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**(1982) 11 KL CK 0016**  
**In the High Court Of Kerala**

Kerala Minerals Employees Congress

APPELLANT

Vs

Assistant Labour Commissioner and Others

RESPONDENT

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**Date of Decision :** 23-11-1982

**Acts Referred:**

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10A, 11, 12, 18

**Citation :** (1983) 1 ILR (Ker) 289 : (1983) 1 LLJ 424

**Hon'ble Judges :** U.L. Bhat, J

**Bench :** Single Bench

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## Judgement

U.L. Bhat, J.—Second respondent - company - and its employees represented by four trade unions, respondents 3, 4, 6 and 7 entered into conciliation settlement on 16th July, 1978. Its term expired on 30th June, 1981. Four trade unions submitted separate charters of demands in July, 1981. Negotiations between the management and the union having failed, the first respondent, Assistant Labour Commissioner (Central), Trivandrum was requested to intervene to effectuate settlement. First respondent held conciliation conferences in June and July, 1982 which led to fresh conciliation settlement on 24th July, 1982, a copy of the Memorandum of settlement being Ext. R2-A. Petitioner is a new trade union formed in 1979 and claims loyalty of majority of the employees of the second respondent. Under Ext. P1 the second respondent was informed about the formation of the petitioner-union. On 3rd July, 1981 the Union forwarded to the 3rd respondent a memorandum alleged to have been signed by the employees of the second respondent and claiming right to represent those employees in all conferences. Petitioner-trade union was not consulted by the management and was not invited to the conciliation talks and was not a party to Ext.R.2A settlement. After settlement, the union under Ext.P3 protested to the Central Labour Commissioner, without any avail. The union has therefore filed this original petition under Article 226 of the Constitution for declaration that Ext.R.2A agreement is not valid and binding on the union and its members and for the issue of a writ of mandamus directing the first respondent to take back

the dispute to his file and to dispose of the same in accordance with Section 12 of the Industrial disputes Act, 1947 (for short "the Act") with the participation of the petitioner union and for a disposal of Ext. P3, representation expeditiously. The learned Counsel for the petitioner, however, pressed only the relief of declaration that Ext.R.2A settlement is not binding on the petitioner union and its members or in the alternative for a direction to the first respondent to hold de novo, conciliation proceedings with the participation of the petitioner.

2. The learned Counsel for the petitioner argued that u/s 18(3) of the Act, any conciliation settlement entered into between the management and any one or more of the trade unions will be binding on all the workers including the workers not belonging to the unions which are parties to the settlement, and also binding on union which is not a party to the agreement and therefore, petitioner-union and its members will be bound by Ext.R.2A. According to him, it was, therefore, mandatory on the part of the first respondent to have invited the petitioner-union and ensure petitioner's participation also in the conciliation talks and since that was not done, the agreement or settlement is invalid and not binding on the petitioner-union and its members. Reliance is placed on the decisions reported in Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others, ; Padmanabhan Menon (T.K.) and Others Vs. Indian Aluminium Company Ltd. and Others, and Monthly-rated workmen of Peirce Leslie and Co. Ltd. Vs. Labour Commissioner and Others,

3. Settlements between management and the workers represented by the trade unions could be of two kinds. There could be settlement after direct negotiations and without the aid of conciliation machinery created under the Act. There could also be settlement brought about with the aid of such conciliation machinery. These two kinds of settlements are dealt with in Section 18 of the Act.

4. Section 18 deals with persons on whom settlements and awards are binding. We are concerned in this case only with the binding nature and effect of settlement. Sub-section (1) of Section 18 refers to settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding. Such settlement shall be binding on the parties to the agreement. Sub-section (3) deals with settlement arrived at in the course of conciliation proceedings under the Act and certain other cases. Such settlement is binding on all the parties to the industrial dispute and where the parties included workmen, all persons who were employed in the establishment or part of the establishment, to which the dispute related on the date of the dispute and all persons who subsequently become employed in the establishment or the part thereof. This is seen in clauses (a) and (d) of Section 18(3) of the Act. In other words, in the case of settlement arrived at in the course of conciliation proceedings, not only the parties to the industrial dispute, not only the signatories to the settlement but in the case of workmen, all persons employed in the establishment are bound by the settlement.

5. The earlier conciliation settlement was arrived at between the management

and the four trade unions, then existing, viz., respondents 3,4,6 and 7. The impugned settlement of 1982 was also brought about in conciliation proceedings with consent of the management and the very same four trade unions. The result is that by virtue of Sub-section (3) of Section 18 of the Act, the settlement entered into in 1982 will be binding on all the workers including those who may not owe allegiance to the four signatory trade unions, i.e. respondents 3,4,6 and 7. It is binding on such of the employees of the second respondent, who happen to be members of the petitioner union. This is what precisely the petitioner is aggrieved about.

6. Learned Counsel for the petitioner relied on the observations of Chief Justice M.S. Menon, speaking for a Division Bench in *M.R. Workmen of Pierce Leslie & Co. Ltd v. Labour Commissioner* (supra). That decision related to a case where a conciliation settlement was arrived at with the participation of only one of the two unions operating in the establishment. Petition under Article 226 of the Constitution was filed challenging the settlement. The union which was a party to the settlement was not impleaded in the original petition and on that ground the original petition as well as the writ appeal were dismissed. However, passing in the judgment in appeal it was observed:

...It may be difficult to say that the settlement is a settlement in the course of conciliation proceedings conducted in accordance with the provisions of the Industrial Disputes Act, 1947.

It has to be seen that the relief was denied to the petitioner therein on the ground of non-joinder of necessary parties. The above observation is to be read along with the facts of that case. In that case both the unions raised demands with the employer; but only one union was invited for the conciliation talks. It was in that context that the above observation was made. If, in that case, the petitioner union had not raised any demands, it would follow that the above observation would not have been appropriate.

7. I shall now refer to the two other decisions relied on by the learned Counsel for the petitioner. In *Ramnagar Cane and Sugar Company's* case (supra), two unions participated in the conciliation proceedings and no agreement could be arrived at as one union was not prepared for separate conciliation talks with the employer. Conciliation proceedings continued between the other union and the employer and it ended in a settlement. Meanwhile the union which did not agree for separate talks called a strike. The question arose if the strike was illegal in the light of Sections 22, 23 and 24. Supreme Court held the conciliation talks between one of the unions and the employees related to matters concerning all the workers and the pendency of such proceeding rendered the strike illegal and the conciliation settlement was binding on all the workers. This decision is not particularly helpful in deciding the present case. In *Padmanabhan Menon's* case this Court had to consider Sections 12 and 18 of the Act. The settlement challenged in that case was not a conciliation settlement, but a bipartite settlement between one of the three unions which put forward charters of

demand and the management. It was held that the two other unions shall have the right to raise industrial dispute and if any such dispute is raised, the conciliation officer is bound to act u/s 12 of the Act and the right cannot in any manner be affected by the settlement effected between the company and the union concerned. The decision obviously rested on the circumstances that the settlement impugned in that case was only a bipartite agreement between the management and one of the trade unions. A bipartite settlement is binding only on the parties thereto u/s 18(1) of the Act unlike a conciliation settlement u/s 18(3) of the Act, It should also be noticed that in that case two unions which did not join the settlement had also submitted charters of demands and had participated in the conciliation talks and the conciliation was infructuous. This decision also will not help the petitioner on the facts of this case.

8. Section 2(k) of the Act defines an "industrial dispute". By virtue of this definition any dispute between employers and workmen which is concerned with the employment or non-employment or the terms of employment or with the conditions of labour of any person would be an industrial dispute. Industrial dispute could be raised by a body of workmen acting through union or otherwise. Such a dispute, in appropriate cases can be referred by the appropriate Government to a Board for settlement or to a court for enquiry or to a Labour Court or Tribunal for adjudication u/s 10 of the Act. Section 10A of the Act provides for voluntary reference of disputes to arbitration. Section 11 deals with the procedure and powers of Conciliation Officer, Boards, Courts and Tribunals. Section 12 deals with duties of Conciliation Officers. Sub-section (2) of Section 12 requires the conciliation officer to take steps for the purpose of inducing the parties to come to a fair and amicable settlement of the disputes. Where a settlement is so arrived at, the Memorandum of such settlement has to be signed by the parties to the dispute under Sub-section (3) of Section 12. If a settlement is not reached, on report from the conciliation officer, it is open to the appropriate Government to refer the dispute to a labour court or Tribunal, etc.

9. From these provisions it is clear that the parties to a dispute are required to participate in the conciliation proceedings and settlements are to be arrived at by such parties. Where a union puts forward charter of demands and the same is not agreed to by the management, a dispute could be said to arise. Where a union does not put forward any demand at all, it cannot be said that an industrial dispute has arisen; or where the dispute is raised by another union, the union which does not raise the dispute is not a party to such dispute and cannot insist on a right to participate in the conciliation proceedings or settlement.

10. In the three decisions referred to earlier, all the unions had submitted demands and raised disputes. All the Unions were parties to "industrial dispute". In Ramnagar Cane and Sugar Company Ltd. case, one of the two unions kept away from joining the conciliation settlement. The observations in Padmanabhan Menon's case were made in view of the fact that one of the two unions, both having raised "dispute" was not invited and was not allowed to participate in the

conciliation conference. Pierce Leslie's case did not deal with a conciliation settlement, but only with a bipartite agreement. These decisions are not helpful in resolving the controversy in the present case.

11. The term of the earlier conciliation settlement in this case expired on 30th June, 1981. Even before that date the petitioner-union claimed to have come into existence as could be seen from Ext.P1. It was certainly open to the petitioner to place a charter of demands before the management in regard to the service conditions. The petitioner obviously did not choose to do so. Even in the original petition there is no averment that the petitioner-union had submitted any charter of demands or had conveyed to the management its position in regard to the service conditions. But the other four unions had submitted charters of demands which led to conciliation conferences and ultimately to Ext. R.2A settlement. Since the petitioner-union did not place any charter of demands before the management and did not raise an industrial dispute in regard to the service conditions of the employees, it was not a party to any industrial dispute and therefore was not entitled to participate in the conciliation proceedings or to have a say in the conciliation settlement. Section 12 requires the conciliation officer to induce the parties to the dispute to come to a fair and amicable settlement of the dispute. Where a union is not a party to a dispute, the conciliation officer is not obliged to persuade such a union to participate in the proceedings or to come to a fair and amicable settlement of the disputes raised by the other unions as against the management. The contention of the petitioner that it was obligatory to have allowed the petitioner-union to participate in the conciliation proceedings so as to enable the petitioner to have a say in the ultimate settlement is untenable. No doubt, the result is that the ultimate settlement arrived at without participation of the petitioner-union will be binding on the members of the petitioner-union as well. But, that is a situation brought about by the inaction of the petitioner-union itself.

12. Learned Counsel for the petitioner relying on Ext.P2 submitted that even in 1981 the petitioner had informed the first respondent about its right to represent the workers in all conferences. The fact that the union gave such an information to the first respondent will not by itself be sufficient to enable it to be treated as a party to a dispute so as to be invited to the conciliation conferences in regard to the disputes raised by certain other unions and not by the petitioner-union.

13. The learned Counsel for the petitioner further submitted that in the counter affidavit it is accepted that the petitioner is a recognised union and therefore the petitioner should have been invited to the conciliation proceedings. The reference is to the counter affidavit filed on behalf of the second respondent in C.M.P. No. 18178 of 1982. In paragraph 5 of the counter affidavit it is stated:

But in accordance with the Code of Discipline in industry, as propounded in the 15th Session of the Indian Labour Conference, the Management decided to recognise the Union and accordingly wrote a letter on 3rd July, 1981 to the Assistant Labour Commissioner (C), Ernakulam, pointing out the representation

sent by 117 persons claiming to be members of the IRE Minerals Division Employees" Union, requesting that they may also be invited for discussion....

The letter referred is Ext.R2B. The representation sent by 117 persons referred to above is the representation referred to in Ext.P2. From the above passage it is argued that the petitioner-union has been recognised.

14. But, there are certain passages in paragraph 5 of the said counter affidavit which throw a different light on this aspect. The first few lines in paragraph 5 read as follows:

This respondent is not aware of the Union formed by the petitioner and this respondent has not recognised the petitioner-union. This respondent does not admit that all the members of the two Unions, viz. the Indian Rare Earths Employees" Association and the Kerala Minerals Workers Congress have joined with the petitioner-union. It is true that Ext. P1 letter was sent to this respondent. But the said letter could not be acted upon as there was no statutory provision for recognition of the union....

With reference to Ext.R2B the counter affidavit says that "even though the Assistant Labour Commissioner received Ext.R2B letter, no orders have been passed on the said representation" and that "this respondent is not bound to recognise the petitioner-union unless they satisfy themselves that they could be recognised in accordance with the Code of Discipline as enunciated above,"

15. Ext. R2B is the letter addressed by the management to the first respondent informing him that the petitioner-union was not a signatory to the previous settlement and referring to the representation signed by 117 persons claiming to be members of the petitioner-union. It was further stated that the second respondent did not know about the representative character of the union. The first respondent was requested to assess the representative character of the union and to inform the second respondent about the same.

16. There is no statutory right vesting in any union to compel the management to recognise the union. The union could raise an industrial dispute in regard to the non-recognition. As pointed out in paragraph 5 of the counter affidavit, the Fifteenth Indian Labour Conference has accepted a Code of Discipline and one of the clauses of the Code refers to recognition of unions, A union which has been in active existence for one year and which commands loyalty of not less than 15% of the employees has to be recognised. Evidently, the petitioner did not place any material before the second respondent to satisfy the second respondent that petitioner-union commands loyalty of not less than 15% of the employees of the second respondent. Though there is a statement in paragraph 5 of the counter affidavit that the second respondent has decided to recognise petitioner-union, there is nothing in the counter affidavit to show that recognition had actually been granted. From the averments in paragraphs 5 and 6 of the counter affidavit of the second respondent taken together, it is clear that petitioner-union has not been recognised. Therefore, the petitioner cannot claim

the status of a recognised union. Even if the petitioner is a recognised union, since it was not a party to the industrial dispute in question, it had no right to participate in the conciliation proceedings. At the same time, members of the petitioner-union are bound by the terms and conditions of the settlement, Ext.R2A. In this view neither of the reliefs pressed before me could be granted to the petitioner in this original petition.

In the result, the original petition is dismissed; but, in the circumstances, without costs.