
(1955) 02 BOM CK 0030
In the Bombay High Court
Case No : Criminal Appeal No. 1256 of 1954

The State	Vs	APPELLANT
Andheri-Marol-Kurla Bus Service		RESPONDENT

Date of Decision : 04-02-1955

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(2), 10(3), 11, 11(1)

Citation : AIR 1955 Bom 324 : (1955) 57 BOMLR 529 : (1955) CriLJ 1161 : (1955) ILR (Bom) 602 : (1955) 1 LLJ 378

Hon'ble Judges : Vyas, J;Gajendragadkar, J

Bench : Division Bench

Advocate : A.A. Mandgi, Asst. Govt. Pleader, for the Appellant; C.K. Jaisinghani, for the Respondent

Judgement

Gajendragadkar, J.—This is an appeal against the order of acquittal passed by the learned Chief Presidency Magistrate, Bombay, in favour of the respondents.

The respondents are the Andheri-Marol-Kurla Bus Service, its partners and the manager respectively. The Bus Service Company itself is accused No. 1, Amichand Narayan, Karamchand Narayan and Validad Hazrat Hussein, the three partners of the Company are accused Nos. 2, 3 and 4 whereas the manager H.M. Khan is accused No. 5.

The charge against these accused persons was that they had committed an offence u/s 31(1) and Section 33 of the Industrial Disputes Act, 14 of 1947. The learned Magistrate" has held that the charge framed against these accused persons has not been proved. That is why he has acquitted them of the said charge. The propriety and the correctness of this order of acquittal are challenged by the State in the present appeal.

2. The facts essential for the decision of this dispute lie within a very narrow compass.

It is common ground that between the company and its management on the one

hand and the employees on the other, disputes arose towards the end of 1951). These disputes were taken up by the Conciliation Officer under the Industrial Disputes Act. For the prosecution it was alleged that the conciliation proceedings commenced before the Conciliation Officer on 31-12-1951, and that they concluded on 12-6-1952, when the Conciliation Officer returned a failure report. The prosecution further allege that during the pendency of these conciliation proceedings, the accused dismissed one of the employees by name Louies Pereira on 18-3-1952. This employee was concerned in the aforesaid dispute. That is how the accused were charged with having committed an offence u/s 31(1) inasmuch as pending conciliation proceedings before the Conciliation Officer, the accused dismissed their employee Louis Pereira.

Section 31(1), Industrial Disputes Act, provides that any employer who contravenes the provisions of Section 33 shall be punishable in the manner mentioned in this sub-section and Section 33 provides "inter alia" that during the pendency of any conciliation proceedings, no employer shall alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings, or discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute save with the express permission in writing or the Conciliation Officer.

The prosecution case was that during the pendency of the proceedings, contrary to the provisions of Section 33, the employee Louis Periera has been dismissed by the accused and so they have rendered themselves liable to be punished u/s 31(1). The defence was that the provisions of Section 33 as well as Section 31(1) would be inapplicable to the present case inasmuch as on the date when Louis Pereira was dismissed, no valid conciliation proceedings were pending before the Conciliation Officer.

The argument was that under the material provisions of the Industrial Disputes Act. it is obligatory for the Conciliation Officer to conclude the conciliation proceedings within 14 days, and if the conciliation proceedings are allowed to be protracted beyond the prescribed period of 14 days, the conciliation proceedings are rendered invalid and the pendency of such invalid conciliation proceedings cannot invoke the provisions of Section 33 and Section 31(1) of the Industrial Disputes Act. Shortly stated, the learned Chief Presidency Magistrate has accepted this plea and has, therefore, come to the conclusion that the dismissal of Lious Pereira cannot be said to constitute an offence u/s 31(1) of the Industrial Disputes Act.

The principal question which thus arises for our decision in the present appeal is whether by the continuance of conciliation proceedings before a Conciliation Officer beyond 14 days which are prescribed u/s 12, Sub-section (6), the proceedings themselves become invalid and their pendency cannot bring into operation the penal provisions of the statute contained in Sections. 33 and 31(1).

3. Before dealing with this point, it would be relevant to refer to the material facts in regard to the disputes between the parties which led to the conciliation proceedings in the present case.

Mr. Amdekar, who was the Conciliation Officer concerned, has stated that on 17-1-1952, the manager of the company appeared with the assistant manager and the Union representative Mr. Kamerkar in respect of the disputes which had arisen between the company and its employees. Mr. Amdekar has described in detail by reference to the material documents how the proceedings were kept pending and had to be adjourned from time to time in order to afford facilities to the disputants to come to a reasonable agreement about the disputes between them. On several occasions the company by its representatives asked for time, and as is inevitably to be expected the Conciliation Officer himself requested the company to supply material facts and other statistics which would enable him to assist the parties to come to a settlement of the pending disputes.

After the proceedings were pending before Mr. Amdekar for some time, Mr. Shelke, his successor, took charge of them and before Mr. Shelke also some adjournments were taken by the management and time was taken by the parties to discuss terms] of settlement between them and it always looked possible that the Conciliation Officer may be able to bring about the conciliation of this dispute.

It was only on June 2, 1952, that Mr. Shelke received a letter from the manager, accused No. 5, that no agreement with the Union was possible in view of the Union's attitude and that no useful purpose would be served by any further meeting between the parties before the Conciliation Officer. The manager also added that the time limit for conciliation had long expired and he intimated to the Conciliation Officer that the management would not attend on 3-6-1952. Thereupon the Conciliation Officer made a failure report on 12-6-1952. It would thus be noticed that between 17-1-1952, to 2-6-1952, both the parties to the dispute appeared before the Conciliation Officer and the Conciliation Officer reasonably expected that the dispute may be settled by conciliation and was, therefore, trying his best to collect material data and statistics and was persuading the parties to talk the disputes over between themselves with the object of successfully terminating the disputes by means, of conciliation. On 2-6-1952, however, he was told in categorical terms by accused No. 5 that no useful purpose would be served by any further meeting and that he would, therefore, not attend the meeting on 3-6-1952, as fixed by the Conciliator.

What has happened in this dispute would, we think, normally happen in a large majority of the disputes that would be brought before a Conciliation Officer. Indeed, Mr. Jaisinghani has fairly conceded that in a large majority of disputes brought before a Conciliation Officer, it would not be possible to bring about the conciliation, within 14 days as required by Section 12, Sub-section (6) of the Act. Section 12(6) no doubt provides that the report by the Conciliation Officer about the conciliation, which he attempts to bring about shall be submitted within 14 days of the commencement of the conciliation proceedings or within such shorter

period as may be fixed by the appropriate Government. It is this clause which falls to be construed in the present appeal. But in construing this clause, it would be relevant to bear, in mind that it is substantially common ground before us that strict compliance with the time table fixed by Section 12(6) would be impossible of achievement in a very large majority of cases; and if that is so, while we attempt to put upon this clause a reasonable construction, it would be relevant to remember that if this sub-section is capable of two constructions, we should lean in favour of that construction which does not make the provisions of the Act nugatory. It is perfectly true that there are obvious limitations impressing into service the objects of the Act while we are construing the sections in the Act. If the words used in Section 12(6) are unambiguous and on a plain and grammatical construction they lead only to one result, it would be idle for the State to contend that we should put upon those words a different construction solely on the ground that the construction for which the State contends would lead to the fulfillment of the objects of the Act. However, if the words used in the subsection in question are capable of two constructions, then the arguments that the Court should prefer the construction which establishes harmony between the provisions of the Act and enables the effective carrying out of these provisions cannot be rejected by us.

4. It would now be necessary to consider the scheme of the Act in order to be able to appreciate the nature and the effect of the directions contained in Section 12(6). It is well known that this Act has been put on the statute book because Legislature thought that it was expedient to make provision for the investigation and settlement of industrial disputes.

In other words, the main object of the Act is to preserve industrial peace and to take such steps as would be necessary for the investigation and settlement of the industrial disputes that are likely to disturb industrial peace.

Under this Act, several statutory bodies have been constituted for the purpose of investigating and settling industrial disputes. A Board of Conciliation has been constituted under this Act and this Board is called the "Board" by Section 2(c). A Conciliation Officer functions under this Act and Section 2(d) defines him as a Conciliation Officer appointed under the provisions of this Act. A conciliation proceeding, according to Section 2(e), means any proceeding held by a Conciliation Officer or Board under this Act. An Industrial Tribunal that functions under the Act is called a "Tribunal" u/s 2(r). Chapter II of the Act deals with the different authorities that function under the Act and appointment of officer in that behalf.

Having provided for the constitution of different authorities under the Act by the provisions of Chap. II, Chap. III deals with the reference of disputes to the said authorities. These authorities are Boards, Courts or Tribunals. Chapter IV deals; with the procedure, powers and duties of authorities. We are concerned in the present case with the Conciliation Officer and the proceedings pending before him, and the dispute which has given rise to the present proceedings is a dispute

not in connection with a public utility service.

Section 11(1) authorises the Conciliation Officer to follow such procedure as may be prescribed by the Act. Section (2) empowers a Conciliation Officer to enter the premises occupied by any establishment to which the disputes relate. Section (4) gives him power to call for and inspect any document which he has "ground for considering to be relevant to the industrial dispute. It is noticeable that, whereas Sub-section (3) of Section 11 confers upon the Board, the Court and the Tribunal the same powers as, are vested in a civil Court under the Civil Procedure Code, similar powers are not conferred upon a Conciliation Officer. The object of appointing Conciliation Officers and referring disputes in the first instance to them obviously is to attempt to settle all industrial disputes by means of conciliation.

It is well recognised that in all modern democratic States, industrial disputes are in the first instance and primarily sought to be settled by amicable conciliation, and so it would be foreign to the nature of conciliation if an element of compulsion is introduced in the proceedings before the Conciliation Officer. That is why, though certain necessary powers are given to the Conciliation Officer, the atmosphere before him is not sought to be made unduly formal and it is from this point of view that the powers of a civil Court are not sought to be conferred upon the Conciliation Officer. Section 11 of the Act thus deals with the procedure and powers of the Conciliation Officers. It is necessary to emphasise this aspect of the matter because, when we come to deal with the question of construing Section 12(6), one of the important points which we will have to answer would be whether the sub-section in question deals with the powers of the officer or with his duties.

Rules of construction have, made a distinction between mandatory words used in the context of powers and similar words used in the context of duties or obligations. That is why it would be relevant to consider whether in the context the provisions contained in Section 12(6) are provisions in regard to the powers or privileges of the Conciliation Officer or they are provisions in respect of his duties. In that connection, S, 11 affords us some guidance. Section 11 deals with the powers and Section 12 deals with the duties of the Conciliation Officer, and it is in this context of the duties of the Conciliation Officer that the provisions of Sub-section (6) are to be found. Section 12 which deals with the duties of Conciliation Officers" requires the Conciliation Officers to hold conciliation proceedings; under Sub-section (1) if the dispute relates to a public utility service and a notice u/s 22 has been given, it is obligatory on the officers to hold conciliation proceedings. In other words, where an industrial dispute exists or is apprehended, the Conciliation Officer is given the right to hold conciliation proceedings. Sub-section (2) requires that without delay the Conciliation Officer shall investigate the dispute and all matters, relevant thereto with a view to bring about a settlement. The sole object of entertaining a dispute is to induce the parties to come to a fair and amicable settlement of the dispute between

themselves.

If the Conciliation Officer succeeds in bringing about such a settlement, under Sub-section (3) he is to make a report to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. It would be noticed that the Conciliation Officer seeks to do nothing more or better than offer assistance to both the parties in bringing about a settlement. In a sense no is a witness to the conciliation proceedings and when they terminate successfully, he gets the settlement terms signed by the parties and then makes a report. If the efforts to bring about conciliation by mutual settlement fail, then Sub-section (4) requires that he should make a report to the appropriate Government accordingly. While making such a report, he has to give a full statement of facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at. This requirement is essential because where conciliation efforts fail and the appropriate Government receives a report in that behalf, it often becomes necessary for the appropriate Government to consider whether the dispute should be referred to a Board or a Tribunal. That is why the appropriate Government wants to be in possession of all the relevant facts together with the reasons which in the opinion of the Conciliation Officer led to the failure of the efforts at conciliation. On receiving ft failure report, the appropriate Government has to consider whether the case in question is fit to be referred to the Board or the Tribunal. This is provided for by Section 12(6).

If the appropriate Government decides not to make a reference, it communicates its decision to the parties concerned together with its reasons there for. Then we have Sub-section (6) and as I have already indicated, Sub-section (6) requires that a report under this sub-section shall be submitted within 14 days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

Section 13 provides for the duties of the Boards. Sub-section (5) of Section 13 provides that the Board shall submit its report under the said section within two months of the elate on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government. There is a proviso to this sub-section and under this proviso the appropriate Government is authorised from time to time to extend the time for the submission of the report by such further periods not exceeding two months in the aggregate. There is a further limitation on the power of extension which is provided for by the next proviso, but it is unnecessary to set it out. Section 14 similarly deals with the duties of Courts and Section 15 with the duties of Tribunals.

Sections 16 and 17 deal respectively with the form of report or award and with the publication of reports and awards. Section 17A provides for the determination of the commencement of the award. Sub-section (1) says that the award of a Tribunal shall become enforceable on the expiry of thirty days from the date of its publication u/s 17. There is a proviso to this section which it is

unnecessary to set out.

Then Section 18 deals with the question as to the persons on whom settlements and awards are binding and Section 19 deals with the period of operation of settlements and awards. That takes us to Section 20.

Section 20 deals with the commencement and conclusion of proceedings. Sub-section (1) of Section 20 provides for an artificial period of commencement in respect of conciliation proceedings by reference to the date on which a notice of strike or lock-out under Section 22 has been received by the Conciliation Officer and the date of the order referring the dispute to the Board which has been passed by the appropriate Government. The effect of Sub-section (1) is that in respect of these two kinds of proceedings, the date of commencement is the date on which the notice in question has been received or the order in question has been passed respectively. Sub-section (2) deals with the date of conclusion and this again provides for an artificial definition of the date of conclusion in three different classes of cases. Sub-section (2)(a) provides that where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute, the proceeding is deemed to be concluded. Sub-section (2)(b) provides that where no settlement is arrived at, when the report of the Conciliation Officer is received by the appropriate Government or when the report of the Board is published u/s 17, 63 the case may be, the proceedings would be deemed to have concluded. Under Sub-section (2)(c), the date of conclusion is the date of the receipt of the report even when a reference is made to a Court or Tribunal u/s 10 during the pendency of conciliation proceedings. Sub-section (3) then deals with proceedings before a Tribunal and it provides that these proceedings shall be deemed to have commenced on the date of the reference of disputes for adjudication and they shall be deemed to have concluded on the date on which the award becomes enforceable u/s 17A. .-

This briefly is the scheme of the provisions contained in Chap. IV which deals with the procedure, powers and duties of respective authorities that function under the Act. Two other provisions need to be mentioned before we deal with the question of construing Section 12(6) which has been raised by this appeal. Section 33 has already been set out by me and the effect of these provisions is that, during the pendency of any conciliation proceedings, an employer is prevented from taking any action to the prejudice- of the workmen as mentioned in sub-sections. (a) and (b) of Section 33 unless for his action he obtains the express permission in writing of the Conciliation Officer. Contravention of the provisions contained in Section 33 is rendered liable for punishment u/s 31.

5. It is not disputed that the continuation of conciliation proceedings before the Conciliation Officer inevitably depends upon the willingness of both the parties to the disputes to make an attempt at conciliation with the assistance of the Conciliation Officer. In other words, where a dispute has been taken to the Conciliation Officer for conciliation, it would be open to either of the two parties to tell the Conciliation Officer that, having regard to the attitude adopted by the

opponent, the party feels that no useful purpose would be served by continuing the conciliation proceedings; and when the Conciliation Officer is unequivocally told by either of the parties that efforts at conciliation are not likely to succeed, the Conciliation Officer realises that further efforts would be futile and he would naturally make a report of the failure u/s 12(4). It is also common ground that during the pendency of the conciliation proceedings, it would be open to the employees to go on strike provided of course they go on strike subject to the other limitations prescribed by the Act. Similarly, it would be open to the employer to declare a lock-out provided again he does that subject to the other restrictions imposed by the Act. The only limitation which is imposed is upon the employer and that by the provisions of Section 33. So long as he continues negotiations with the employees in the presence of the Conciliation Officer and both the parties hope to settle the dispute by amicable settlement, Section 33 debars the employer from taking any action which might prejudice the employees and their rights, and even there allows him to take such action provided he obtains the express consent in writing of the Conciliation Officer to do so.

Therefore, the plea of hardship raised before us by Mr, Jaisinghani while contending that the continuance of conciliation proceedings before the Conciliation Officer beyond a fortnight is invalid cannot be said to be well-founded. It is not as if the company was absolutely prohibited from dismissing Louis Pereira. If the company felt that there was a very good case for dismissing Louis Pereira, it was open to the company to have gone to the Conciliation Officer and obtain his express consent to dismiss Louis Pereira. In other words, the proceedings before the Conciliation Officer postulate the possibility of setting the dispute by amicable settlement and the Conciliation Officer, therefore is expected to do his best to persuade the parties to come to a settlement between themselves.

6. The question of construing the provisions of Section 12(6) presents problems which have been considered by judicial decisions on several occasions in the past. Often enough Legislature uses words like "shall" which are mandatory in form and often enough Courts have to decide what the effect of the use of these mandatory words is in a particular provision contained in the statute.

Mr. Jaisinghani contends and there is some force in the contention, that Sub-section (6) emphasises that the Legislature thought that time was the essence of the matter. Legislature, therefore, has provided for 14 days as the outside limit and this is clearly indicated by the Legislature by adding that the report shall be submitted within 14 days or within such shorter period as may be fixed by the appropriate Government. Thus, the position cannot be disputed that the object of making the provisions! of Section 12(6) is to emphasises the fact that time is, the essence of the matter and that" the Conciliation Officer must do his very best to complete within the, time fixed for him by the statutory provisions contained in Section 12(6). Indeed, it may be permissible! to say that time should be

regarded as essential" in the settlement of all industrial disputes where-over they are pending,

But Mr. Jaisinghani contends that Legislature has emphatically expressed its views in the matter in Section 12, Sub-section (6) and it is admitted that the dismissal of Louis Pereira took place long after. 14 days had expired since the commencement of the conciliation proceedings. It is unnecessary to consider whether the proceedings commenced on 3-12-1951, as the accused contend, or on 31-12-1951, as the prosecution contend. Even if we take the latter date, the dismissal of Louis Pereira took place more than 14 days after the said commencement, The question which arises for our decision is: What is the effect of the failure of the Conciliation Officer to complete the conciliation proceedings within 14 days as prescribed by Section 12(6)? Does the command imposed by Section 12(6) involve the invalidating consequence? In other words, is it the effect of Section 12(6) that, as soon as 14 days expire, the Conciliation Officer virtually becomes "functus officio" and the proceedings which were validly pending before him till then become wholly invalid thereafter? If that is the effect of the provisions of Section 12(6), the accused have committed no offence. If that is not the effect of the provisions of Section 12(6), the accused have undoubtedly committed an offence u/s 31(1).

7. The construction of the material clause requires the Court to take into account the intention of the Legislature. In construing this clause, we have to bear in mind the object which the Legislature had in view, the scheme which the Legislature has adopted for carrying out that object and the effect of the construction for which both the parties contend before us. "In dealing with the question as to the effect of the use of imperative words, very often distinction is sought to be drawn between cases where the statute confers upon a public officer a privilege or power or where it imposes upon him an obligation or duty.

Maxwell has observed:

"Where powers, rights or immunities are granted with a direction that certain regulations, "formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is therefore probable that such was the intention of the legislature. But when a public duty is imposed and the statute requires that it shall be performed in" a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative." (Maxwell on Interrelation of Statutes, 10th edn., p. 376). "

8 In other words, according to this statement of the law, if the statutory provision which uses imperative words imposes an obligation or duty on a public officer subject to certain other requirements, the public officer's failure to

comply with the said requirements does not make his subsequent action invalid. The use of imperative words does not involve the invalidating consequence in connection with such provisions. On the other hand, if the use of¹ the imperative words is to be found in a provision that confers upon a public officer a privilege or power subject to certain conditions and these conditions are not complied with, the exercise of that power or privilege would be rendered invalid.

Even so, there is another point which has to be borne in mind and that is that even in respect of duties the performance of which is required subject to certain conditions, if it appears that the failure to comply with the conditions is likely to lead to injustice or patent hardship, then the Court would hesitate to come to the conclusion that the non-performance of the conditions does not involve the invalidating of the performance of duty itself. That is why I have already indicated that if we were to take the view for which the learned Government Pleader contends, it would not involve any injustice or substantial inconvenience to either party. The only limitation imposed upon the employer during the continuance of conciliation proceedings is that whilst he purports to hold negotiations with his employees with the object of settling the disputes, he should not be at liberty to stab the said negotiations by taking any action inconsistent with the negotiation unless for doing so he obtains express sanction in writing of the Conciliation Officer himself. We do not think that it would be reasonable to contend that the imposition of this limitation involves such injustice or inconvenience to the employer that we must construe the words used" in Section 12(6) as themselves involving the invalidating consequence as contended by Mr. Jaisinghani.

9. The rules of construction which are invoked in construing imperative, words used by statutes came to be considered by Lord Campbell L C. in "The Liverpool Borough Bank v. Turner", (1860) 2 DeG F & J 502, and the observations made by the learned Judge on that occasion are always cited as classic on this point.

"No universal rule can be laid down", observed Lord Campbell L, C. "for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by- carefully attending to the whole scope or the statute to be construed." (p. 507).

Fifteen years after these observations were made. Lord Penzance in -- "Howard v. Bodington", (1877) 2 PD 203, had occasion to consider the same point. Meanwhile a large volume of judicial opinion had been expressed and all these cases were cited before Lord Penzance who observed, that these judicial decisions were on all sorts of subjects and he found it difficult to group them together with the result that he ultimately agreed with the observations made by Lord Campbell L. C. that in dealing with imperative "words used by statutes, it is the duty of Courts of Justice to try to get at the real intention of-the Legislature and that should be done after carefully attending to the whole-scope of the

statute to be construed.

Now, if we consider the scope of the statute and the object which it has in view, there can be little difficulty in coming to the conclusion that the argument based on the object and scope of the statute are in favour of the construction for which the learned Government Pleader contends. If Section 12(6) is construed in the manner which appeared to the learned Chief Presidency Magistrate to be reasonable, it would lead to the unfortunate result that in a very large majority of cases, conciliation efforts are bound to fail. I have already indicated that unless the nature of the industrial dispute admits of a very easy and quick solution, in a large majority of such disputes it would be necessary for the Conciliation Officer to prepare the ground for mutual settlement by collecting necessary data and statistics, by arguing with the parties one against the other, and by inducing them ultimately to agree to certain terms by consent. However quick the Conciliation Officer may be and however responsive both the parties to the dispute may be, it seems very unlikely that within the statutory period of 14 days, many industrial disputes can be settled. If that is so, then the construction "which makes the Conciliation Officer's work almost impossible should, we think, be avoided if it can be reasonably so done.

Unfortunately, the attention of the learned Chief Presidency Magistrate -was not invited to the rule of construction which applies to statutory provisions that deal with the imposition of duties on public officers. Indeed, he has observed in his judgment that in the present case no question of public duty or injury to innocent members of the public by reason of any default of the officer in question arises. He thought that certain powers were granted to the Conciliation Officer and that is how he proceeded to deal with the question of construction. I have already pointed out that the scheme of the Act itself negatives the argument that Section 12(6) deals with powers and not duties. The importance, of marginal notes in the construction of sections obviously cannot be over-rated. But there is some indication which we can have from the marginal notes themselves and that indication is that Section 11 deals with powers and Section 12 deals with duties. But, apart from the marginal notes, the provisions of Ss. 11 and 12 themselves unambiguously indicate that, whereas u/s 11 the powers of the different authorities are mentioned, u/s 12 the duties of the Conciliation Officers are indicated.

Therefore, in our opinion, there is no doubt whatever that the clause which we are called upon to construe in the present case deals with the duties of a public officer, and in the absence of any indication that the construction contended for by the learned Government Pleader is likely to lead to injustice or inconvenience, we must accept that construction because it is based on the rule of construction which applies to the use of imperative words in connection with the imposition of duties on public officers.

10. Mr. Jaisinghani has, however, contended that when we consider the scheme and object of the Act, it would be necessary for us to remember that where the

Legislature wanted power to be given to -the appropriate Government" to extend the period, the Legislature has not hesitated to make proper provision in that behalf, and this no doubt is true. Section 13, Sub-section (5), to which I have already referred, is an illustration in point. The period of two months is first provided by Sub-section .(5) and by the two provisos, provision has been made for the extension of the said period. Mr. Jaisinghani therefore contends that the Legislature has not made any corresponding provision in regard to the period of 14 days prescribed by Section 12(6) and that is an indication that this period was not intended to be extended in any event. In our opinion, though this argument at first blush appears to be attractive, it is really not consistent with the scheme of the Act.

There is an essential difference between the nature of the proceedings before the Conciliation Officer and those before the Boards as contemplated by the Act. Before the Conciliation Officer, the nature of the proceedings is more or less domestic. It is not a formal enquiry in the sense that the officer presiding over the enquiry ultimately has authority to make a decision. As I have already indicated, he is assisting the parties to the dispute and the object of his assistance is to induce the parties to come to a compromise. The pendency of the proceedings again depends not on the authority of the Conciliation Officer, but upon the willingness of the parties to continue the proceedings before him. These proceedings can be terminated unilaterally, by either of the two disputants by conveying to the Conciliation Officer that the party in question does not feel that any useful purpose would be served by carrying on the proceedings. That is not "the position in regard to a dispute which has been referred to the Board or the Tribunal. Proceedings before the Board or the Tribunal are in the nature of quasi-judicial proceedings. These proceedings end in a decree or an award, whereas conciliation proceedings end in a mutual settlement to be signed by the parties. Therefore, though it may be necessary to give power to the appropriate Government to extend the period of limitation in cases which are referred to the Board, that necessity does not plainly exist where the proceedings are pending before the Conciliation Officer. Even so, the Legislature wanted to emphasise the desirability of bringing about conciliation as quickly as possible and so by using strong words in Section 12(6), they have warned the Conciliation Officer and told the parties to the dispute that 14 days is the limit within which the disputes are expected to be settled. Therefore, we are not impressed by the argument that the failure of the Legislature to provide for the extension of this period necessarily means that non-compliance by the Conciliation Officer with the provisions of Section 12(6) renders all further proceedings before him invalid.

11. There is another point to which reference must be made. In considering the question as to the effect of the provisions of Section 12(6), it would be relevant to bear in mind the provisions of Section 20. I have already indicated that Section 20 gives artificial denotation to the expressions, "commencement" and "conclusion" of the proceedings. If the denotation of the word "conclusion" of the proceedings which is to be found in Section 20(2) is applicable to the conciliation

proceedings pending before the Conciliation Officer, that provides an additional ground in favour of the contention which has been urged before us by the learned Government Pleader. Sub-section (2) of Section 20 provides that proceeding shall be deemed to have concluded when a report by the Conciliation Officer is received by the appropriate Government in case no settlement is arrived at. In other words, where the Conciliation Officer fails to bring about conciliation and makes a failure report, the proceedings are deemed to continue until the report is received by the appropriate Government. That means that the proceedings are artificially treated as being alive even after the parties have failed to come to a conciliation and even after the Conciliation Officer has made his report. The pendency of these proceedings continues until " the report is received in fact by the appropriate Government. This provision indicates that the factual determination of conciliation proceedings does not in law amount to the conclusion of such proceedings. The proceedings survive for some period more until the report is received by the appropriate Government. If that is true about the continuance of the proceedings, it indicates that- the reference to the 14 days in Section 12(6) cannot involve the consequence of invalidity as suggested by Mr. Jaisinghani. On Mr. Jaisinghani's argument, all proceedings before the Conciliation Officer, whatever the result and whenever the report by the Conciliation Officer may be sent, automatically come to an end as soon as 14 days are over. That conclusion is plainly inconsistent with the provisions of Section 20(2). That is why Mr, Jaisinghani attempted to argue that the provision of Section 20 do not apply to the proceedings before the Conciliation Officer at all. We are not impressed by this" argument. Mr. Jaisiughani suggested that the provisions of Section 20 should be confined only to industrial disputes in respect of public utility services and this argument is based upon the first part of Section 20, Sub-section (1). While dealing with the denotation of the commencement of a conciliation proceeding in regard to a dispute which begins with" the issue of a notice u/s 22, it is provided that the said proceedings shall be deemed to have commenced on the date on which the notice is received by the Conciliation Officer.

Mr. Jaisinghani contends, that this indicates that what follows u/s 20 is intended to be applicable only to disputes in respect of public utility services, because Section 22 deals with strikes and lockouts in public utility services. This argument is clearly misconceived, because Section 20(1) also deals with another class of conciliation proceedings and provides for the denotation of the expression "commencement" of the said proceedings when it says that in respect of such proceedings, the commencement would be on the date of the order referring the dispute to a Board. In other words, where on receiving a report from the Conciliation Officer u/s 12, Sub-section (4), the appropriate Government decides under sub-section (5) of Section 12 to refer the dispute to a Board, the proceedings are deemed to commence with the order by which the dispute is thus referred to "the Board. It is clear that the disputes which may be referred to the Board by an order passed u/s 12(5) would be not only disputes in

respect of public utility services, but disputes in respect of other services as well; and if that is so, it would not be possible to hold that Sub-section (1) of Section 20 is confined only to conciliation proceedings in respect of public utility services. Therefore, the provisions of Sub-section (2) of Section 20 likewise apply to all conciliation proceedings and the application of the provisions of this sub-section shows that the conciliation proceedings such as those with which we are concerned in the present appeal must be deemed to be pending until the report made by the Conciliation Officer is received by the appropriate Government and that is plainly inconsistent with the view that the proceeding, before the Conciliation Officer-must automatically come to an end as soon as 14 days are over.

Therefore, in our opinion, the learned Chief Presidency Magistrate was, with respect, in error in holding that the proceedings before the Conciliation Officer became invalid as soon as 14 days were over from the date of the commencement of the proceedings and so the accused were not guilty of any of the offences charged.

12. It would now be necessary to refer to some of the decisions to which our attention has been invited. In -- Workers of The Industry Colliery, Dhanbad Vs. Management of The Industry Colliery, , their Lordships of the Supreme Court had to construe Section 20(2)(b) of the Industrial Disputes Act. This was no doubt a dispute in -respect of a public-utility service. On 13-10-1949, notice about this dispute was given and it was received on 15-10-1949. On October 22, the Conciliation Officer was told that the dispute could not; be amicably settled. The failure report was then sent on October 25. It was received by the Chief Labour Commissioner, New Delhi, on that date. The appropriate authority which should have received the report was the Secretary of the Labour Department of the Government of India. The appropriate authority received this report on 17-11-1949, and a strike was declared on 7-11-1949.

The question which arose for the decision of the Supreme Court was whether this strike which was declared on 7-11-1949, contravened the material provisions of the Industrial Disputes Act; and this naturally led to the further question as to whether the proceedings could be said to be pending until the failure report was received by the appropriate authority on 17-11-1949. Their Lordships held that the provisions of Section 20(3) were clear and the fact that the report through mistake was addressed to a wrong authority would not alter the position that until the report was received by the appropriate authority, the proceedings in question could not be deemed to have concluded. That is why the strike, in question was held to amount to a contravention of the material provisions of the Act.

Mr. Justice Das has observed that a conciliation, proceeding cannot be deemed to have concluded u/s 20(2)(b) of the Act in a case where no settlement has been arrived at as soon as the Conciliation Officer sends his report. It can be deemed to have concluded only when the report is received by the appropriate

Government. It would thus be seen that the consequence of the artificial denotation attributed to the words "deemed to have concluded" led to a somewhat surprising result that, even if the report was sent wrongly to an inappropriate authority and was received by the said authority, the proceedings in law cannot be said to have concluded. They would be deemed to be continuing until the report is received by the appropriate authority itself.

If the continuance of the proceedings is thus artificially lengthened by the provisions of Section 20(2), it would be unreasonable to hold that in a case which is pending before a Conciliation Officer u/s 12, the whole proceedings become invalid as soon as 14 days from the commencement of the proceedings have expired. In any case, they cannot be deemed to have concluded until the report is received and that itself means that the period of 14 days is not intended to be inexorably enforced.

It is true, that in dealing with this case Mr. Justice Das, who delivered the judgment of the Court, has referred to Section 12(6) and has observed that the Act requires that the Conciliation Officer must submit his report within 14 days from the commencement of conciliation proceedings and then on receipt of the report by the appropriate Government, the conciliation proceedings are to be deemed to have concluded. Although, the learned Judge has added, factually the conciliation proceedings terminate when a settlement is arrived at before the Conciliation Officer or when it is found that no settlement can be arrived at, the Act, by a legal fiction, prolongs the conciliation proceedings until the actual receipt of the report by the appropriate Government. That is why the learned Judge thought it necessary to draw the attention of the authorities concerned to the slack- and unbusinesslike manner in which the matter before the Court had been dealt with before the office of the learned Chief Labour Commissioner.

As I have already indicated, the dispute with which the Supreme Court was dealing with was in regard to an essential public service. But the observations made by Das J. in dealing with Section 20 as well as Section 12, Sub-section (6), do not suggest that the Supreme Court was disposed to confine the provisions of Section 20(2) only to the limited class of conciliation proceedings which deal with industrial disputes in regard to essential services alone. The observations made are general, and it may be permissible to the learned Government Pleader to contend that these observations suggest that Section 20(2) would apply even to the conciliation proceedings with which we are concerned in the present appeal.

13. To the same effect is the decision of the Labour Appellate Tribunal consisting of Mr. H. C. Mitter and Mr. G. P. MaUiur in -- "Colliery Mazdoor Congress v. New Beerbhoom Coal Co. Ltd.", 1952 Lab AC 219. Even with regard to this judgment of the Appellate Tribunal, it may be pointed out that the dispute was one, in respect of " an essential service. Here again, the observations made by the learned Judges when they construed the provision of Section 12(6) are general, and it would not be unreasonable to hold that on the view taken by the learned Judges, the position would be the same even where the dispute was not one in

regard to essential service.

14. Our attention has also been invited by the learned Government Pleader to a judgment delivered by Mr. Justice Govinda Menon in which the learned Judge has applied the provisions of Section 20(2) while construing the provisions of Section 12, Sub-section (6), even though the dispute before him was not one in regard to an essential service vide -- K.N. Padmanabha Ayyar Vs. State of Madras and Others, .

15. We must, therefore, hold that the learned Chief Presidency Magistrate was in error in coming to the conclusion that the accused had not committed an offence u/s 31(1). The appeal must, therefore, be allowed and the order of acquittal, except in regard to accused Nos. 2, 3 and 4, passed by the learned Chief Presidency Magistrate must be set aside and accused Nos. 1 and 5 must be convicted of the offence u/s 31(1);

Unfortunately, the Andheri-Moral-Kurla Bus Service Company, accused No. 1, audits manager H. M. Khan, accused No. 5, appear to be habitual offenders in respect of the provisions of the Industrial Disputes Act. There are as many as seven previous convictions recorded against them. These convictions are admitted before us" by Mr. Jaisinghani. It is to be deplored that an industrial concern should be guilty of having committed as many as eight offences since 1950.

It must be realised by all employers and managers of industrial concerns that their co-operation is essential to bring about an atmosphere of industrial peace in this country and -they must loyally and faithfully abide by the provisions of- the Industrial Disputes Act which has been enacted in national -interest. The object of the Act is obviously beneficent. It is to assist the industrial production of the country and all the provisions are based on the assumption wisely and rightly made by the Legislature that for assisting industrial production, industrial peace is of paramount importance. That is why we express our disapproval of the conduct of accused No. 1 and accused No. 5 in that they are found to have committed contraventions of the provisions of the Act as many as eight times during the short period of five years. In order to express our disapproval of this conduct, we think it necessary to impose upon accused No. 1 the penalty or a fine of Rs. 250 and upon accused No. 5 the penalty of a fine of Rs. 50. In respect of the other accused, namely accused Nos. 2, 3 and 4, they pleaded that they were not concerned with the direct management of the concern from day to day.

They also alleged that they had executed a power-of-attorney in favour of accused No. 1 and accused No. 5 corroborated this plea and produced the power-of-attorney. It therefore appears that accused Nos. 2, 3 and 4 were not in actual management of the concern and their plea that the contravention has taken place without their knowledge or consent can, therefore, be accepted as proved. "In that view of the matter, the order of acquittal passed in their favour would be" confirmed.

16. Appeal allowed.