Discussions on theses proposals from August to November, 1979 yielded no results and consequently in the month of January, 1980, the workmen belonging to the union resorted to "gherao" of the company's officers, intimidation and violence. The company was forced to approach the civil Court for obtaining an order of injunction against the union. Thereafter, the dispute touching the charter of demands was admitted in conciliation on 1-2-1980 and normalcy was restored from 13-2-1980. The company made a fresh offer to the union as per Annexures-1 and 2 filed with the return and in order to test the acceptance of this offer which in terms of money saddled the company with the recurring annual liability of Rs. 32 lakhs and a lumpsum payment of Rs. 20 lakhs at the time of the settlement. The union conducted a secret ballot among its members on 6-3-1980 under the aegis of a local advocate. The secret ballot disclosed that a substantial majority of the workmen had voted in favour of accepting the final offer of the company. Respondent - 3, on being informed about the result of the secret ballot and the

willingness of the company and the union to sign the settlement on the lines of the improved final offer, wanted to hear the Association's representatives as they had raised certain objections to the proposed settlement. Accordingly, on 15-3-1980, she discussed the terms with the Association's representatives and explained to them the benefits of the settlement but the said Association continued their opposition to the settlement and recorded their opposition to the settlement on the minutes of the proceedings before her. With a view to thwart the efforts of the company and the majority of the workmen from entering into the settlement, they wanted more time to consider the terms but both the company and the union opposed any further extension of time since the mandate given to the union on 6-3-1980 in the secret ballot was to sign the settlement forthwith as any postponement would have led to serious industrial unrest which had simmered down since 13-2-1980 after the initiation of conciliation proceedings by respondent - 3. The total average monthly gains per worker was Rs. 153-00 under the fresh offer made by the company and as could be seen from the proceedings of the conciliation filed by the petitioners as Annexure-E to the writ petition, 1612 workers out of 1800 attended the secret ballot and the number voting for the settlement was 1207 and against was 395. In these circumstances, respondent - 3 was justified in the interests of the majority of the workmen and in the interest of maintaining peace, in agreeing to the execution of the settlement between the company and the union on 15-3-1980 and certifying the same as one under S. 12(3) of the Act by subscribing her signature to the settlement. The said settlement being in truth and substance executed with the advice, consent and concurrence of respondent - 3, the conciliation officer, it was binding on the petitioners and this is further demonstrated by the fact that 1840 workmen of the company have accepted the benefits under the settlement on 16-3-1980 and, therefore, a minority union like the Association cannot challenge the settlement. The allegation of collusion between respondent - 3 and the company was also refuted by the company.

5. Respondent - 3, the conciliation officer, has entered appearance through the learned Government Advocate and filed her affidavit on 10-6-1980 denying the allegations made against her by the petitioners. She has denied their allegations that she did not apply her mind to the various terms and conditions of the settlement and that there was no discussion with regard to each one of the terms and conditions of the settlement. Her affidavit discloses that the union being the recognised union under the Code of Discipline, on receipt of its charter of demands, she took immediate step to convene a meeting of the union and the company to investigate the genuineness of the dispute. Joint meetings were held on 25-1-1980, 29-1-1980, 30-1-1980 but no agreement could be reached despite her best efforts. Since no progress could be made by the union and the company till 1-2-1980, she admitted the dispute in conciliation and had discussions with the parties on 2-2-1980, 5-2-1980, 8-2-1980 and 11-2-1980. There was some progress after these discussions and hence she advised the union by letter dated 11-2-1980 to call off the strike with a view to restore

industrial peace. The union heeded to her advice and called off the strike with effect from 13-2-1980. Further proceedings took place on 13-2-1980 and 14-2-1980 to reach an amicable settlement. In the meanwhile, some of the office-bearers of the Association contacted her and represented to her that she might continue the discussions with the union. She was informed that the union had obtained a mandate from the workers in a secret ballot for signing the settlement and she was also bona fide satisfied that the settlement was fair and reasonable having regard to the issue and the discussions that had preceded. She was also, satisfied that the settlement was a fair and amicable one and hence she certified it and submitted a memorandum of settlement to the State Government. She admitted the request made by the Association for some time to enable the latter to place the proposed terms before its special general body but has asserted that she did not accede to that request as, in her view, the request if granted would have further protracted the proceedings "unnecessarily" since the Association was only a minority Association and was not a recognised bargaining agent. She has categorically denied the allegation of collusion between her and the company and has characterised the same as "irresponsible" and "false". The further allegation that the settlement was signed within ten minutes and there was undue haste on her part, according to her, was unfounded.

6. The union, which is respondent - 5, in this petition, has substantially supported the averments of the company in its statement of objections. It has also complained of suppression of material facts by the petitioners in their petition. According to the union, the Association has only about 100 employees as members thereof whereas the union's membership is 1800 and it is recognised as the sole bargaining agent under the Code of Discipline and as such, has entered into a number of settlements with the company from time to time. Further, the Association has never claimed recognition under the Code of Discipline and has never challenged the union's claim as the recognised union for purposes of collective bargaining. The Association having no representative strength, is bent upon capturing power, through violence and intimidation and its object in wrecking the settlement is the manifestation of union rivalry and blow to collective bargaining. Regarding the fairness of the settlement, it has stated that in the history of the company, the monetary benefit that each workman was entitled to was the highest under the impugned settlement and there was no wrongful loss to the workmen as alleged by the petitioners. The settlement was the result of 7 to 8 months of negotiations between the union and the company and was fair, reasonable and just and had been entered into keeping in mind the welfare of the workmen in general. It had also specifically denied the allegations made by the petitioners against respondent - 3. In paras 8 to 10 of the return, the union has stated in detail the developments from stage to stage, after the termination of the 1976 settlement which ceased to be in force from 1-4-1979, culminating in the impugned settlement. Further it has asserted that the settlement was properly entered into under S. 12(3) of the Act.

7. The State Government and the Commissioner of Labour who are respondents

1 and 2 respectively, have not filed any return but the learned Advocate General has produced the records pertaining to the impugned settlement. Before I proceed to consider the various contentions of the petitioners, the objections as to the maintainability of the petition and the jurisdiction of this Court under Art. 226 of the constitution to entertain a challenge to a settlement under S. 12(3) of the Industrial Disputes Act, will have to be disposed of. As noticed earlier, the petition was filed originally by four workmen. The Association was substituted for the first two workmen by the order of this Court on I.A. No. I. This amendment was permitted before the issue of notices to the respondents and no objection has been taken respondents 1 to 4 challenging the locus standi of the petitioners to file the petition. It is only the union which has taken objection but Mr. S. Krishnaiah for the union has not seriously pressed the same. Since the impugned settlement affected the rights of the workers belonging to the Association, the Association was an aggrieved party and therefore, it had the locus standi to file the petition. Further, under Annexure-C filed with I.A. No. I, which is a true copy of the resolution passed on 3-4-1980 by the Executive Committee of the Association, the Vice-President and the Assistant Secretary of the Association were authorised to file this writ petition and these two office-bearers were the original first and second petitioners. The Association has come on record presumably to represent the interests of all the workers who are its members. Hence, I find that the petition is maintainable in the form in which it is filed.

8. The second objection need not detain me long since the point is covered by two Division Bench rulings of this Court. Mr. R. N. Byra Reddy, learned counsel for the petitioners, relied on the Division Bench decision in *Mysore Sugar Company Employees' Union Vs. Commissioner of Labour (State Conciliation Officer) and Others*, wherein a settlement under S. 12(3) of the Act was challenged on the ground that it had not been arrived at in the course of conciliation proceedings and did not have the efficacy claimable under that sub-section. Somnath Iyer, J., as he then was, speaking for the Bench observed :

"We take the view that there is nothing in the record of the conciliation proceeding upon which Sri Krishnaiah depends, which can persuade us to say that the State Conciliation Officer made no effort to promote a settlement. "On the contrary, the statement in that regard that a settlement was reached between the management and the association is not incompatible with the assertion made by the association and the company that the settlement was promoted by the State Conciliation Officer. What we should look into for the purpose of deciding whether the settlement was promoted by the State Conciliation Officer is the memorandum which records the settlement, and when we do so, we find that there is a clear recital in that memorandum that the State Conciliation Officer was the person who brought about the settlement. The contemporaneous record made on 22nd July, 1966 makes it clear that it was on his advice and through his instrumentality that the settlement was reached. It is to our mind sufficiently obvious that the State Conciliation Officer was of the view that the settlement was both fair and reasonable."

Though this Court held on facts that the impugned settlement was one in the course of conciliation under S. 12(3) of the Act, whether the relief in the nature of a writ of certiorari or mandamus was available to the union which challenged the settlement in that case was not considered as obviously no such contention was taken by the contesting parties. However, after the aforesaid decision was rendered in *Krishnarajendra Mills Workers' Union Vs. Assistant Labour Commissioner and Conciliation Officer, Mysore and Others*, a Division Bench of this Court dealt with these specific contentions in a writ petition challenging a settlement under S. 12(3) of the Act. Rukol, J., speaking for the Court, observed :-

"It is an undisputed principle of law that a writ Court is not an appellate Court and cannot assume the role of an appellate Court to examine the fact of the case and the evidence before the Tribunal in order to assess whether the conclusions arrived at are reasonable satisfactory. The limits of the writ jurisdiction are well-known. So far as the petitioner in a writ for certiorari is concerned, it is necessary for him to show that there is an error of law apparent on the face of the record or that there is an illegality, or as laid down by the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , the administrative order complained of is vitiated either on the ground of mala fides, dishonesty or corruption. We have no proof of any of these infirmities in this case. So far as the writ for mandamus is concerned, we have already pointed out that the settlement impugned is an act of the parties to the settlement and the conciliation officer has merely used his good office to induce the parties to come to a fair and amicable settlement. The settlement is neither an order passed by him nor a decision recorded by him. So the question of issuing any writ of mandamus against a statutory authority does not arise."

This decision was followed by another Division Bench of this Court in *Workmen of Hindusthan Machine Tools Ltd., Bangalore v. C. N. Nanappa and others* (Writ Petition No. 769 of 1970 disposed of on 26-6-1972).

Chandrashekhar, M., as he then was, observed :-

"We shall now consider the first prayer of the Employees' Association, namely, issue of a writ of certiorari quashing the impugned settlement. In *Krishnarajendra Mills Workers' Union Vs. Assistant Labour Commissioner and Conciliation Officer, Mysore and Others*, the facts were very similar. There, the management and one of the several trade unions had entered into settlement in the course of the conciliation proceedings, A rival union of workmen moved this Court in a writ petition to quash that settlement. While declining to issue a certiorari, this Court held that a settlement brought about through the conciliation officer, was an administrative act, and not a judicial act and was not, therefore, liable to be struck down by certiorari.

In the light of the aforesaid decision of this Court, the prayer in the present petition for quashing the settlement, cannot be granted and must be rejected."

But on the contention raised by the petitioners therein that a declaratory relief could be granted to the effect that the settlement was not one arrived at in the course of the conciliation proceedings and hence not binding on all the workmen under S. 18(3) of the Act, the learned Judge observed, following the decision of the Supreme Court in A.B. Abdulkadir and Others Vs. The State of Kerala and Another, , that such a declaratory relief could be granted.

However, the learned counsel for the company has invited my attention to the decision of the Supreme Court in The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, In that case, the Supreme Court, while up-holding the view of the Andhra Pradesh High Court that a petition for a writ in the nature of mandamus against a company incorporated under the Indian Companies Act, 1913, was misconceived and not maintainable, set aside the declaration made in favour of three workmen against the company that the settlement impugned in the writ petition before the High Court was illegal and void. Abdul Kadir's case, on which the Division Bench of this Court in W.P. No. 769 of 1970, placed reliance, was distinguished by the Supreme Court in Praga Tools" case on the ground that was not a case where a writ petition was held to be not maintainable against a company. The Supreme Court observed :

"In our view once the writ petition was held to be misconceived on the ground that it could not lie against a company which was neither a statutory company not one having public duties or responsibilities imposed on it by a statute, no relief by way of a declaration as to invalidity of an impugned agreement between it and its employees could be granted. The high Court in these circumstances ought to have left the workmen to resort to the remedy available to them under the Industrial Dispute Act by an industrial dispute thereunder. The only course left open to the High Court was, therefore, to dismiss it. No such declaration against a company registered under the Companies Act and not set up under any statute or having any public duties and responsibilities to perform under such a statute could be issued in writ proceedings in respect of an agreement which was essentially of a private character between it and its workmen. The High Court, therefore, was in error in granting the said declaration."

Unfortunately, the decision in Writ Petition No. 769 of 1970, was not cited in, the course of the arguments and hence I did not have the benefit of the arguments of either side on the implications of that decision. It escaped my attention too. However, I am of the view that the learned Judge did not lay down in that decision that a declaration could be made against a company but against the statutory authorities who bring about settlements under S. 18(3) of the Act. This is clear from para 21 of the order which reads :

"Having regard to all the circumstances of the case, we consider it inexpedient to exercise our discretionary jurisdiction to grant the declaration sought for by the Employees" Association. It follows that the other relief sought for by the Employees" Association, namely, directing the conciliation officer to continue the conciliation proceedings in regard to the demand raised by the Employees"

Association in its notice of demand Exhibit "B", also cannot be granted."

For these reasons. I hold that though the petitioners are not entitled to a writ in the nature of certiorari for quashing the impugned settlement, they can pray for a declaration that the settlement is not one under S. 12(3) of the Act but one attracting S. 18(1) of the Act and, therefore, the impugned settlement is not binding on them. That relief is covered by the second amendment application (A.I. No. II) dated 20-6-1980 which was allowed by this Court on 2-7-1980. In the view, I have taken, it is unnecessary to consider the various other authorities cited by Mr. Byra Reddy, learned counsel for the petitioners, in support of the proposition that this Court could entertain a petition touching the validity of a settlement under Art. 226 of the Constitution. Further, I am in agreement with his contention that :

"The consequence of a settlement in the course of conciliation proceedings is that it binds all the workmen of the establishment who may not be the parties to the agreement and also those who may join the establishment subsequent to the settlement. The statutory provisions governing the recognition of trade unions and settlement of disputes with the recognised unions, etc., are not yet brought into force. Recognition of trade unions is a matter governed by the code of discipline and the same has no statutory force. In this situation, it is open to the employer to manipulate unions and give them colour of representative character and force on the workers a settlement to their detriment under the guise of a settlement being one reached under the conciliation proceedings with the recognised union. Hence the need to scrupulously scrutinise all the relevant questions in relation to the conciliation proceedings and proper compliance with all the requirements of law."

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 a petition under Art. 226 of the Constitution but the relief in such a petition would be of a declaratory nature which may, in appropriate cases, necessitate the granting of consequential reliefs.

9. Before I consider the rival contentions of the parties, a few general observations about collective bargaining and the resultant settlements to ensure industrial peace and production under the Act, may be made. There is no doubt we have come a long way from the days of trafficking in human labour and skill. These two factors are sine qua non for any organised means of production. Two centuries ago, when the industrial revolution in America was in its infancy, the Virginia Gazette dated 28-3-1771 (Foster Rhea Dulles, "Labour in America", Thomas v. Crowell Co., New York, 1949, P7) carried an advertisement as follows :

"Just arrived at Leeds town, the ship Justitia, with about one hundred Healthy Servants, Men, Women and Boys, among which are many Trades people - viz., Blacksmiths, Shoemakers, Tailors, House Carpenters and Joiners, a Cooper, several Silversmiths, Weavers, a Jeweller and many others. The Sale will

commence on Tuesday, the 2nd of April (1771), at Leeds town on Rappahannock River, A reasonable credit will be allowed, giving Bond with approved Security to THOMAS HODGE."

But thank to the militancy of organised labour unions "the history of collective bargaining is thus largely a history of unionism. The two are inseparably intertwined." "In a historical recital one may emphasize either unionism per se, or its major facet, collective bargaining." (See COLLECTIVE BARGAINING - PRINCIPLES AND PRACTICES by C. Wilson Randle). If as a result of collective bargaining a final agreement is reached, such "an agreement upon wages and working conditions between the managers of an industry and its employees, whether made in an atmosphere of peace or under the stress of strike or lock-out reasonable in many ways a treaty". As a safeguard of social peace it ought to be construed not narrowly and technically but broadly and so as to accomplish its evident, aims and ought on both sides to be kept faithfully and without subterfuge. In no other way can confidence and industrial harmony be sustained. (From the opinion of Justice Sibley in Yazoo and M.V.R. Co. v. WEBB, 1933. Neil W. Chamberlain. "Collective Bargaining Procedures" public Affairs Press, Washington, D.C., 1946, p.126.") Not of least importance is the sense of stability and assurance which a documentary statement of terms introduces into the collective bargaining relationship, establishing a concrete memorial of mutual rights and duties. (2) Sections 12, 18 and 19 of the Act, to some extent, provide of the achievement of the objectives of a settlement in the course of collective bargaining.

10. Mr. Byra Reddy maintained that (i) the petitioners were not summoned by respondent - 3 to participate in the conciliation proceedings which resulted in the impugned settlement; (ii) their charter of demands was considered neither by the company nor respondent-3 the Conciliation Officer; (iii) a major portion of the petitioners' demands remained outside the settlement; (iv) there was no effective settlement of all demands as there was no application of mind by respondent-3 to the legitimate demands of the Association but he acted in a mechanical manner; (v) in truth and substance the settlement was one under S. 12(2) of the Act and not under S. 12(3) of the Act; (vi) the subsequent chaotic development after the execution of the settlement strikes at the very root of the reasonableness and fairness of the settlement; (vii) the impugned settlement did not cover ten demands of the workmen and its terms are more disadvantageous and generous to the workmen than the terms of the 1976 settlement and thereby there was violation of S. 9A of the Act; (viii) the petitioners being not a party to the impugned settlement, the same was not binding on them; (ix) the Conciliation Officer (respondent-3) had a duty to perform under S. 12 of the Act and such duty was coupled with the power of certification under S. 12(3) of the Act and, therefore, principles of natural justice and fairness come into play for judging the action and conduct of the conciliation officers and she having admittedly refused to extend the time by three days to enable the Association to place the matter before its general body, the impugned settlement is violative of

the principles of natural justice and is, therefore, vitiated; her action in allowing the settlement to be executed on the pressure exerted by the company and the union disclosed that she did not act fairly and independently but she whittled under the threat of strike by the union and the apprehension of the company of another spurt of violence in the factory premises; alternatively, her conduct disclosed her collusion with the company; (x) the civil suit filed by the union in Original Suit No. 350 of 1980 in the Munsiff's Court for an order of injunction restraining the Assistant Labour Commissioner and Deputy Registrar of Trade Union, the 7th defendant therein, from registering any charges in the incumbents occupying the posts of office-bearers of the union is itself proof of the non-representative character of the union, though it is recognised as the majority union under the Code of Discipline; (xi) the impugned settlement is vitiated by legal mala fides and arbitrariness on the part of respondent-3; and (xii) the impugned settlement was forwarded to the State Government without a report as required under S. 12(3) of the Act and the absence of such report was another instance of nonapplication of mind to the terms of the settlement by respondent-3 and non-compliance with the mandatory requirement of S. 12(3) of the Act.

11. These contentions will be considered seriatim. Contention No. (i) Mr. Byra Reddy does not appear to be well-founded. His contention is that there was no notice to the Association as required under the Act and respondent-3 did not scrupulously follow the prescribed procedure. Under S. 12(1) of the Act, where any industrial dispute exists or is apprehended, the conciliation officer may hold conciliation proceedings in the prescribed manner. The Act does not prescribe any particular procedure. Under S. 11(2) of the Act, the conciliation officer may, for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates, has not occurred in this case. Under S. 11(4) of the Act, the conciliation officer may call for and inspect any document which he has ground for considering to be relevant to the industrial dispute. Mr. Byra Reddy has not contended that the conciliation officer has violated any of the aforesaid provisions of the Act. Under Rule 10 of the Industrial Disputes (Karnataka) Rules, 1957 (in short "the Rules") framed by the State Government in exercise of the powers conferred on it by S. 38 of the Act, where the conciliation officer receives any information about any existing or apprehended industrial dispute and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein. It is seen from the records produced by the learned Government Advocate that the notice of conciliation under Rule 10 of the Rules was issued on 1-2-1980 to the General Secretary of the union (respondent-5) and to the company. Such notice of conciliation was not served on the Association (petitioners). Hence, Mr. Byra Reddy maintained that there was no proper summoning of the parties to the industrial dispute and, therefore, the very

initiation of conciliation proceedings was in contravention of the statutory provisions. That contention takes me to the point urged by Mr. Srinivasamurthy, learned counsel for the company that since the Association was a minority union and was not recognised for the purpose of collective bargaining under the Code of Discipline non-summoning of the Association did not vitiate the conciliation proceedings. Respondents 3 and 5 also have taken the same stand. Therefore, the point for consideration is whether under the Code of Discipline which admittedly has no statutory force, respondent-3 was justified in not issuing notice to the Association under Rule 10 of the Rules. The Code of Discipline (in short "the Code") which was ratified by all Central Employers' and "Workers" Organisations at the 16th Session of the Indian Labour Conference held at Nainital in May, 1958 came into force from 1-6-1958. In Part V of the "Implementation and Evaluation Machinery - Its functions and procedures, "the rights arising out of recognition of unions are found." Para 13 which comes under the said part, reads :

"The question of rights of unions recognised under the Code of Discipline vis-a-vis unrecognised unions was discussed at the 20th Session of the Indian Labour Conference (August 1962). While a decision on the rights and privileges of unrecognised unions was deferred for future consideration it was agreed that unions granted recognition under the Code of Discipline, should, for the present, enjoy the following rights :

(i) to raise issues and enter into collective agreements with employers on general questions concerning the terms of employment and conditions of service of workers case of a Representative Union, in an industry in a local area;

.. .. (iv) for the purpose of prevention or settlement of an industrial dispute - (a) to hold discussions with the employees who are members of the at a suitable place or places within the premises of office/factory/establishment as mutually agreed upon; (b) to meet and discuss with an employer or any person appointed by him for the purpose, the grievances of its members employed in the undertaking; (c) to inspect, by prior arrangement, in an undertaking, any place where any member of the union is employed."

Part VI provides for sanctions under the Code. Para 15 provides for sanction against the members of all Central Employers' and Workers' Organisations for violating the provisions of the Code. As could be seen from paragraph 12, the Code aims reducing inter-union rivalry and achieving trade union amity. Appendix-I to the Code joins on the management to recognise the union in accordance with the criteria provided in Annexure-I to that Appendix, which was evolved at the 16th session of the Indian Labour Conference held in May, 1958. Under clause 4 of Annexure 1 when a union has been recognised, there should be no change in its position for a period of two years. Under clause 5 of the said Annexure, when there are several unions on an industry or establishment, the one with the largest membership should be recognised. Under clause 8 only unions which observe the Code of Discipline would be entitled to recognition.

These aspects of the Code should be kept in view while considering the Association's grievance that it was not properly summoned for conciliation proceedings initiated by respondent-3. Admittedly, the Association came into existence in the year 1978. It is not the case of the petitioners that it was a recognised union under the Code. Further, they have not established that the Association represents the majority number of workmen of the company. In para 13 of the petition, it is averred that the Association has got more than 1300 membership in the year 1980 and these members had submitted a representation to the company stating that the impugned settlement was not binding on them. Apart from this bare assertion, there is no other proof of membership of, or of the representation by 1300 workmen. Neither it has sought for recognition by writing to the authorities concerned as provided for in Appendix Iv to the Code to ascertain its representative character nor has it asserted in the petition that its plea for recognition was turned down on grounds extraneous to the criteria provided under the Code. In the circumstances intimation to the union only under Rule 10 of the Rules, was consistent with the scheme and spirit of the Code. But since the Code has no statutory force, it remains to be considered whether the Association's rights were in any way violated by the non-issue of notice to it by respondent-3 for participation in the conciliation proceedings.

As observed by this Court in *Krishnarajendra Mills Workers' Union Vs. Assistant Labour Commissioner and Conciliation Officer, Mysore and Others*, by initiating the conciliation proceedings respondent-3 was doing an administrative Act. This is clear from Rule 10 of the Rules under which he gives "formal intimation in writing to the parties concerned" declaring his intention to commence conciliation proceedings. His act was also controlled by the provisions of the Code which enjoined the company to deal only with the recognised union. Hence absence of intimation to the Association about the conciliation proceedings did not take away any of the rights of the Association under the Act. Even otherwise as could be seen from the averments in the petition, the Association had actively participated in the conciliation proceedings despite the failure of respondent-3 to notify it under Rule 10 of the Rules. In para 4 of the petition the petitioners have averred that the Association was called upon to participate in the conciliation proceedings and it had opposed the impugned settlement. In para 6 of the petition, they have asserted that the Association was a party to the conciliation proceedings in I.D. No. 171/79-80 before respondent-3. Those proceedings were pursuant to the intimation by respondent-3 on 1-2-1980, to the union and the company. The only grievance of the Association was that it was not given time to place before its general body, the terms and conditions of the impugned settlement. Hence, I am of the view that want of intimation to the petitioner under Rule 10 of the Rules did not vitiate the settlement since the Association, though not a recognised union, had effectively participated in those proceedings.

12. Point No. (ii) : The second contention of Mr. Byra Reddy also should fail since the character of demands presented by the Association was not the subject-

matter of conciliation in the conciliation proceedings held by respondent-3. Further, the Association also did not make any grievance about it in the conciliation proceedings though it has participated in the same. From the petition averments it is seen that the Association had presented a character of demands in August, 1979 prior to the charter of demands submitted by the union, Hence the company was justified in entering into negotiations with the recognised union, i.e., respondent-3 for considering the charter of demands presented by it and respondent-3 was equally justified by it and respondent-3 was equally justified in considering only the union's charter of demands.

13. For the same reasons, the third contention of Mr. Byra Reddy also fails.

14. Point No. (iv) : The fourth contention of Mr. Byra Reddy postulates that respondent-3 was bound to consider of demands of the Association as well as that of the union in the proceedings held by her. While considering Mr. Reddy's second contention, I have held that respondent-3 was not obliged to consider the demands of the Association since these demands has been superseded by the recognised union, i.e., respondent-5. Hence, the further contention of Mr. Reddy that there was no application of mind by respondent-3 to the legitimate demands of the Association should also fail since the conciliation proceedings which resulted in the impugned settlement were only with regard to the charter of demands presented by the union. But whether respondent-3 acted in a mechanical manner in certifying the impugned settlement, will have to be considered in order to meet the challenge of the Association that the settlement was not one under S. 12(3) of the Act. The case of the Association was that the impugned settlement was certified by respondent-3 in hardly about ten minutes" time and that was not justified regard being has to the fact that the settlement runs into about 89 pages and contains innumerable clauses could not have been examined in such tome and that was an indication to sustain its allegation that there was no application of mind by respondent-3. Respondent-3, in her counter-affidavit, has denied these assertions. Her denial is sought to be supported by the records produced by the learned Advocate General. Further she has also produced through her counsel the dairy maintained by her in the day-to-day course of her work of conciliation proceedings held by her. The records disclose that there was a meeting on 1-2-1980 with the representatives of the company and the workmen. The noting for the meeting on 1-2-1980 shows that there were prolonged discussions on that day. On 2-2-80 there were certain proposals by the union and the company wanted time to examine them and the proceedings were adjourned to 5-2-1980. On 5-2-1980, the noting of respondent-3 discloses that there were prolonged discussions on the proposals given by the union, and the company obtained time to put the proposal before the Board of Directors and the proceedings were adjourned to 8-2-1980, on which day there was a stale-mate in the negotiations since the workmen had resorted to strike and agitation and the company had expressed its apprehension that an amicable settlement would be difficult unless normalcy was restored

quickly. The representatives of the union requested for adjournment to 11-2-1980. The proposals put by the company were again considered and the union was requested to call off the strike by respondent-3 by her letter dated 12-2-1980, in order to create a peaceful and congenial atmosphere for further talks in the matter. On 24-1-1980, respondent-2 was informed by the company that the production department had remained shut down due to stoppage of work by workmen in a vital sub-group and the company had no alternative but resort to lay-off those workmen who were rendered surplus on account of the shut down in the production department. A copy of the said letter had been forwarded to respondent-3 also. Thereafter, the executive committee of the union, on 12-12-1980 intimated the company that the workmen had resolved to restore normalcy on condition that the existing vacancies in the higher cadres should be filled up immediately by the company and further negotiations could be held bilaterally also for a satisfactory settlement of their demands. That committee also informed respondent-3 that resolution would come into effect immediately and the General Secretary of the union had requested the company to fill up all vacancies that existed in the higher cadre. A copy of that resolution was also sent respondent-3. Pursuant to that resolution normalcy was restored and a conciliation meeting was held on 15-3-1980. Respondent-3 had also before her a chart showing the estimated money gains by the fresh offer made by the company and also the arrears of wages that would be due to the workmen by accepting the proposal of the company. The attendance sheet maintained by her the conciliation meeting dated 15-3-1980 shows that three representatives of the company and five representatives of the union were present for discussions with her. The diary maintained by her discloses notes and calculations made by her on the various terms of the impugned settlement. The minutes of the meeting recorded by her discloses in detail her discussion with the General Secretary of the union, with the representatives of the company and with the Vice-President and the Assistant Secretary of the Association. A copy of the minutes was given to the Association by respondent-3 as is evident from Annexure-E filed with the petition. This contemporaneous record of the proceedings on 15-3-1980 should be taken into consideration while considering the allegation of the learned counsel for the Association that the impugned settlement was not one under S. 12(3) of the Act, inasmuch as there was no application of mind by respondent-3 to the terms of the impugned settlement. A perusal of the minutes in Annexure-E is sufficient to repel that contention of Mr. Byra Reddy. She had taken into consideration the representative character of the union, the recognition granted to it as the recognised union on the advice of the Deputy Labour Commissioner during August, 1977; the fact of ten earlier settlements having been amicably reached between the company and the union.; the fairness of the terms of the impugned settlement and the representation made by the company and the union that if the settlement was not executed on 15-3-1980 there would be further disruption in the smooth working of the company on account of the likelihood of workers resorting to violence and accordingly she came to the conclusion that the settlement which was fair and beneficial to the workmen and

would promote the interests of industrial peace, should be executed under S. 12(3) of the Act. The minutes recorded on 15-3-1980 are reflected to some extent in the preamble to the impugned settlement. These two documents read together leave no doubt in my mind that the impugned settlement was brought about with her concurrence and assistance, and through her instrumentality the impugned settlement was reached. Therefore, as observed by this Court in *Mysore Sugar Company Employees' Union Vs. Commissioner of Labour (State Conciliation Officer) and Others*, which I have quoted in para 8 above, it is sufficiently obvious that the impugned settlement brought about by respondent-3 was fair and reasonable and the charge that she did not apply her mind to the terms of the settlement before certifying the same as one under S. 12(3) of the Act, is unfounded. It does appear to me that the contention of Mr. Reddy that the proceedings of the conciliation officer would not disclose application of mind to each and every terms of the settlement, appears to be far-fetched. As observed by this Court in *Krishnarajendra Mills Workers' Union Vs. Assistant Labour Commissioner and Conciliation Officer, Mysore and Others*, the conciliation officer is not an adjudicating authority. If he is satisfied after negotiations with the company and the union representatives that the terms of the settlement taken as a whole, are beneficial to the workmen, being fair and reasonable, it is not open to this Court in a petition under Art. 226 of the Constitution to examine whether there has been an application of mind by him to each and every term of the settlement. The forum for such enquiry is elsewhere.

Mr. Byra Reddy strongly relied on the decision of the Supreme Court in *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, In that case the Supreme Court has observed :

"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."

On the facts of that case, the Supreme Court found that the Labour Commissioner-conciliation officer had cancelled the proceedings proposed to be held with the management and the workmen represented by the union and he had proposed to hold further conciliation proceedings at a future date before making his final recommendation to the Government. The company had protested to the conciliation officer against holding any further proceedings and apparently did not attend the meeting fixed at a future date. Nothing further seems to have taken place in the proceedings on that date. On these facts the Supreme Court held that the conciliation officer took no steps to promote the actual agreement arrived at between the company and the union and such agreement was arrived at without his assistance and did not receive his specific concurrence even later. The evidence also disclosed that the conciliation officer had not approved the settlement since it excluded the reinstatement of a large

group of workmen and so he did not act under S. 12(3) of the Act.

The facts of the instant case disclose an entirely different situation. Respondent-3 right from the date of issue of notice on 1-2-1980 to the concerned parties was actively associated with them till 15-3-1980 and the minutes of the proceedings recorded by her just prior to the certification of the impugned settlement leave no doubt that the settlement was arrived at with her assistance and concurrence. Hence the impugned settlement fully satisfies the requirements prescribed by the Supreme Court and, therefore, must be held to be one under S. 12(3) of the Act. Hence the fourth contention of Mr. Byra Reddy fails.

15. Point No. (v) : This contention of Mr. Byra Reddy is based on the hypothesis that the Association was not a party to the impugned settlement as it had not signed the same. The minutes recorded in Annexure-E disclose that the Association opposed the settlement and did not want to sign it. But the majority of the workmen having agreed to accept the proposed terms under the impugned settlement and the recognised union having signed the settlement, the fact that the Association opposed the terms of the settlement and did not sign the same, will not take it out of the ambit of S. 12(3) of the Act and it attracts the provisions of S. 18(3) of the Act. The law on this point is settled by the Supreme Court in *Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others*, The Supreme Court observed :

"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), (b), (c) and (d) of sub-s. (3). Section 18(3)(d) makes it clear that, where a party referred to in clause (a) or (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 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). In this connection we may refer to two recent decisions of this Court where similar questions under S. 19(6) and S. 33(1)(a) of the Act have been considered. (Vide *The Associated Cement Companies Ltd. Vs. Their Workmen*, and *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*,

But Mr. Byra Reddy maintained that those observations must be understood in the context in which they were made and they do not lay down the proposition that a union of workmen which is not a party to the settlement is governed by the settlement if it is one under S. 12(3) of the Act. His contention is that in that case the Supreme Court was mainly concerned with the construction and the effect of the provisions of S. 22(1)(d) of the Act and the company therein being declared as a public utility service the conciliation proceedings in the dispute between the company and its workmen was mandatory under S. 12(1) of the Act and, therefore, those observations should not be applied to a settlement entered into by a non-public utility service like the company in this case with the union. I am unable to agree with this contention of Mr. Reddy because the first part of S. 12(1) of the Act relates to conciliation proceedings in an industrial dispute between the management and the workmen of a non-public utility service. Section 18(3) of the Act does not make any distinction in regard to settlement arrived at by a public utility or a non-public utility service. Further the Supreme Court made those observations while considering the scope and the effect of a settlement in the course of conciliation or an award under sub-ss. (1) and (3) of S. 18 of the Act. Those observations were made independently of the point for consideration that arose under S. 22(1)(d) of the Act and hence I am of the view that they amount to a statement of law by the Supreme Court, and therefore, it should be held that the opposition of the Association to the terms of the impugned settlement and its refusal to sign the settlement would still make the settlement one under S. 12(3) of the Act. Mr. Byra Reddy relied on a number of decisions of various High Courts on this point but it is not necessary to refer to all those decisions since they have only a persuasive value and in the light of the statement of law by the Supreme Court which is binding on this Court those decisions will not help the contention of Mr. Byra Reddy. I may also note that my attention has not been drawn to any decision of the Supreme Court which has departed from its earlier view on the effect of S. 18(3) of the Act in *Ramnagar Company* case. All the same Mr. Reddy maintained that in view of the allegations made by the Association against respondent-3, the impugned settlement in truth and substance is not one under S. 12(3) of the Act. I have referred in detail to the progress of the conciliation proceedings from 1-2-1980, the contemporaneous record maintained by respondent-3 on 15-3-1980 and the preamble to the terms of the settlement. The averments of the petitioners against respondent-3 as well as against the company of collusive action have been denied by respondent-3 and the company and their denial is properly

supported by the records of the conciliation proceedings produced by the learned Advocate General. In the circumstances the contention that the impugned settlement, in truth and substance, is not one under S. 12(3) of the Act is liable to be rejected.

16. Point No. (vi) : The contention of Mr. Byra Reddy on this point has given me some anxiety in regard to the firmness and reasonableness of the terms of the impugned settlement to make it one under S. 12(3) of the Act. It is admitted by the company as well as the union that the impugned settlement had not resulted in industrial peace. It is admitted that the strike by the majority of the workmen continued and continues after execution of the settlement. But it is asserted by the company and the union that such situation was caused by the violent activities of the workmen belonging to the Association. The union has also approached the civil Court in O.S. No. 350 of 1980. It appears, the office-bearers of the union were sought to be removed clandestinely by a resolution passed by certain dissident members of the union with the active connivance of the Association. There is no doubt that the subsequent developments after the execution of the impugned settlement would be a pointer to ascertain whether the settlement was really one under S. 12(3) of the Act since the very object of such settlement was to settle the industrial dispute and maintain industrial peace and harmony between the company and its workmen. The object of a settlement under S. 12(3) of the Act being restoration of normalcy in the relations between the management and the workmen and creation of industrial peace and harmony resulting in increased production or restoration of normal production, it may have to be considered whether a settlement which has not achieved these objectives could still be considered as a settlement under S. 12(3) of the Act. But I am of the view that no sufficient material has been placed on record by the Association stating the reasons for the chaotic developments after the execution of the impugned settlement. I cannot say on the material on record that the impugned settlement was responsible for continuance of strike by majority of the workmen. It may be, as stated by the learned counsel for the company and the union, due to union rivalry. This is evidenced from the pleadings in the original suit filed by the union a copy of which has been filed in this Court by consent of parties of sufficient material on record as to the causes for the subsequent chaotic conditions in the Industrial relations between the company and its workmen, I should not speculate in the manner suggested by Mr. Byra Reddy. Further, such a contention should have been properly pleaded in the petition, to enable the respondents to meet the same. In the circumstances I hold that there is no material to give a finding that the subsequent developments prove that the settlement was not one under S. 12(3) of the Act.

17. Point No. (vii) : I have already rejected the first part of this contention of Mr. Byra Reddy while dealing with point No. (iii), i.e., respondent-3 was not bound to consider the demands of the Association at the time of certifying the impugned settlement as the Association was neither the representative union nor the recognised union under Code of Discipline. Further, I am satisfied that the

majority of the workmen were in favour of accepting the benefits under the impugned settlement and they have also accepted the same as they were favourable as pleaded by the company and duly supported by Annexures Nos. I to III filed by the company with its return and hence the fact that the ten demands of the Association were not considered and the terms of the impugned settlement were more disadvantageous and onerous to the workmen would not vitiate the settlement. The learned counsel for the company Mr. Srinivasamurthy while maintaining that the terms of the impugned settlement were more beneficial than the terms of the 1976 settlement repeatedly requested this Court to scrutinise the terms of the impugned settlement and give a finding as to whether the 1976 settlement or the impugned settlement was more beneficial to the workmen though it would not be within the purview of this Court under Art. 226 of the Constitution to do so. I do appreciate his anxiety to have a ruling from this Court on the fairness of the settlement in view of the allegations of the petitioners against the company but it is not necessary to go into the terms of the settlement Mr. Reddy's contention must fail, because -

(a) the settlement was entered into with the recognised representative union whose right to recognition was never disputed by the petitioners before the filing of the writ petition;

(b) it was a package deal and, therefore, it involves a little give and take on the part of the company and the union and hence the non-consideration of the ten demands of the Association would not by itself affect the fairness or reasonableness of the settlement;

(c) the Association never made a grievance of the non-inclusion of their demands in the conciliation proceedings between respondent-3, though on its own showing it had participated in those proceedings upto the last day;

(d) from the material on record, I am satisfied that a large majority of the workmen in the secret ballot held on 6-3-80 had voted for the acceptance of the impugned settlement and human conduct being what it is, the company could not have forced an unfair settlement on the vast majority of its workmen when they had the freedom to cast their votes untrammelled and uninhibited by their loyalty to a particular union;

(e) either in the petition or in the course of arguments, the impartiality and the fairness of the advocate who conducted the secret ballot was not questioned and the result of the secret ballot which turned the tables against the petitioners was also not disputed; further there is no proof that the vast majority of the workmen who had voted for the settlement are members of the Association.

But whether the impugned settlement resulted in violation of S. 9A provides for a notice to be given by the employer to the workmen while proposing to effect any change in the conditions of service applicable to them in respect of any matters specified in the Fourth Schedule to the Act. It is not in dispute that some of the matters covered by the impugned settlement come under the Fourth Schedule.

But the proviso to S. 9A of the Act provides that no such notice shall be required for effecting any changes in pursuance of any settlement. Since some of the conditions of service enumerated in the Fourth Schedule to the Act are covered by the impugned settlement, provisions of S. 9A of the Act are not attracted and, therefore, there is no violation of that section at all because the terms of the impugned settlement in some respects vary from the terms of the 1976 settlement. Further the 1976 settlement was also entered into between the company and the union as the recognised union under the Code. When the present settlement was also between the same parties, any variation in the terms of conditions of service was not brought about unilaterally by the company but only with the concurrence of the recognised union. Therefore, the contention that there was violation of S. 9A of the Act fails.

18. Point No. (viii) : I have already held that in the light of the law laid down by the Supreme Court in *Feroz Din and Others Vs. State of West Bengal*, it was not necessary for a settlement to be binding on the Association that it should be made a party to the settlement. Hence this contention requires no further elaboration.

19. Point No. (ix) : I am unable to agree with the contention of Mr. Byra Reddy that mere refusal to put off the date for signing the settlement by three days was violative of the principles of natural justice. The reasons given by respondent-3 (the conciliation officer) convincingly explain why she refused to extend the time. The company and the recognised union were ready for a settlement. The majority of the workmen were in favour of the settlement. Their mandate was that the settlement should be executed without any delay. If under these circumstances respondent-3 felt that it would be unwise to extend the time by three days as requested by the Association representatives, it was because of her anxiety to maintain industrial peace which had been restored through her efforts a few days before. As observed by the Supreme Court in *Suresh Koshy George Vs. University of Kerala and Others*, , the rules of natural justice are not embodied rules and the question whether the requirement of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions. Respondent-3 was discharging an administrative act in bringing about a settlement between the parties before her. The recognised union, and to some extent the company, were the best Judges of the mood of the workmen. If they felt that the execution of the settlement was imperative for maintenance of industrial peace, respondent-3 exercised her discretion, under these circumstances properly to bring about the settlement on 15-3-1980 by refusing to accede to the request of the Association representatives. Her action was neither violative of the principles of natural justice nor arbitrary. Far from it, she took a bold and fair decision to ensure industrial peace though subsequent events have proved her wrong, but was not responsible for those events. For these reasons, the charge of collusion against her also must fail. Further, from the return filed by her and the records produced

by the learned Advocate General, I am satisfied that the charge of collusion is baseless. The petitioners could have been a little chivalrous while making such allegation against a lady conciliation officer.

20. Point No. (x) : Since the suit is still pending in the trial Court, I will refrain from making any observations on the alleged non-representative character of the union. The civil suit was a sequel to the developments that took place after 16-3-1980. By that time, the impugned settlement had come into existence and the majority of the workmen had taken the benefits under that settlement. Suffice it, for me to observe that this proceedings in the trial Court reflects the state of unionism in this country and the inadequacy of the existing legislation to ensure the legitimacy and continuity of recognised union to be the sole bargaining agency for the workmen.

21. Point No. (xi) : I have already held that the charge of collusive conduct by respondent-3 is baseless. I have also held that she had acted fairly and not arbitrarily, in exercise of her discretion to bring about a fair settlement in the interests of maintaining industrial peace due regard being had to the legitimate apprehensions of the company and the union after the secret ballot. The plea of mala fides was not taken in the petition but Mr. Byra Reddy maintained that he rested his contention on legal mala fides in the light of the observations of the Supreme Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, of its judgment at page 321. Krishna Iyer, J., answering the question "what is mala fides in the jurisprudence of power" ? observed :

"Fraud in this context is not equal to moral turpitude embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt, the resultant act is bad. If considerations foreign to the scope of the power or extraneous to the statute enter the verdict or impels the action, mala fides or fraud on power vitiates the acquisition or other official act."

Whether legal mala fides should be specifically pleaded or not was not decided in that case. Assuming such pleading is not necessary, could it be said that the conduct of respondent-3 in exercise of the powers under S. 12(3) of the Act is vitiated by corrupt purpose or considerations foreign to the scope of the power or extraneous to the statute have impelled her action in bringing about the settlement, attracting the twin vice of mala fides or fraud on power ? If the memorandum of the impugned settlement is read with the contemporaneous record to which I have made a detailed reference in para 14 above, it cannot be said that her action was impelled by a corrupt purpose or that she exercised her power actuated by considerations foreign to the scope of the power or extraneous to the provisions of S. 12(3) of the Act. This plea, therefore, fails.

22. Point No. (xii) : The last contention of Mr. Byra Reddy appears to be the most formidable one. Admittedly, respondent-3 forwarded the impugned settlement with a covering letter to the State Government. Mr. Srinivasa Murthy for the

company maintained that the word "report" in the setting of S. 12(3) of the Act means only a communication to the Government enclosing the settlement signed by the parties and, therefore, the covering letter satisfies the requirement of S. 12(3) of the Act. I am unable to agree with this submission. The scheme of S. 12 of the Act negatives such contention. Under S. 12(3) of the Act, if a settlement is reached, the conciliation officer should send a report thereof to the State Government together with the memorandum of settlement. Under S. 12(4) of the Act, if a settlement is not reached, a full report setting forth the steps taken by the conciliation officer 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, will have to be sent to the Government. On a consideration of that report, the Government will have to take a decision whether to refer the industrial dispute, whether in existence or just apprehended, for adjudication by the appropriate adjudicating authority under the Act. That is clear from S. 12(5) of the Act. Under S. 12(6) of the Act, a report either under S. 12(3) or under S. 12(4) of the Act will have to 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. If as contended by Mr. Srinivasa Murthy, the report under S. 12(3) is mere communication, the words "full report" in S. 12(4) are inappropriate for the purpose of that subsection. The words "report" and "full report" must derive their meaning from the context in which they are used, keeping in view the scheme of S. 12 as a whole. When there is a settlement, a detailed report may not be necessary since the dispute in the ordinary course is amicably settled. When there is no settlement, a detailed report is warranted to enable the Government to exercise its power under S. 12(5) of the Act and also under S. 10 of the Act. That a report under S. 12(3) of the Act is not mere communication is further made clear in S. 12(6) of the Act. That subsection fixes a period of fourteen days from the commencement of the conciliation proceedings or such shorter period as may be fixed by the appropriate Government for submission of a report, provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute. Mere communication about the execution of the settlement does not require a time limit and, therefore, the word "report" in S. 12(3) of the Act means a statement of facts or an official presentation of facts relating to the settlement and cannot be understood as synonymous with words like communication or announcement. Therefore, the next question for consideration is, in the absence of a report as warranted under S. 12(3) of the Act, what is the statutory effect of the impugned settlement forwarded to the Government. Does it cease to be a settlement under S. 12(3) of the Act or does it become a private settlement attracting S. 18(1) of the Act binding only the parties to that settlement? Mr. Byra Reddy has maintained that a report about the settlement is not only meant for the Government but also to the parties to the settlement and the settlement but have a grievance about the

terms of the settlement. He further maintained that such report is essential, in that case of a challenge to the validity of a settlement, to meet that challenge as in this case, and hence its absence will vitiate the settlement. I have no doubt that a report under S. 12(3) of the Act should be sent to the Government as required under that sub-section. But would failure to forward such report vitiate the settlement under S. 12(3) of the Act ? Under the scheme of S. 12 of the Act, the settlement comes into existence first and then the report. That settlement is between the parties to it and can stand by itself and binds the parties and other persons as provided for under S. 18(3) of the Act. There is no reference to the report of the conciliation officer in S. 18(3) of the Act and the operation of that sub-section is not controlled by any order or act of the appropriate Government, as is evident from the provisions of S. 12(3) of the Act. Failure to submit a report may attract the penal provisions of S. 31 of the Act which is subject to the protection afforded under S. 37 of the Act. Accordingly, I am of the view that the absence of a report under S. 12(3) of the Act would not vitiate the impugned settlement, whatever may be the reasons for the requirement of such report from the conciliation officer. A similar challenge to the validity of the settlement entered into in the course of conciliation proceedings on the ground that the report under S. 12(6) of the Act was not submitted to the Government by the conciliation officer within the prescribed time, was repelled by the Supreme Court in *State of Bihar Vs. Kripa Shankar Jaiswal*, The Supreme Court observed that contravention of S. 12(6) of the Act may be a breach of duty by the conciliation officer. Similarly, the failure on the part of respondent-3 in the instant case to submit a report may amount to a breach of duty but that would not invalidate or vitiate the settlement.

23. A number of other decisions have been cited by the learned counsel for the petitioners and the company, but I find that a reference to them is not necessary in view of the pronouncement of the Supreme Court and this Court in the cases alluded to above on the material points raised in this petition.

24. In the reply filed by the petitioners to the return filed by the company, they have denied the averments of the company to the following effect :

(a) the Union is the majority and representative union under the Code and is also the recognised union;

(b) the signatures for the Union have not colluded with company in signing the impugned settlement;

(c) there were several tripartite meetings between 1-2-1980 and 15-3-1980 for bringing about the impugned settlement;

(d) the impugned settlement confers monetary gains ranging from Rs. 110 to Rs. 175;

(e) 1940 workmen have accepted the impugned settlement;

and various other factual assertions. Further, they have highlighted the

disadvantages of the impugned settlement by giving as many as six illustrations. By these pleadings, the petitioners have raised several conflicting and disputed questions of fact disentitling this Court to grant them the necessary reliefs in this writ petition. These and other disputed questions, in the very nature of things, could not be the subject-matter of adjudication in a writ petition. Hence, on this ground also this petition should fail.

25. Before parting with the record of this case, I feel a short epilogue to this order is warranted on the facts of this case. From the facts on record, it is seen there has been industrial unrest since January, 1980 resulting in a colossal loss of production. The company has asserted that the Central Government is losing Rs. 40 lakhs per day in excise revenue. This loss is also a loss to the national exchequer and the national weal. For the workmen, there has been no wages for a considerable time. The hardship to them and their families who are solely dependent on their monthly or daily earnings, must be indeed acute and agonising. It may be, in this country for millions of workmen, hardship is part of life and life is an aggregation of hardships but when theses could be removed by progressive thinking in our labour legislation it is a matter of regret that the workmen should suffer much penury and privation due to union rivalry in collective bargaining and inadequacy in our present laws to streamline the system of sole bargaining agency. It is hoped the authorities who are committed to their welfare will initiate the necessary legislative action. Perhaps, an Action on the lines of the Industrial Relations Act, 1971, enacted in the United Kingdom may throw some light but it is not for this Court to give any guidelines to the authorities concerned. Perhaps, the learned counsel for the petitioners, whose commitment to the welfare of labour could be perceived from the empathy in his arguments could give a lead.

26. To sum up :

(1) The petition is maintainable.

(2) This Court in a petition under Article 226 of the Constitution of India challenging the validity of a settlement entered into the course of conciliation proceedings, can grant, in appropriate case, declaratory reliefs.

(3) The impugned settlement is a settlement in the course of conciliation proceedings and the petitioners have not made out a case for grant of the declaratory relief prayed for.

27. For these reasons, Rule is discharged and the petition is dismissed. Parties to bear their own costs.