

(1982) 03 KAR CK 0043
In the Karnataka High Court
Case No : Writ Petition No. 20435 of 1981

Mico Employees" Association

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 29-03-1982

Acts Referred:

Citation : (1986) ILR (Kar) 3474 : (1987) 1 LLJ 300

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : R.N. Byra Reddy, M.C. Narasimhan and S.Channarayana Reddy, for the Appellant; B.S. Keshava Iyengar, Advocate General for R-1 to 3, G.B. Pai and K. Kasturi for R-4 and D. Leelakrishnan, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Bopanna, J.—The validity of the settlement u/s 12(3) of the Industrial Disputes Act, 1947 (in short the Act) read with Rule 59 of the Rules framed by the State Government under the Act entered into between the fourth Respondent-Management of Motor Industries Co. Ltd., (in short the Management) and the MICO Employees Association purporting to be represented by its President - fifth respondent, viz., F. M. Khan, Member of Parliament, is challenged by petitioners 1 to 6, who are the office bearers of the MICO Employees" Association (in short the Association) represented by its General Secretary, the President, Assistant Secretary, the Executive Committee Member, the Treasurer and a Committee Member respectively.

2. The case of the petitioners is that they are the duly elected office-bearers of the Association and they had submitted a charter of demands to the Management for the revision of wages-structure, enhancement of dearness allowance and for providing transport facilities etc., on 14-4-1980 with the sanction of the Special General Body Meeting held on 13-4-1980. Pursuant to this charter of demands, a number of bipartite meetings were held between the petitioners and the Management and certain tripartite Meetings were also held

before the second respondent - Commissioner of Labour in Karnataka (hereinafter referred to as the Commissioner) in regard to these demands. The Association is the only union of all the workmen employed by the Management; but the fifth respondent who was a stranger to the Association and admittedly belongs to the Ruling Party, with the support of the State Government, claimed to be the duly elected President of the Association with the help of his supporters and got up certain documents falsely to contend that he was the elected President of the Association and the impugned settlement was signed by him behind the back of the petitioners and without their knowledge by employing unfair means like using violence in the factory premises and obtaining signatures of some workers at the point of knives. The petitioner had brought to the notice of the Commissioner that the fifth respondent had no representative capacity to represent the Association and accordingly the Commissioner refused to have any conciliation proceedings with the fifth respondent. However, the impugned settlement was entered into in the chambers of the Minister for Labour (in short the Minister) on 23-7-1981 between the Management and the fifth respondent claiming to be the President of the Association. No conciliation proceedings took place on 23-7-1981 before the Minister and even otherwise the Minister was not authorised under the Act and the Rules thereunder to function as a State Conciliation Officer and he had no power to hold conciliation meetings u/s 12(3) of the Act; similarly, the third respondent-Joint Labour Commissioner (hereinafter referred to as the JLC) had no authority to sign the settlement u/s 12(3) of the Act and Rule 59 of the Rules and he also had not applied his mind to the question whether the settlement was just, fair and reasonable; the minutes of the meeting recorded in the chambers of the Minister on 23-7-81 do not disclose that there were conciliation proceedings as required under law and therefore the impugned settlement is not in accordance with law and liable to be quashed. If such settlement is not a settlement u/s 12(3) of the Act, the provisions of Section 18(3) of the Act are not attracted and therefore the petitioners are entitled to a declaration that the settlement is not one made in the course of conciliation proceedings as claimed by the Management. In support of this contention, the petitioners have further averred that albeit the fact that the conciliation proceedings were initiated by the Commissioner, the JLC who had no jurisdiction continued the same in the absence of any order transferring the proceedings to his file and the impugned settlement has ignored certain important demands of the workmen like provision for transport facilities, washing allowance and reinstatement of a number of workmen whose services had been illegally terminated ; certain other demands had been turned down and more important, the impugned settlement strengthens the hands of the Management to impose unilaterally heavy workload on the workmen and to take arbitrary action against them in the name of discipline. Further, the Management having notified in its notice -board that till such time a duly elected team of office-bearers of the Association were elected in accordance with the constitution of the Association and the Trade Unions Act, it would not negotiate with any other persons or group of persons, the petitioners were taken by surprise by the

impugned settlement between the Management and the fifth respondent and the action of the Management amounts to unfair labour practice and is also against the spirit of trade union activities and collective bargaining.

3. The State Government, the Commissioner and the JLC, who are respondents 1 to 3 respectively, have filed a joint statement of objections. They have stated, inter alia, that joint meetings were also held before the Commissioner and other State Conciliation Officers in the presence of the petitioners and the Management representatives. Regarding the charter of demands dated 14-4-1980, whenever meetings had been held before the officers of the Labour Department, the proceedings of such meetings had been recorded. According to them, respondent-5 was not a stranger to the Association since the Management had notified these respondents that in the General Body Meeting held on 27-4-1981 about 5000 workmen had elected the fifth respondent as the President of the Association after removing the second petitioner from that office. Thereafter, a conciliation meeting was held on 23-7-1981 before the JLC in the Minister's chambers attended by the fifth respondent and the representatives of the Management. After deliberations, the impugned settlement was arrived at and was signed by the Management and the fifth respondent with the help and assistance of the JLC. The JLC, after satisfying himself that the fifth respondent was duly authorised by the majority of the workmen and being satisfied about the fairness and reasonableness of the settlement had subscribed his signature to the same. They have also asserted that all the workmen had received the benefits under the settlement after going through each term of the settlement and that fact speaks about the reasonableness of the settlement. They have denied the allegation that the settlement was brought about to suit the convenience of the Management and the fifth respondent. According to them, the conciliation proceedings could be continued before the JLC because he was also a State Conciliation Officer and he was not compelled to sign the settlement. Regarding some of the demands which were dropped in the settlement, they have contended that "the Management and the fifth respondent negotiated the settlement of various other demands, came to some understanding with the help of the JLC and signed the settlement which was fair and reasonable. According to them, the settlement was one in the course of conciliation proceedings u/s 12(3) of the Act and the JLC certified the settlement on being satisfied that the fifth respondent did represent the Association as President, and the terms of the settlement were also not unfair and unreasonable as contended by the petitioner. Since the third respondent (JLC) was satisfied about the representative capacity of respondent-5, there was no need to give an opportunity to the petitioners to prove their representative capacity before he attested the settlement. Regarding the allegation that the proceedings in the chambers of Minister were not conciliation proceedings, they have stated that those proceedings were held in the Minister's chambers with a view to make use of his good offices in arriving at the settlement and the petitioners also had attended such meetings in the Minister's chambers earlier and therefore the third respondent does not take the

settlement out of the purview of Section 12(3) of the Act. They have also denied all other allegations against the Commissioner and the JLC that they brought about the settlement in order to oblige the Minister and due to extraneous considerations.

4. Before the arguments were about to conclude, an additional affidavit was filed by the JLC on 27-2-1982 to clarify as to what transpired on 23-7-1981 in the Minister's chambers regarding his certification of the impugned settlement. He has stated :

"I submit that on the 23rd July 1981, I held conciliation between the parties. Even though in the settlement, the parties had agreed with regard to various issues, there were differences of opinion in regard to some of the issues between the parties. These issues were also discussed between the parties and I also took part in the discussions and advised the parties to reach a settlement. I particularly recall an issue where the Management did not agree to concede to the demand of the Union in regard to the Grace Time to be given to the employees. The Management was adamant and was not willing to concede this issue. However, I intervened and prevailed upon the Management to agree to the same and it was agreed by the Management. Likewise, with regard to Transport Subsidy also, there were some difference of opinion, which was settled between the parties at my instance, to increase the same from Rs. 60/- to Rs. 70/- per month. I submit that certain other issues were also discussed and ultimately the parties came to an amicable settlement, I state that I had duly participated and assisted the parties whenever necessary so that an amicable settlement could be reached. The memorandum of settlement itself bears testimony to this fact. Since I was satisfied that the overall benefits conferred by the settlement were fair and reasonable, I certified the same "

5. The Management, respondent-4 herein, has filed its return and contended inter alia that the petitioners have no locus standi to maintain this petition since some of them are not office-bearers of the Association on the date of filing of the petition and some of them were not its employees ; the petitioners have raised complicated and disputed questions of fact which could not be gone into in these proceedings ; that the settlement had come into force with effect from 1-1-1980 and all the workmen have received the benefits of the settlement amounting to more than Rs. 2,000/- and in all the Management has paid Rs. 1.5 crores towards arrears due to them under the settlement ; the total amount paid up to October 1981 under the said settlement comes to about 2. 2 crores of rupees ; that the settlement had resulted in industrial peace and improved the production in the factories of the Management and hence no interference is called for under Article 226 of the Constitution ; that the dispute raised by the petitioners in this Writ Petition is against the representative capacity of the fifth respondent to sign the settlement but that question is a matter pending in the Civil Court and therefore the petitioners cannot raise that issue in these proceedings either directly or collaterally and question the validity of the settlement ; that whether

the terms of the settlement are beneficial to the workmen or not also cannot be questioned in these proceedings ; that the charter of demands presented by the Association represented by the petitioners was considered by the Management and after a number of meetings between the petitioners and the Management, the Management made a final offer to Mr. Rao. who was then the President of the Association in March 1981 ; but no settlement could be reached due to certain differences between the parties in the matter of granting certain amenities to the workmen. However, on 27-4-1981, the Management was informed by the Association that the fifth respondent had been elected as its President and Rao had been removed from that position by the resolution parsed in the special general body meeting convened by the numbers of the Association ; the election of the fifth respondent as President was followed by large-scale violence in the factory premises resulting in serious injuries to some of the officers and the workmen and extensive damage to the Management's property, warranting the clamping of lockout by the Management from 29-4-1981 which was lifted from 14-5-1981 the fifth respondent informed the Management on 3-7-1981 that, as many as 5012 members of the Association had authorised him to negotiate with them and settle all the pending demands and accordingly he requested the Management to negotiate with him and to arrive at a settlement on the charter of demands; but Mr. Rao also represented to the Management on the same day, styling himself as the President of the Association that about 2,000 workers had authorised him to negotiate on behalf of the Association and arrive at a settlement; and in view of these conflicting claims, the Management was forced to make the necessary verification of the correctness of the claims made by the fifth respondent and Mr Rao as to their representative capacity; after such verification, it was found that the fifth respondent had the backing of 4772 of the workmen whereas Rao was supported by only 1482 workmen; but all the same, the Management on 16-7-1981 informed the Commissioner who is also the State Conciliation Officer that they would be prepared to sign a settlement with the representatives, who, in the opinion of the Commissioner, represented a substantial majority of the workmen of the factory. Thereafter, the Conciliation Officer (JLC) called the Management representatives and the fifth respondent for discussions and for finalisation of the settlement and the same was arrived at on 23-7-1981 after thrashing out certain differences between the parties with the help of the JLC ; thus the settlement was one u/s 12(3) of the Act; every workman inside the factory was given a copy of the settlement to enable him to understand the terms of the settlement and out of 6382 workmen 6023 had given an undertaking that they had fully understood the terms of the settlement and had agreed to be bound by its terms and abide by the same.

In para 18 of its return, the Management has highlighted the benefits that had accrued to the workmen under the settlement and has also filed a tabular statement produced as Annexure-14. They have also contended that the petitioners have not approached this Court with clean hands since they have made certain misstatements of fact and they have not disclosed certain material

facts and hence on this count, the petitioners are not entitled to any relief. On the main question that the settlement was not in the course of conciliation they have contended that the discussion before the JLC just prior to the signing of the settlement was due to the fact that the Commissioner was not available; that the Minister was only mediating between the parties to arrive at a settlement and it could not be said that he had assumed the powers of conciliation; the petitioners themselves at an earlier stage having insisted that the discussions should go on in the presence of the Minister, they could not complain of his presence when the settlement was arrived at; that the JLC signed the settlement only after being satisfied that the same was fair and reasonable, and it was not correct to allege that no conciliation proceedings were held on 23-7-1981; the photostat copy of the settlement clearly showed that even at the last stage some of the demands had to be examined and the Management had to concede certain demands in the over-all interests of the workmen; the various stages of the conciliation proceedings in regard to the charter of demands took place before the JLC and DLC as is evident from Annexure-B filed in the Writ Petition and since the JLC was also the Conciliation Officer, there was no need to transfer the file from the Commissioner to himself; the settlement was a package deal wherein certain demands had been given up by the Union and certain demands had been conceded by the Management and the fairness of the settlement has to be judged from that point of view; the records clearly disclose that the dispute was investigated by Conciliation Officer and he participated in the proceedings by helping the parties to arrive at a settlement.

6. The fifth respondent has filed his return stating inter alia that the Petition is not maintainable since the petitioners have no locus standi to represent the Association ; that the fifth respondent was duly elected as the President of the Association in a meeting validly held as per Clause 15 of the bye-laws of the Association ; prior to his election as the President, he had been admitted as an honorary member of the Association under Clause 4(d) of the Union bye-laws ; that the workmen under the leadership of the petitioners having resorted to large-scale violence, the fifth respondent took the initiative to bring about industrial peace and with a view to negotiate with the Management to arrive at a settlement on the charter of demands and he had the support of the majority of the workmen to arrive at the settlement and accordingly u/s 12(3) of the Act, the settlement was arrived at in the course of conciliation proceedings; that the settlement was in the best interests of the workmen and the same had resulted in industrial peace and increased production and the workmen had also benefited monetarily inasmuch as each of them had received more than Rs. 2,000/- as benefits that had accrued under it : the JLC was duly satisfied that the fifth respondent was the real accredited representative of the Association since he had before him the individual letters of authorisation given by 5012 workers and was also satisfied that the terms of the settlement were fair and reasonable; that the proceedings held on 23-7-1981 were conciliation proceedings which attracted the provisions of Section 12(3) of the Act and, therefore, this is not a fit case for

this Court to interfere in exercise of its extraordinary jurisdiction. Though certain other points were taken up by this respondent in his statement of objections, the same were not pressed in the course of arguments and hence I have not referred to them.

7. The petitioners have filed their replies to the statement of objections filed by respondents 1-5 but it is not necessary to refer to them in detail, since the short point that arises for consideration is whether the petitioners are entitled to a declaration on the facts and circumstances of this case, that the settlement is not made in the course of conciliation proceedings u/s 12(3) of the Act. For a proper determination of this point, the scheme of the Act and the relevant provisions relating to conciliation require a careful examination, specially in view of the provisions of Section 18(3) of the Act which extends the operation of the settlement to persons who are not parties to it. In that sense, the settlement in question has to be distinguished from a mere settlement between the parties. The subsidiary issues which arise for consideration to determine this question are:

(1) Whether the Commissioner having issued the notice of conciliation under Rule 10 of the Rules was enjoined by law to continue the proceedings up to their ultimate end which resulted in the settlement ?

(2) Whether the J L C was competent to certify the settlement as one in the course of conciliation proceedings on 23-7-1981 ?

(3) Whether in view of the request made by the Management to the authorities to verify the representative capacity of respondeat-5 and Mr. Rao, in order to enter into a settlement on the charter of demands,, the JLC made a proper investigation into this aspect of the matter before permitting the Management and the fifth respondent to sign the settlement and certify the same as one in the course of conciliation ?

(4) Whether for the purpose of bringing about a settlement, it was incumbent on the Conciliation Officer to hold an independent investigation into the rival claims of Mr. Rao and the fifth respondent?

(5) Whether the petitioners have made out a case for the declaration sought for ?

8. The preamble of the Act itself discloses that the Act was enacted to make provision for the investigation and settlement of industrial disputes and for certain other purposes.

"Conciliation Officer" means a Conciliation Officer appointed under this Act. [Section 2(d)]. "Conciliation proceeding" means any proceeding held by a Conciliation Officer or Board under this Act. (Section 2(e) of the Act).

Chapter II of the Act provides for the appointment of authorities charged with the duty of mediating and promoting the settlement of industrial disputes like Conciliation Officers and Boards of Conciliation. Section 4 of the Act empowers the appropriate Government to appoint Conciliation Officers charged with the

duty of mediating in and promoting the settlement of industrial disputes. Section 4(2) reads as under :

"A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period."

Under Section 11(2), a Conciliation Officer, for the purpose of inquiry into any existing or apprehended industrial dispute, is empowered to enter the premises occupied by any establishment to which the dispute relates. u/s 11(4), he is empowered to call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act and for the aforesaid purposes, he has the same powers as vested in a Civil Court under the CPC in respect of compelling the production of documents. u/s 11(6), he is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. Section 12 specifically deals with duties of Conciliation Officers. The Management in the instant case admittedly being not a public utility service, Where any industrial dispute exists or is apprehended, the Conciliation Officer may hold conciliation proceedings in the prescribed manner. Section 12(2) of the Act reads as under :-

"The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute."

The first part of this sub-section is mandatory in its construction and the second part is directory. Under the first part, for the purpose of bringing about the settlement of the dispute, the Conciliation Officer, without delay should investigate the dispute and all matters affecting the merits and the right settlement thereof. Under the second part, he has the discretion to do all such things as he thinks fit, for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

Section 12(3) of the Act reads as :

".... of the matters in dispute is arrived at in the course of the conciliation proceedings the Conciliation Officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute."

Under Section 20 of the Act, conciliation proceedings should be deemed to have commenced on the date on which a notice of strike or lockout u/s 22 is received by the Conciliation Officer. It shall be deemed to have concluded, as in this case, where a settlement is arrived at, when the memorandum of settlement is signed

by the parties to the dispute; where no settlement is arrived at, when the report of the Conciliation Officer is received by the appropriate Government or when a reference is made to a Labour Court or other adjudicating authority u/s 10 during the pendency of the conciliation proceedings.

Under Section 21 of the Act, the Conciliation Officer is under an obligation not to include in his report any information obtained by him if the parties before him had made a request in writing that such information should be treated as confidential.

Under Section 33(1) of the Act, during the pendency of conciliation proceedings before a Conciliation Officer in respect of an industrial dispute, no employer shall (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding ; or (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

During the pendency of any such proceedings before the Conciliation Officer, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or where there are no such standing orders, in accordance with the terms of the contract between him and the workman, (a) after, in regard to any matter not connected with the dispute, the conditions of service of the workman or discharge or punish him for any misconduct not connected with the dispute. (See Section 33(2) of the Act).

Under Sub-section (3) of Section 33, notwithstanding anything contained in Sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute (a) by altering, to the prejudice of such protected workman, the condition of service applicable to him immediately before the commencement of such proceedings ; or (b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Under Sub-section (5) of Section 33, where an employer makes an application to a Conciliation Officer under the proviso to Sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit.

Under Section 33-A of the Act, any workman aggrieved by the contravention of Section 33 by the employer may make a complaint in writing to any of the adjudicating authority on whose file the dispute in which he is a concerned workman is pending and upon such complaint, the adjudicating authority shall

decide the same as it were the dispute referred to it or pending before it in accordance with the provisions of the Act and shall submit its award to the appropriate Government.

Under Section 38 of the Act, the appropriate Government has the powers to make Rules prescribing the powers and the procedure of Conciliation Officer and such Rules have to be laid before the State Legislature.

Rule 10 of the Rules comes under Part III of the Rules which provides for powers, procedure and duties of Conciliation Officer and other authorities. That rule reads as under:

"10. Conciliation proceedings in non public utility service --Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, "at such place and at such time as he deems fit" 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."

Rule 10-A reads as follows :

"10.A. Parties to submit statements :

(1) The employer or the party representing workmen involved in industrial dispute shall forward a statement setting forth the specific matters in dispute to the Conciliation Officer concerned whenever his intervention in the dispute is required.

(2) The party representing workmen involved in a dispute in a non-public utility service "or in a dispute in a public utility service where no notice of strike is given under Rule 72" shall forward statement of its demands to the Conciliation Officer concerned before such date as may be specified by him for commencing conciliation proceedings The statement shall be accompanied by as many spare copies thereof as there are opposite parties.

(3) Where an employer, or a party representing workmen, applies to the State Government for reference of an industrial dispute, to a Labour Court or Tribunal, such application shall be accompanied by a statement of the demands or points in dispute, with as many spare copies as there are opposite parties.

(4) The statement of demands submitted by the party representing the workmen under Sub-rule (1) or Sub-rule (2) shall be transmitted to the State by the Conciliation. Officer concerned with his report under Sub-section (4) of Section 12 of the Act.

(5) The statements referred to in Sub-rules (1), (2) and (4) and every copy thereof required under the Sub rules to accompany the said statement shall be duly signed, on behalf of the person making it."

Under Rule 24 of the Act, the Conciliation Officer, for the purposes of any conciliation under the Act, may, at any time between hours of sunrise and sunset, enter any building, factory, workshop, or other place or premises whatsoever, and inspect the same or any work, machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to the subject matter of the conciliation. This power could also be utilised for the purpose of investigation of a dispute as is evident from the language of Section 12(3) of the Act and the word "investigation" under Rule 24.

Under Rule 59, a settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form-H and shall be signed by the parties and duly attested by the Conciliation Officer.

These are the provisions of the Act and the Rules which deal with the powers, duties of the Conciliation Officer and the procedure to be adopted by him for mediating in, investigating and promoting the settlement of industrial disputes and the consequences of conciliation proceedings.

9. Relying on these provisions, Mr. M. C. Narasimhan and Mr. R. N. Byra Reddy, learned Counsel appearing for the petitioners, contended that the bipartite and tripartite meetings between the Management and the petitioners on some days and between them in the presence of the Commissioner or the JLC, were not meetings in the course of conciliation. Anything that transpired in those meetings would not have the effect of making the settlement one in the course of conciliation so as to attract the provisions of Section 12(3) of the Act and its extended operation u/s 18(3) of the Act. According to them, the conciliation proceedings commenced when the Commissioner issued a notice under Rule 10 to the petitioners on 23-3-1981 which is produced as Annexure- C in the Writ Petition and pursuant to the notice the Commissioner alone should have continued the conciliation proceedings by exercising his powers conferred on him under the Act and the Rules and therefore in the absence of any delegation of his powers to the JLC, the proceedings held on 23-7-1981 in the chambers of the Minister, were not proceedings in the course of conciliation and therefore the settlement signed by the Management and respondent-5 on that date was not a settlement u/s 12(3) of the Act and therefore it did not attract the provisions of Section 18(3) of the Act. Secondly, assuming without conceding that there was a meeting in the course of conciliation in the Minister's chamber on 23-7-1981, the settlement signed on that date was not one in the course of conciliation.

10. From the records produced by the learned High Court Government Pleader, it is clear that on the notice of the Commissioner under Rule 10 (Annexure-C) neither the petitioners nor the Management had filed their statements setting forth the specific matters in dispute. However, on 10-4-1981, there was a discussion in the Commissioner's chamber as is evident from the letter dated 11-4-1981 from the Management to him enclosing a copy of the final offer from the Management. The Commissioners-endorsement on that letter is "place in

relevant file". The records disclose that no action was taken by the Commissioner on this final offer to bring about a settlement as apparently there was violence in the factory as well as work-to-rule agitation in some of its departments and internal dissensions in the Association as by that time there was a move to dislodge the present office bearers and have a new set-up of office-bearers with respondent-5 as the President, as is evident from the suit filed by the petitioners on 11-5-1981 in the Civil Court.

On 16-7-1981, the Management by its letter to the Commissioner had stated as follows :

"We are prepared to sign a settlement in your presence u/s 52(3) of the Industrial Disputes Act with the person who, in your opinion, represents a substantial majority of workmen in the establishment.

We shall therefore be glad if you will kindly fix up a conciliation meeting and help us to arrive at an amicable settlement " which has been pending for a long time."

The first para of the letter demonstrably proves that there was no discussion between the parties and the Commissioner regarding the final offer made by the Management in its letter but it (Management) was prepared to sign a settlement in the presence of the Commissioner u/s 12(3) of the Act with a person recognised by the Commissioner as the representative of a substantial majority of the workmen. The second para of the letter indicates that the Management was prepared to discuss the final offer in the presence of the Commissioner and arrive at a settlement. Thereafter, the Association, by letter dated 22-7-1981, put the Commissioner on notice stating that no settlement with the fifth respondent should be entered into during the pendency of the civil suit filed by the General Secretary of the Association. However, on 3-8-1981, the Commissioner had forwarded to the Government a copy of the impugned settlement purporting to be one u/s 12(3) of the Act and that is the subject-matter of the dispute in this Writ Petition.

The proceedings prior to the issue of notice of conciliation (Annexure-C) under Rule 10 of the Rules framed under the Act, as appearing from the records are as follows :--

There was a meeting in the chambers of the Commissioner on 4-9-1980 at 11-30 A.M. styled as conciliation meeting. The charter of demands was before the Commissioner. The stand taken by the Management was :

" Mr. Murthy, speaking on behalf of the Management mentioned that the Management are agreeable for discussion with the union on the entire charter of demands and they cannot agree for discussion on an isolated demand viz., transport facilities for workmen."

The parties present were the Management representatives and two of the petitioners. There was no discussion on the terms of the settlement. There was a joint meeting again on 14-11-1980 in the chambers of the Minister ; after some

discussion the meeting was adjourned to 21-11-1980. Mr. Rao was present on behalf of the Association and the Technical Director for the Management. The proceedings do not indicate either the participation of the Minister or the JLC in the discussions. Again on 21-11-1980, there was a further meeting in the Ministers' chamber. Mr. Rao for the Association and the Divisional Manager for the Management were present. No settlement was arrived at since the Association insisted on the implementation of transport facility by the Management. On 25-11-1980 the meeting continued in the chambers of Minister and the Management agreed to give their counter proposals in a week's time. The parties agreed to meet again on 5-12-1980 in the Minister's chamber. But the joint meeting took place on 3-1-1981 in the chambers of the Commissioner. But no settlement was arrived at and the meeting was adjourned to 6-1-1981 at 3-30 P.M. The proceedings do not disclose any initiative from the Commissioner to settle the differences and the meeting was adjourned to enable the Management to consider the modified offers of the Association. There appears to be no meeting on 6-1-1981. But on 13-1-1981 there was a meeting in the office of the JLC. Proceedings of that meeting read as follows :

"Date : 13-1-1981 : The President of the Union is present. The management is absent. They have not informed the reason for their absence. The matter is being delayed says the President. He further states that management is wantonly creating the problem. He requested the department to ensure the presence of the management and early concluding of the proceedings.

Next date is 15-1981 at 11 A.M."

On 5-2-1981, there was a bipartite meeting in the Small Conference Room of the Management. No settlement took place on that date as is evident from the noting which reads as under :

".... All other demands would continue as they are.

.... The Management representatives informed Mr. Suryanarayana Rao that they would give their reply to the amended demands, in the meeting on Sunday the 8th February 1981."

The meeting on 21-2-1981 was also bipartite and its proceedings were kept strictly confidential and it was agreed to hold the next meeting on 28-2-1981 but it was advanced to 26-2-1981. On that date, there was another bipartite meeting and the Management's stand on 26-2-1981 was as follows:

"The Management representatives told him that the Management has improved its offer quite a bit and it was not possible to give its final offer unless the MEA came forward with its final stand regarding the issues which were still open."

The next bipartite meeting held on 4-3-1981 did not yield any results since the Management was not agreeable to mix up the question of suspension of the workmen with the discussion on the charter of demands. No settlement was arrived at on that date is clear from the following noting:-

" Mr. Suryanarayana Rao said that he would place these offers and also the Management's demands before the Council. He would also call a General Body meeting on the 9th March 1981 and place them before that body and later inform the Management about the decision of the workmen."

The bipartite meeting was adjourned to 25-3-1981, on which date, Mr. Rao expressed his inability to attend the meeting and requested for an adjournment. Two days prior to this request, the notice under Rule 10 (Annexure-C) was issued by the Commissioner of Labour initiating conciliation proceedings on the ground that there was an industrial dispute between the workmen and the Management and hence it was necessary to intervene in the said dispute.

11. Mr. G.B. Pai, Learned Counsel for the Management maintained that the conciliation proceedings commenced on 4-9-1980 before the Commissioner and ended on 23-7-1981 and the notice of conciliation Annexure-C dated 23-3-1981 must be understood in the context in which it was issued. According to him, all the meetings prior to 23-3-1981 were conciliation meetings and the parties had notices of each of those meetings, a number of demands were discussed and the meetings were adjourned from time to time and finally on 23-7-1981 the settlement was signed in the presence of the JLC through his good offices and concurrence. On this contention, he is supported by the Learned Counsel for respondents 1 to 3 and 5.

12. From the provisions of the Act relating to conciliation as excerpted in para-8 above, conciliation proceeding is a proceeding held under the Act. Section 11(1) does not confer any power on the Conciliation Officer to follow such procedure as he may think fit for initiating conciliation proceedings. That procedure is indicated in Section 12 and Rules 9,10 and 10A. He has to mediate and initiate conciliation proceedings in the prescribed manner, i.e.. as provided under Rule 10 in this case when there is an existing industrial dispute or an apprehended industrial dispute. Mere placement of charter of demands on the Management does not create an apprehended or existing industrial dispute. It becomes a dispute when it is not accepted by the Shambu Nath Goyal Vs. Bank of Baroda, The description of the meeting on 4-9-1980 as a conciliation meeting is not conclusive of the matter as is evident from the subsequent proceedings which are styled as joint meetings and bipartite meetings. In all these meetings up to 23-3-1981, to which 1 have made a brief reference, neither the JLC nor the Commissioner made any conscious effort to bring about a settlement on the charter of demands. They left the parties to sort out their differences as best as they could. The record in fact proves that some of the meetings were kept confidential. It was only when violence erupted in the factory and much damage was caused to Management's property, the Commissioner took the view that there was an existing industrial dispute and accordingly he issued the notice under Rule 10 (Annexure-C) on 23-3-1981. That was the starting point of conciliation proceeding. The scheme of the Act relating to conciliation proceedings and their aftermath supports this view Section 20(1) of the Act prescribes a definite date

for the commencement of conciliation proceedings in the case of public utility service. In the absence of any such provisions for non-public utility service, the date of commencement of the conciliation proceedings has to be inferred from Section 12 of the Act and Rule 10 of the Rules made thereunder since it cannot be said that the Act did not prescribe any provision for reckoning the date of commencement of conciliation proceedings when Section 20(2) prescribes the date of conclusion of the proceedings for both public utility and non-public utility services. The provisions of Section 33 of the Act excerpted above place an embargo on the rights of the employer to alter the service conditions of its workmen or take action against them for alleged misconduct during the pendency of conciliation proceedings. Such pendency connotes definite dates of commencement and conclusion of conciliation proceedings in order to avoid any ambiguity or confusion in determining the period of conciliation proceedings which is relevant for the purpose of lifting the embargo placed by the Act on the employer. Otherwise, the consequences of complaint u/s 33A will have to be faced by the Management. Hence it would be a misnomer to characterize the meetings held in the chambers of the Ministers, the Commissioner and the JLC on the charter of demands prior to 23-3-1981 as meetings in the course of conciliation proceedings. Further, in those meetings, the area of difference and the offers and counter-offers made between the parties were not within the knowledge of the Commissioner or the JLC as is evident from the proceedings before the Commissioner dated 13-1-1981 and 24-4-1981 which read as under :

"13-1-1981 : The President of the Union is present. The Management is absent. They have not informed the reason for their absence. The matter is being delayed says the President. He further states that Management is wantonly creating the problem. He requested the Department to ensure the presence of the Management and early concluding of the proceedings.

Next date is 15-1-1981 at 11 A.M. 24.1.1981 : In view of the bilateral talks taking place between the parties, the meeting is adjourned to the next date."

It may be, as contended by the Management, that the petitioners themselves wanted certain meetings to be held in the chambers of the Minister. They might have relied on his good offices or his authority to obtain total acceptance of their charter of demands but there was no existing industrial dispute or an apprehended industrial dispute prior to 23-3-1981 and the mere presence of the Minister, Commissioner or JLC in all the meetings prior to Annexure-C would not convert those meetings into proceedings in the course of conciliation because,

- (i) There was no notice for initiating conciliation proceedings,
- (ii) even if such notice was not necessary, the authorities did not know the exact dispute between the parties in the absence of any statements from the parties under Rule 10A,
- (iii) mere discussion between the parties before the Minister, the Commissioner or the JLC on the charter of demands did not amount to conciliation proceedings,

(iv) the authorities made no effort to perform their duties u/s 12(2) of the Act that is to say, to investigate the dispute and all matters affecting the merits and the right settlement thereof but allowed the parties to try their best to come to a voluntary settlement,

(v) the averment of respondent-5 in para-16 of his return also bears out that conciliation commenced after he became the President.

13. The next point for consideration is whether the proceedings after the issue of conciliation notice (Annexure-C) were conciliation proceedings. It should be noted that the parties did not file any statement setting forth the specific matters in dispute to the Commissioner pursuant to his notice. What was before him till then was the charter of demands submitted by the petitioners. The proceedings as per the notice (Annexure-C) commenced on 25-3-1981. On that date there were no discussions since Mr. Rao could not attend. The noting for that date reads as under :

"Date 25-3-1981 : The Management representatives are present. The President of the Union on the telephone expressed his inability to attend and requested for an adjournment. It is suggested that next date and time will be communicated."

The next meeting, however, was in the Minister's chambers between respondent-5 and the Management representative. What transpired on that day is best stated in the noting of the proceedings in the Minister's chambers :

"23-7-1981 : Proceedings of the meeting held in the chambers of Hon'ble Labour Minister.

The Management of MICO in their letter dated 16th July 1981 have informed that they received letter from Sri P.M. Khan stating 5012 employees have signed the individual letters authorising Sri P.M. Khan negotiate with the Management on charter of demands and come to a settlement. Of 5012 employees the Management indicate that 4772 workmen could be taken as authorising Sri Khan to negotiate. They (Management) also have stated that Sri Suryanarayan Rao in his letter dated 3rd July 1981 intimated about the authorisation of 2000 workmen authorising him to negotiate and sign a settlement. After verifying the actual number of signatures, it is said that the number of Workers who have signed on the sheets is 1615. After taking away 33 duplicates and 100 withdrawals, the balance was 1482.

In view of the above, it is stated that Sri Khan had made an appeal to the workers to improve the production and maintain discipline. The Management confirms that there has been great improvement in production and discipline in the factory. Being satisfied about the overall improvement in discipline and record production of major products the Management made exgratia case award of Rs. 201/- to most of the workmen.

Earlier after violence the Management had declared a lockout and it was at the promise given by Sri Khan to maintain the peace and production to the

management followed by an appeal to the workmen to go back to duty and maintain peace and production inside the factory, the Management lifted the lockout.

"After the receipt of the letter dt. 3rd July 1981 from Sri P.M. Khan and after going through the individual authorisation letters given by the workmen authorising Sri P.M. Khan, the management had discussions with him on different dates and thrashed out majority issues ; except on retrospective classification increase in all inclusive salaries of monthly rated workmen; promotion procedure, medical reimbursement ; change room.

The parties negotiated and discussed these issues also and have come to the terms of settlement."

Sd/- (F. M. Khan) Sd/- (S. S. Murthy)

These minutes do not disclose that any efforts were made by the JLC to induce the parties to come to a fair settlement much less investigation of the dispute and all matters affecting the merits and the right settlement thereof. As noticed earlier the final offer made by the Management in April 1981 was placed by the Commissioner on the relevant file. No meetings took place after the final offer was made either in the presence of the Commissioner or the JLC nor any material was placed by the respondents to show that this final offer was passed on by the Commissioner to the JLC to enable him to discharge his duties as enjoined by Section 12(3) of the Act if it became necessary. But the Commissioner and the JLC have sworn to two affidavits in their return to make good the lacuna in the contemporaneous record of the proceedings on 23-7-1981. The first affidavit was sworn to by the Commissioner but since he had no personal knowledge of the proceedings on 23-7-1981, the second affidavit was sworn to by the JLC explaining the conciliatory part played by him in the meeting on that date for bringing about the settlement. This was filed when this case was half-way through and after the petitioners had replied to the return of respondent-1 to 3 on 18-2-1981. The affidavit of the Commissioner on the part played by the JLC on 23-7-1981 has to be rejected since he has stated that he made the same on the basis of information gathered from records. The records of 23-7-1981 indisputably do not disclose that respondent-3 played the good Samaritan to bring about the settlement. They do not even bear his signature to establish his presence. Be that as it may, a record of the Government which does not bear the signature of the official who wrote the note does not deserve serious consideration. So this Court has to fall back on the affidavit of respondent-3 filed belatedly on 27-2-1982 and the impugned settlement, which according to him, proves the conciliatory part played by him in bringing about the settlement. That settlement bears out the changes made on 23-7-1981 but to ascertain whether those changes were made at the instance of the JLC, we have to take his word and the say of the Management as also respondent-5. Though the contemporaneous records does not support his assertion, the changes made in the settlement do support his case that they

were made at his instance. But does the part played by him make the settlement one in the course of conciliation? According to him, he was responsible for increasing the transport subsidy from Rs. 60/- to Rs. 70/- per month and changes in the clause relating to grace-time. He is not clear about the other amendments as he has merely stated that "certain other issues were also discussed" in his affidavit. It should be noted at this stage that it was the Commissioner who could be credited with the knowledge of the differences between the Management and the Association on the terms of the impugned settlement as is evident from the conciliation notice (Annexure-C) and not the JLC, and only on 23-7-1981 the latter took over the mantle of the Commissioner.

14. It is axiomatic regard being had to the language of Section 12(2) of the Act a mere signing of the settlement in the presence of the Conciliation Officer would not make it one in the course of conciliation proceedings. As a corollary, mere crossing the T's and dotting the I's in a settlement by the Conciliation Officer will not also make the settlement one in the course of conciliation proceedings. In this case, the final offer made by the Management was not considered by the Commissioner any time after the notice of conciliation nor was it passed on to the JLC. No conciliation meeting took place between Respondent-5 and the Management till 23-7-1981 before the Commissioner or the JLC. Respondent-5's letter dated 3-7-1981 to the Commissioner shows that there were disputes regarding the charter of demands and he wanted the Management to arrange for a meeting to discuss and settle all pending demands. Though a copy of this letter had been endorsed to the Commissioner and the Government, no conciliation meeting took place till the date of settlement on 23-7-1981. On 23-7-1981, despite the civil suit in which Rao had succeeded initially in obtaining an order of temporary injunction against respondent-5, the JLC was satisfied that respondent-5 was the real President of the Association and Rao had been removed from that office. Both the Management and respondents-1 to 3 knew that the race for leadership of the Association, was sub-judice in the Civil Court. What is more, no explanation is forthcoming from the Commissioner as to why an election was not held as per the request of Mr. Rao before the matter was taken to the Civil Court despite his notice Annexure-M appointing the Deputy Commissioner of Labour as the returning officer, to test the representative capacity of Mr. Rao and respondent-5. The Management also had not explained this aspect of the case. On the matrix of these facts, the part played by the JLC on 23-7-1981 has to be critically examined in order to find out whether he discharged his duties as enjoined by Section 12(2) of the Act by bringing about two changes in the settlement on 23-7-1981 between respondent-5 and the Management.

15. The need for such scrutiny is imperative in this case as the contemporaneous record is significantly silent about his participation in the meeting and there was also no report by him to the Government about the settlement as required u/s 12(3) of the Act, What is on record is a mere communication to the Government about the execution of the settlement from the Commissioner on 3-8-1981 who

admittedly did not participate in the proceedings before the Minister. Assuming the JLC was competent to hold the conciliation meeting on 23-7-1981 in the absence of the Commissioner, was he in a position to inform himself about the differences between the parties on the charter of demands? I have found that in all the pre-conciliation meetings, he or the Commissioner made no effort to settle the differences. After the notice of conciliation the only meeting the JLC held was on 23-7-1981 in the Minister's chambers. Neither the Management nor respondent No. 5 had forwarded any statement as required under Rule 10-A setting forth the specific matters in dispute to the Commissioner or to the JLC before that date. The final offer of the Management that was placed before the Commissioner on 10-4-1981 was ordered to be placed on the relevant file. On 3-7-1981, admittedly disputes were pending on the charter of demands, as could be seen from a letter of Respondent-5 to the Management copied to the Commissioner and the Government (vide page 239 of the records). By that time, it was fairly certain that both the Management and Respondents 1 to 3 were prepared to recognise Respondent-5 as the President of the Association. Neither the return of Respondents 1 to 3 nor that of the JLC nor the records disclose that the JLC made any effort to study the final offer of the Management made in April 1981 and ascertain the disputes between the parties. Hence, for the first time on 23-7-1981 he was confronted with a settlement, a fait accompli, between Respondent-5 and the Management in the Minister's chambers. If a couple of changes were effected in that settlement at his instance, in my view, the settlement would not be one in the course of conciliation proceeding u/s 12(3) of the Act because--(a) there was no conciliation proceeding in the manner prescribed u/s 12(1) ; (b) even otherwise, on the facts stated above, the JLC did not perform the duties under the mandatory part of Section 12(2); (c) consequently, what transpired on 23-7-1981 was a mere proceeding in the Minister's chambers and not a conciliation proceeding and, hence, it cannot be contended that the settlement was arrived at in the course of conciliation proceeding u/s 12(3) of the Act : (d) the expression "conciliation proceeding" must satisfy the requirements of Subsections (1) and (2) of Section 12 of the Act and in this case those requirements were not satisfied. Mere issue of a notice of conciliation under Rule 10 does not make a proceeding a conciliation proceeding if such proceeding is not held in the prescribed manner and if the Conciliation Officer does not discharge his duties according to the true tenor and spirit of Section 12(2) of the Act, having regard to the consequences of such settlement u/s 18(3) of the Act.

16. In *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, relied on by the Management, the question as to the meaning of conciliation proceeding under the Act did not arise for consideration. It was not in dispute that there was a conciliation proceeding and the Supreme Court considered the meaning of the words "in the course of conciliation proceedings." This is clear from the following observation of the Supreme Court in that case :

"A settlement which can be said to be arrived at in the course of conciliation

proceedings is not only to be arrived at during the time the conciliation proceedings are pending but also to be arrived at with the assistance of conciliation officer and his concurrence ; such a settlement would be reported to the appropriate Government u/s 12(3). In the present case the agreement of 2 September 1954 was not arrived at with the assistance and concurrence of the conciliation officer, namely, the Labour Commissioner, which will be clear from his letter of 3 September 1954."

My view is also supported by the preamble to the settlement on which the JLC and the Management have placed strong reliance. It reads as :

"..... Direct negotiations were held between the company and the office bearers of the MEA thereafter with a view to come to an amicable settlement on the various demands raised by the MEA on behalf of the aforementioned workmen, as also other issues raised by the company in regard to certain matters. The parties could not come, to a settlement on all the demands raised by the MEA and all the issues raised by the company and a few points remained to be settled. The matter was taken up for conciliation by the Commissioner of Labour in Karnataka and the State Conciliation officer, his notice No. IDA-5/CR-77/80-81 dated 23-3-1981. The conciliation proceedings were held on various dates. During and in the course of the conciliation proceedings, and with the good offices of the State Conciliation Officer, a settlement in full and final settlement of all the demands and issues has been arrived at on 23rd July 1981 as under...."

The underlined portion belies the case of the Management that conciliation proceedings commenced on 4-9-1980. In this preamble, their own case is that the dispute was admitted in conciliation by notice dated 23-3-1981. In the context of this assertion, the further assertion that conciliation proceedings were held on various dates must obviously mean dates subsequent to 23-3-1981. The records belie this assertion of the Management and Respondent-5 who are signatories to the settlement. I have found that there was no conciliation meeting after 23-3-1981, except on 23-7-1981. That meeting may at best be described as a meeting after the notice of conciliation but not in the course of conciliation proceedings. The JLC had not noticed the palpable and patent error in the preamble that conciliation proceeding was not held on various dates. All the same, he certified the settlement as one in the course of conciliation proceeding. The anxiety of the Management to secure industrial peace and the eagerness of the workmen, to take the monetary benefits offered by the Management were understandable. But the JLC, who was charged with the statutory duty of certification of the settlement, as one in the course of conciliation should have displayed, a greater sense of responsibility realising, as he ought to have realised, the consequences of such settlement on the workmen who were not parties to it. If he was unaware of a fact which ought to have been within his knowledge, he could not claim to have any knowledge of the various terms of the settlement that was placed before him on 23-7 1981 for the first

time excepting the fact that the Management and respondent-5 had agreed on all the terms of the settlement but for a couple of items.

17. However, Mr. G. B. Pai, learned Counsel for the Management, placed strong reliance on the decision of a Division Bench of the Bombay High Court in *Association of Chemical Workers Vs. Wahid Ali and Others*, In that case, the Conciliation Officer, in order to settle the dispute between the employer and the employees held a meeting with the petitioner-union on 7-3-1978. There was then another meeting between them on 14-3-1978 at which the employer and the other rival union were also present. Justification statements in respect of their demands were filed at that meeting. At the meeting held on 3-4-1978, the Conciliation Officer himself indicated as to which of the demands made by the first petitioner-union and respondent-3 - union were admitted by him for conciliation. A notice in writing to that effect was served by him both on the first petitioner-union and on the employer and the rival union. Thereafter, he had meetings with the employer, the first petitioner on 14th and 17th April 1978 at which he tried to explore the possibility of a settlement. Then on the adjourned date, he had a meeting with the employer and the other rival union, and that meeting was fruitful and resulted in a settlement between the employer and the rival union. These facts go to show that the Conciliation Officer who initiated the conciliation on 17-4-1978 continued his efforts till 22-4-1978 and brought about a settlement in the course of conciliation between the employer and the rival union on that date. The said settlement was held to be a settlement in the course of conciliation by the Bombay High Court.

However, the facts in the instant case stand on a different footing and therefore I find little assistance from the decision of the Bombay High Court.

The second case relied on by Mr. Pai is *Mysore Sugar Company Employees' Union Vs. Commissioner of Labour (State Conciliation Officer) and Others*, In that case, the earlier conciliation proceedings held by the Assistant Commissioner of Labour at the instance of the petitioner-union was unsuccessful. Thereafter, the State Conciliation Officer arranged for a joint discussion in regard to the controversies between the parties and eventually on 19-7-1966 he issued notices to them intimating his intention to commence conciliation proceedings which began on 22-7-1966. On the same day, the impugned settlement was reached between the Management and the rival union. The settlement was challenged by the petitioner therein on the ground that the State Conciliation Officer did not promote the settlement.

On the facts of that case, this Court rejected the petitioner's Contention and held :

"It is not for us to decide whether the settlement is a fair and reasonable settlement. What is necessary is that the State Conciliation Officer should have been satisfied in his mind that it was fair and reasonable. We are satisfied that he was satisfied about it."

Therefore, it is the Court which has to be satisfied about the part played by the Conciliation Officer. In this case also the State Conciliation Officer who issued the notice of his intention to commence the conciliation proceedings, brought about the impugned settlement between the employer and the rival union.

In *Tata Engineering and Locomotive Company Limited Vs. Their Workmen*, the question whether the settlement was one in the course of conciliation proceedings, did not arise for consideration. Hence, it is of little assistance to the Management.

In *The Workmen of Government Silk Weaving Factory, Mysore Vs. The Presiding Officer, Industrial Tribunal, Bangalore and Others*, whether the settlement was one made in the course of conciliation u/s 12(3) of the Act did not come up for consideration;

Similarly, in *Amalgamated Coffee Estates, Ltd. and Ors. v. Their Workmen and Ors.* 1965 II LLJ 110 *Herbertsons Ltd. v. Workmen of Herbertsons Ltd and Ors.* 1977 Lab. I.C. 162 and *New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others*, the settlements which came up for consideration before the Supreme Court were not settlements u/s 12(3) of the Act.

In *Workers and Staff Association of Government Soap Factory v. State of Mysore and Anr.* 1971 I Lab. I.C 79 a settlement between the Management and the majority of the workers, after the failure of conciliation proceedings was held to be binding on the remaining minority since the settlement covered the demands originally made and was accepted by the majority of the workmen and therefore the order of the Government declining to make a reference regarding the validity of the settlement was held to be proper by this Court. Thus the question whether the settlement was one in the course of conciliation did not come up for consideration in the said case as also in *Sree Type Foundry Vs. State of West Bengal and Others*,

In *Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others*, the validity of the settlement in the course of conciliation did not come up for consideration. But only the operation of the settlement u/s 18(3) of the Act and the interaction between that Section and Sections 22 and 24 of the Act came up for consideration.

In *Workers of Buckingham and Carnatic Co. (by Binny and Buckingham and Carnatic Employees Union and Madras Textile Workers" Union) v. Commissioner of Labour and Chief Conciliation Officer and Ors.* 1964 1 LLJ 253 the validity of a settlement u/s 12(3) of the Act was upheld by the Madras High Court. Mr. Pai strongly relied on the following observations of the Madras High Court :

"A conciliation is more or less a matter of negotiation between the parties. The function of a conciliator is to bring the management and the workers together with a view to enter into discussions on the points in dispute and to discover means of settlement acceptable to both. "Under the Industrial Disputes Act the

conciliation officer is an independent agency created with a view to promote industrial peace by making available governmental facilities in the process of collective bargaining. His presence and participation at the discussions does often facilitate an objectivity of approach in the matter of the bargain between the management and the labour. In the words of Sinha, J., in *Royal Calcutta Golf Club Mazdur Union v. State of West Bengal and ors.* 1957 1 LLJ 218 : the main task of the conciliation officer is to go from one camp to the other and find out the greatest common measure of agreement. He has to investigate the dispute and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair and amicable settlement of the disputes. Therefore, when there is an industrial dispute brought up for conciliation at the instance of one union, that union is no doubt the bargaining party. But the bargain being made with the assistance of the conciliation officer can be expected to be fair to all the workers including those who are not members of the union. It is this principle that distinguishes a mere settlement between one union and the management by direct approach, And a settlement reached after conciliation."

I agree with respect with this enunciation of law. But the facts in that case disclose :

"In the present case the Commissioner for Labour took sustained interest in the matter. He more than once reminded the management of the need to expedite the reorganisation proposals ; when he was told that the direct talks between the labour union and the management had resulted in a deadlock, he took up the matter, had separate consultation with the management and the two labour unions. In at least as many as ten points of difference between the parties he was able to persuade the management to accede to the request of the labour union. Sri Delia, appearing for the labour union, placed before us, a statement containing the main differences between the management and the workers and how they were settled by the intervention and the kindly offices of the conciliation officer. Learned Counsel for the petitioner to whom a copy of that statement was given was not prepared to deny that the Commissioner for Labour did not take a significant part in bringing the contending parties to a settlement by suggesting improvements on the proposals put forward by the management."

In the instant case, I have brought out the facts which belie the assertion of the JLC.

18. Mr. Pai also strongly relied on the decision of a Division Bench of the Calcutta High Court in *Calcutta Electric Supply Corporation Ltd. v. P.C. Sen and ors.* 1978 II Lab. I.C. 1395. In that case, it was contended that the conferences held in the presence of the Labour Minister did not acquire the character of conciliation proceedings and the Conciliation Officer could have no control or superintendence over the discussions and negotiations between the workmen and the employer in the presence of the Minister. The Calcutta High Court rejected that contention with the following observations :

"As contended by Learned Junior Standing Counsel, it cannot be said and the decisions cited above do not also lay down the proposition that mere presence of the Minister vitiates the conciliation proceeding. The presence of the Minister of the Government for settlement of industrial disputes in conciliation proceeding between the employer and his workmen in public interest is only to be expected in fitness of things and it will be an untenable situation in law or otherwise if the good offices of the Minister for settlement of industrial disputes, instead of helping the negotiations, will nullify, impede or frustrate such settlement. As however the settlement before the Conciliation Officer has a binding force, the procedural requirement must be strictly complied with. The Conciliation Officer accordingly, in such conferences, where the Minister is present to aid, advise and help the negotiations, must not abrogate his functions and duties but take such active part as required under Sub-section (2) of Section 12 of the Act, by way of investigation of dispute, examination of all matters involving right settlement of the dispute and doing all such things as he may think fit for inducing the parties to come to a fair settlement thereof. In the discharge of such functions and duties by the Conciliation Officer, the good offices of the Minister will be a substantial assistance but the ultimate control and superintendence in such proceedings as required u/s 12(2) should always be with the Conciliation Officer, So that the mere presence of the Minister and his participation in the conciliation proceeding in aid of settlement, by themselves, will not vitiate the conciliation contemplated under the Industrial Disputes Act, 1947.

It appears from record P. C Sen the Conciliation Officer has himself stated in his affidavit that meetings and conferences before the Labour Minister formed part of his attempt to induce the parties to come to a fair and amicable settlement of the dispute. The meetings before the Labour Minister were conciliation proceedings held following the letter of the Unions dated April 17, 1976 where the Conciliation Officer was mostly present, and it cannot be contended, as it appears to us, that his absence in some meetings would alter the character of the conciliation proceedings. It was denied that conciliation proceedings started in early February 1977 when the workmen resorted to demonstrations. The Conciliation Officer further denied that there was no proper report dated November 8, 1976 u/s 12(4) which, it has been said, was sent to the Government on November 17, 1976, There is no denial by the company to these averments made by the Conciliation Officer himself."

Though the said decision helps the case of the Management that the presence of the Minister or the holding of a conciliation meeting in the chambers of the Minister does not vitiate the conciliation proceedings, it is clear from the facts of that case, the validity of the settlement in the course of conciliation did not come up for consideration but what was in issue before that Court was what a conciliation proceeding was for the purpose of Section 33(2)(b) of the Act, The High Court held that after the receipt of the failure report the tripartite conference held between the Labour Minister, the employer and the union of workers under the superintendence of the Conciliation Officer was a conciliation

proceeding which attracted the provisions of Section 33(2)(b) of the Act and therefore the Conciliation Officer could call upon the employer to justify the dismissal of the workmen on the basis of a domestic enquiry by adducing evidence.

17. Mr. Pai pressed into service the decision of the Supreme Court in *The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, to meet the petitioners' contention that the JLC could not have participated in the conciliation proceedings when the Commissioner had initiated the proceedings by issuing a notice under Rule 10 of the Rules. It is not necessary to consider this case since, in my view, in the instant case, assuming that the JLC was competent to participate there was no conciliation proceeding as prescribed under the Act and even otherwise, his participation was minimal and he did not satisfy the requirements of Section 12(2) of the Act. Further, in that case, by a Bench of two Judges of the Supreme Court it was held that the standing orders have statutory force, but a larger Bench of the Supreme Court in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, has held that standing orders have no statutory force.

18. Mr. Pai also strongly relied on my decision in *Brooke Bond India Ltd. Vs. The Workmen*, which is now pending in appeal. On the facts of that case, I had held that the impugned settlement therein was one in the course of conciliation proceeding. The main challenge to the settlement in that case was from a minority Union on the ground that it was not consulted by the Conciliation Officer before the settlement was signed and she colluded with the recognised Union in bringing about the settlement impugned therein. On the facts of that case I had found.

"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 u/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 The facts of the instant case disclose an entirely different situation. Respondent-3 right from the date of issue of notice on 1-2-1 80 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 u/s 12(3) of the Act."

The dictum of this decision is that the validity of a settlement u/s 12(3) of the Act must be judged on the facts and circumstances of a particular case after ascertaining the part played by the Conciliation Officer u/s 12(2) in a conciliation proceeding properly held by him. My conclusions are also supported by the decision of the Calcutta High Court in *The Calcutta Electric Supply Corporation Ltd. v. P.C. Sen and ors.*, 1978 II Lab. I.C. 1395 on which reliance was placed by Mr. Pai. The following observations of that High Court in the said case are apposite :--

"As, however, the settlement before the conciliation officer has a binding force, the procedural requirement must be strictly complied with. The Conciliation Officer accordingly, in such conferences, where the Minister is present to aid, advise and help the negotiations, must not abrogate his functions and duties but take such active part as required under Sub-section (2) of Section 12 of the Act, by way of investigation of dispute, examination of all matters involving right settlement of the dispute and doing all such things as he may think fit for inducing the parties to come to a fair settlement thereof."

Further, the decision of a Division Bench of the Orissa High Court in *Pratap Chandra Mohanty Vs. Union of India (UOI) and Another*, on which reliance was placed by Mr. M. C. Narasimhan supports my view that a joint meeting or a bipartite meeting prior to the issue of a conciliation notice is not a meeting in the course of conciliation proceedings. The learned Judges of the Orissa High Court observed :

"The statute thus makes a clear distinction between disputes relating to public utility service and otherwise, and in the case of disputes relating to public utility service, conciliation is mandatory whereas in regard to other industrial disputes, discretion is vested in the Conciliation Officer to hold conciliation proceedings or not. The use of the words "may" in one case and "shall" in the other, is clearly indicative of such a position -- It would thus follow that in the instant case which is not an industrial dispute relating to a public utility service, the Conciliation Officer had a discretion vested in him under the statute either to hold conciliation proceedings or not. The Conciliation Officer explored the possibility of a settlement by asking the parties for joint deliberations. These were preliminary to the actual conciliation proceeding."

The decision of the Kerala High Court in *M.N. Gopinathan and Ors. v. Kerala State Electricity Board and Anr.* 1975 Lab. I.C. 1727 also supports, view. The learned Judge of that High Court, dealing with the meaning of the words "conciliation proceeding" observed as follows :

"The argument that whatever agreements arrived at after the Conciliation Officer

received a strike notice and he had issued notice for holding conciliation proceeding would be settlements in the course of conciliation, cannot be accepted as the legislative intent appears to be quite contrary. The settlement in the course of conciliation stands on a higher footing than an agreement between the parties, greater sanctity is attached to it as it is one arrived at with the assistance and concurrence of the Conciliation Officer who invites all parties interested in the dispute for conciliation and persuades the participating parties to reach a just and reasonable decision to safeguard the interest of all concerned after due deliberation and proper consideration of the pros and cons of the issues involved."

19. From this discussion on the facts which are not in dispute and the law bearing on the main issue, it follows that in the present case-(a) conciliation proceeding commenced only after the issue of Annexure-C on 23-3-1981 by the Commissioner; (b) he was the person with whom the final offer of the Management was filed and in the fitness of things, he should have participated in the meeting on 23-7-1981; (c) the JLC being a Conciliation Officer, there was no bar for him to act for the Commissioner but on the facts of this case, he did not perform the duties of the Conciliation Officer as required u/s 12(3) of the Act and Rules 10 and 10A of the Rules thereunder; therefore, the proceedings on 23-7-1981 were not proceedings in the course of conciliation and hence the settlement does not satisfy the requirements of Section 12(3) of the Act; and (d) in this view of the matter, whether the word "just" in Section 12(2) of the Act imposed a duty on the JLC to satisfy himself objectively about the capacity of respondent-5 to represent the Association does not require consideration; additionally, any determination of this question will not be proper because of the proceedings pending in the Civil Court on this point.

20. The next point for consideration is whether the petitioners are entitled to the declaration sought for. Though the settlement in question is not a settlement in the course of conciliation, it is a settlement between the Management and the majority of the workmen and hence unless it is shown that the terms of the settlement are onerous and against the interests of the majority of the workmen, it will not be proper for this Court to exercise its jurisdiction under Article 226 of the Constitution. I am satisfied from the material on record that a good majority of the workmen have taken the benefits under the settlement and thereafter resumed normal production and maintained industrial peace for the achievement of which the Management had negotiated with respondents and brought about the settlement. It is well settled that the extraordinary jurisdiction of this Court need not be exercised even if the aggrieved parties make out a case on a question of law unless substantial injustice had been caused to them. The petitioners and the members of the Association belonging to the, petitioners" group may have some grievance about their demands. But their capacity to represent the majority of the workmen is a matter in dispute in the Civil Court and hence it cannot be said that the interests of the workmen as a whole are in jeopardy by the impugned settlement. The observation made by me in National

Mineral Development Corporation v. Kumaraswamy Iron Ore Feasibility, W.P. No. 1693 of 1981 DD 13/20-11-1981 on this aspect of the matter holds good even in this case and I have followed in that case the Division Bench decision of this Court in K.N. Chari v. The National Textile Corporation, Karnataka, W.A. No. 74 of 1976 PD 2M-1979.

One more important factor which comes in the way of exercising my discretion in favour of the petitioners is the possibility of industrial unrest and eruption of violence between the two groups of workmen controlled by the petitioners and the fifth respondent. It is evident, from the record that the initiative of respondent-5 on the hosting was followed by violence by a section of the workmen which resulted in much damage to the property of the Management and threats to the lives and limbs of some workmen and office personnel. If the declaration as sought for is granted, the possibility of recrudescence of violence and industrial unrest cannot be ruled out. For all these reasons, I am satisfied that this is not a fit matter for granting the declaration prayed for.

21. I have not considered the other points raised by the respondents since they were not seriously pressed by them.

22. Before I conclude, I am impelled by the facts of this case to stress the need for legislation to prevent industrial chaos and disputes frequently caused by intra and inter union rivalries. The rough and-tumble in trade union politics is the result of clash of interests among unions which have the penchant for trimming their sails towards the party in power, unions which have affiliated themselves ideologically to political systems alien to our Constitution and culture, unions subtly controlled by and owing allegiance to the various other political parties aspiring for power, unions of workmen fiercely zealous of their rights and independent but totally oblivious to public weal and welfare as also Management-controlled unions in certain industrially backward areas. The Management's position in a developing economy when confronted with a welter of unions in a particular industry is not altogether enviable when it comes to the question of collective bargaining. Oftentimes they fall between two stools and rise again to start from scratch. We have since 1947 an Industrial Disputes Act on the statute book but not an Industrial Relations Act. An Act providing a suitable independent machinery for certification of independent unions, for verification of the representative character of the union for the purpose of recognition and collective bargaining, for effective conciliation and arbitration service, is the need of the hour. The Industrial Disputes Act provides no effective solution to the competing claims of more than one union in an industry or more than one group in a union. An institution like the Advisory, Conciliation and Arbitration Service in England, an independent body corporate which is not a department of the Government but functions on behalf of the Government and not subject to directions of any kind from any Minister, may be set up to take over the advisory, conciliation and arbitration service that the Managements and Unions require in order to achieve real and meaningful industrial democracy in this Country.

23. To sum up -

(a) the settlement dated 23-7-1981 is not a settlement in the course of conciliation proceedings ;

(b) all the same this is not a fit case to grant the declaration prayed for in the exercise of the extraordinary jurisdiction of this Court.

24. Therefore, this Petition stands dismissed. No costs.