

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7158 OF 2020

M/s. Premium Transmission Pvt. Limited
(through its Authorized Signatory)
Plot No. B-36, five Star Shendra MIDC,
Aurangabad.

..PETITIONER

-VERSUS-

01. The State of Maharashtra.
(Through its Dy. Labour Commissioner,
Aurangabad)
Office of Dy. Commissioner of Labour,
Maljipura, Station Road, Aurangabad.
02. The Conciliation Officer under IDA 1947
and Assitt Commissioner of Labour,
Maljipuar, Station Road, Aurangabad.
- 03 Aurangabad Mazdoor Union (CITU)
(through its President / General Secretary)
Citu Bhavan, near Shivaji High School
Ajab Nagar, Khokadpura,
Aurangabad 431001.

..RESPONDENTS

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Mr.B.R. Kawre, Advocate i/by Mr.Nitin Dhoble, Advocate for
the petitioner.
Mr.V.M. Kagne, A.G.P. for respondent Nos.1 & 2/State.
Mr.T.K. Prabhakaran, Advocate i/by Mr.A.S. Kulkarni, Advocate
for respondent No.3.

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CORAM: RAVINDRA V. GHUGE

&

SANJAY A. DESHMUKH, JJ.

Reserved on :- 15th February, 2023

Pronounced on :- 31st March, 2023

JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this petition, the petitioner Management has put forth prayer clauses (b), (c) and (d) as under:-

- “(b) *Issue writ or writ of mandamus or any other appropriate writ or directions or writ of mandamus in like nature and quash and set aside Conciliation admission order dated 11-06-2019 and further entire Conciliation proceedings held by the Respondent No. 2 along with its failure report dated 22-01-2020.*
- (c) *Be quash and set aside the Order dated 28-01-2020 and further notification of Reference dated 28-01-2020 issued by the Respondent No. 1 referring the dispute before Industrial Tribunal, Aurangabad for adjudication and further registration of Reference IT/01/2020 by the Industrial Tribunal.*
- (d) *Pending hearing and final disposal of Petition Order and Notification dated 28-01-2020 issued by respondent No. 1 and pending reference No. IT/01/2020 before Industrial Tribunal may be stayed.”*

3. After having heard the extensive submissions of the learned advocates for the Management and the Union and the

learned AGP on behalf of the office of the Deputy Commissioner of Labour and the Assistant Commissioner of Labour, the learned advocates expressed a desire of tendering their written notes of submissions.

4. The written notes of submissions of the petitioner Management dated 01.02.2023, are reproduced verbatim as under:-

- “01. The Petitioner is an incorporated Company, registered under the Companies Act as well as other applicable statutes. It has a factory situated at Plot No. B-36, Five Star Shendra, MIDC., Aurangabad. The Dy. Commissioner of Labour, Aurangabad Division, Aurangabad is acts on behalf of Govt. of Maharashtra and appropriate Govt. The Res. 2 is Conciliation Officer appointed under the Industrial Dispute Act 1947.*
- 02. The Petitioner is engaged in the business of manufacturing of wide range power transmission engineering products, it includes Worm Gearbox, Helical & Bevel Helical Gearbox, Vertical Coal Pulverizing Mill Gearbox, Planetary Gearbox, Helical & Worm Geared Motors, Bevel Helical Cooling Tower Gearbox, Fluid Coupling both Constant and Variable Speed, Extruder Gearbox, Elevator Machines etc. It's major supply is to industrial Engineering Customers.*
- 03. That, to achieve ordered products, the Petitioner using modern technology by installing highly technological and latest advanced Computer numerical control machines. To operate such CNC machines, the petitioner appointed about 118 highly*

trained manpower. The Factory Manager is appointing and disciplinary authority to the employees employed by the Company.

- 04. That other than regular production activities or incidental work registered Labour Contractor under Contract Labour (R & A) Act 1970 are appointed. The Labour Contractors are independent establishments within the meaning of various Labour statutes like EPF & MP Act, ESIC, Professional tax, GST and other statutes. The Res. 2 being registered authority and in that capacity issued Registration Certificate and Licenses in the name of Petitioner and contractors to engage Contract Labourers. It means the Petitioner and Contractor are permitted to appoint labours on the terms as envisaged in the license.*
- 05. Om Sai Manpower Services Pvt. Ltd., and M/s. Aurangabad Multi Services, independent labour Contractors were appointed to supply Labours as per agreement. The work allotted to Contractors or performed by its labours are not permanent or perennial in nature. The Petitioner and contractor have signed agreements from time to time for specific period are extended till 31-12-2020. The Contractors were required to supply requisite manpower in terms of License and agreement and perform work. The Contractors' manpower use to vary from day to day basis based on work exigency, requirements and fluctuation in production.*
- 06. The Contractors are making statutory compliances like remitting PF and ESIC Contribution, GST & PT Payment. They are independent Assessee of Income Tax and independent establishments within the meaning of various Acts. On the base of registrations as well as terms of Contract the Contractor uses to extend the statutory benefits to its employees. They use to appoint their*

workforce by following its due selection procedure. They issue appointment orders, identity cards, certificates under the ESIC Act, EPF number to its employees. The benefits of Shoes, uniform, leave & bonus are being extended. The Contract Employees are transferable from one associate industrial customer to another as per convenient to Contractor. The Contractors have ultimate supervision and control over its employees.

- 07. The Contractor use to raise monthly bills of its rendered services, whereas monthly bill includes, details of manpower, ESIC/EPF employers share of contribution, GST / Service Tax and service charge. The bills are released after due verification of employee's payment as well as other statutory payments subject to Tax deduction at source (TDS). The Contract labourers have not disputed their appointment, Supervisions' & control, salary / wages and other terms of employment issued by the Contractor.*
- 08. On 15-06-2019 surprisingly the petitioner got a letter from Res. 2, informing that on 11-06-2019 they admitted demand in Conciliation as mentioned in representation. The Res. 2 without notices or in absence of demand notice or its pre-conciliation under pressure of union admitted the dispute in Conciliation on very day of representation. While admitting the Dispute in conciliation the Res. 2 failed to verify, whether demand notice is served to the Petitioner?, whether the Union complied basic provision of Trade Union Act?. The Res. 2 treated direct relationship of Contract Laboures with the Petitioner. At the initial stage list of 65 people were shown and further it has been shown as 132 without any amendment or legal addition.*
- 09. That on 18-06-2019 the Res. 3 issued a letter informing formation of union and acceptance*

of union membership by Contract Labours. The so called back dated demand notice and admission of dispute is shown as 11-06-2019, it means in contravention to the basic provisions of Industrial Dispute Act and without following due procedure of law the dispute came to be admitted.

Under chapter Part III of Industrial Dispute (Bom) Rules 1957 Power, procedure and duties of Conciliation officers, Board, Courts, Labour Courts and Arbitrators are prescribed:

Rule 11 : Conciliation Proceedings in other cases.

Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which relates to a public utility service but no notice of strike or lock-out is given under rule 76 or rule 77 or where the industrial dispute does not relate to a public utility service, and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

The same ratio is confirmed by the various High court, the details are as under :

18.10 Rule 11 of the said Rules in this regard provides that in such a case if the conciliation officer considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein. Commencement of conciliation proceedings in all cases not covered by sub-section (1) of

Section 20 would therefore have to be held from the date where the formal intimation in writing has been given by conciliation officer declaring his intention to commence the conciliation proceedings with effect from such date as may be specified. It can therefore, be seen that conciliation proceedings would commence when the conciliation officer gives a formal intimation in writing to the parties concerned declaring his intention to commence the conciliation proceedings with effect from such date as may be specified therein. It is only for the cases covered under Sub-section (1) of Section 20 that a deeming fiction is created to provide that conciliation proceedings shall be deemed to have commenced on the date on which notice of strike or lock out under Section 22 of the Industrial Disputes Act is received. In the present case admittedly, no such notice under section 22 was received. Again admittedly, conciliation officer never issued any formal notice under Rule 11 of the said Rules expressing his desire to commence the conciliation proceedings. In that view of the matter in my opinion conciliation proceedings had never commenced before the conciliation officer which would require the employer to follow the procedure laid down under Section 33 of the Industrial Disputes Act.

Gujarat Ambuja Cement Pvt. Ltd. V/s. U.B.Gadhe Reported in 2006 I GLR 269(Guj HC)

12. *From the provisions of the Act relating to conciliation as excerpted in para-8 above, conciliation proceeding is a proceedings 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 provide 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 Management. Shambu Nath Goyal v. Bank of Baroda (1978-I-LLJ-484).....

Mico Employees Association V/s. State of Karnataka Reported in 1987 (I) LLJ 300 (Kar HC)

10. *The appropriate Govt. by its order framed Conciliation Manual and directed to department to adhere such procedure. The manual is intended to be precise rules of reference for the Conciliation officer while dealing with Conciliation proceedings under ID Act 1947. It laid down detail procedure while conducting the Conciliation proceedings and attempts to present a synthesis of the entire confidential and other Government directive existing up-to-date on the subject, as also the various requirement of the relevant provision of law in this regards.*

The Government of Maharashtra formulated certain procedure and accordingly issued guidelines to Conciliation Officers related to conciliation proceedings or admission of dispute in conciliation, in the said procedure before admission of dispute is specified as:

Clauses under Manual of Conciliation officers :

19. *In regard to disputes in concerns which are not Public Utility Services within the meaning of the Act, the admission of disputes*

in conciliation is discretionary and not obligatory, as in the case of Public Utility Services. Normally such disputes are admitted in conciliation after preliminary scrutiny and enquiries, the purpose of which is, broadly, to see whether the subject-matter of the dispute and its sponsorship is such that the admissibility of the dispute in question would not be in contravention of any statutory provisions and would not militate against any of the directives, confidential or otherwise, issued by, or under the instructions of the Government from time to time.

20. The points in regard to which preliminary scrutiny and enquiries are required to be made are stated below seriatim.

Points for preliminary scrutiny and enquiry

<i>Establishment of the existence of the Dispute and its Amenability to State Govt. Machinery.</i>	<i>(1) Whether the concern to which the dispute pertains is within the jurisdiction of the State Government machinery or the Central Government machinery ?</i> <i>(2) (a) What is the total complement of the workers in the concern ?</i> <i>(b) What occupation/sections/departments are affected by the dispute and how many employees in each occupation / section /department are affected by the dispute?</i> <i>(c) Which categories (such as workmen/clerks, etc.,) of staff are specifically affected by the dispute?</i> <i>(3)(a) Were the demands under dispute served on the opposite party by the party sponsoring the dispute and if so, whether sufficient time was allowed to the other party to consider the demands?</i> <i>(b) Were mutual negotiations held and if so, with that results?</i> <i>(c) Is there evidence to indicate that despite sufficient time given, the employer is not disposed to consider the workmen's demands?</i>
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<i>Its sponsorship</i>	<i>(4) In the case of a dispute sponsored by a trade union on behalf of the workmen</i> <i>(a) Is the Union registered? If so, the number and date of registration of the said union</i> <i>(b) Whether the union's Constitution allows enrolment of numbers from the industry affected by the dispute?</i>
<i>It's Contd. Sponsorship</i>	<i>(c) What is the live membership of the union</i> <i>(i) among the workmen of the entire concern ?</i> <i>(ii) among the workmen directly affected by the dispute ?</i> <i>(5) If the workmen are not represented by a trade union, whether the representatives of workmen who have brought the dispute have been authorized in the manner prescribed under Rule 85 of the Industrial Disputed (Bombay) Rules ?</i>

24. The next point that is to be seen in this connection is that whether the demands under dispute were served on the opposite party by the party sponsoring the dispute and if so, whether sufficient time was allowed to the other party to consider the demands. In cases where this has not been done, the party sponsoring the dispute should be advised to do it in the first instance. If the trade union does not receive satisfactory response from the employer within a fortnight of the service of the demands on the employer, it may be assumed that the employer is not disposed to discuss the matter mutually with the union and it may be taken that the existence of the dispute is established. If it is disputed by the employer that the union had not served the demands on him, the union should be asked to produce evidence in regard to the service of the demands such as acknowledgment receipt from the employer, certificate of posting, etc.

44. If on the basis of preliminary enquiries made by him the Conciliation officer finds that the dispute or a particular demand involved in it is not admissible in conciliation on account of certain statutory provisions or requirements of the various directive, as discussed above, the Conciliation Officer may inform the trade union that he would not be able to take the dispute/demand in conciliation.

11. Those certain methods of procedure of preliminary enquiries are formulated. That the preliminary enquiries are of a great importance and following procedure should be followed for conducting the preliminary enquiry:

(a) Immediately on receipt of a communication requesting intervention in the dispute from a Trade Union.

(b) On receipt of the communication should be acknowledged within 7 days, stating that the matter is under consideration.

(c) In the above acknowledgment letter the union should be called upon to produce its membership records. (Membership register, Counterfoil of receipt of subscription to establishment its latest live membership among the workmen affected by the dispute not later than a week).

12. That before initiating proceeding or preliminary scrutiny, enquiry the Conciliation Officer should verify that where the demand under dispute is served on the Opposite party by the party sponsoring the dispute and if so, whether sufficient time was allowed to the other party to consider the demands. Sufficient time required to be given to the employer to dispose the worker or union demands. That the so called dispute is sponsored by the Res. 3 Trade Union on behalf

other Contract Labourers, then the Conciliation Officer should have to verify Union Registration, Union Constitution, its provision related to enrolment of members or affected person, live membership of the union among the workmen of the entire concern. But herein the Conciliation officer failed to ensure this procedure and demands raised in representation were directly admitted in conciliation.

13. *When the conciliation officer verifies or ensures the documents and personal hearing before admitting the dispute in Conciliation. The Conciliation Officer should have to ensure that whether the demands under the dispute are properly served on the opposite party by the party sponsoring the dispute and if so, whether sufficient time was allowed to the other party to consider the demand. In case where this has not be done the party sponsoring then dispute should be advised to do it in the first instance. If the Trade Union does not get satisfactory response from the employer within a fortnight of the service of the demand, it may be assumed that the employer is not willing to discuss with the union and it may be taken that the existence of the dispute is established. If it is dispute that the employees/union had not served the demands on him, the union should be asked to produce evidence in regard to the service of the demand such acknowledgment from the employer, certificate of posting etc.*

14. *The object of the enquiry on the points under this head is to verify whether the trade union which sponsored dispute is genuine and not spurious and that it generally command the backing of the workers of the concern whom the dispute affect as a class. The dispute should not be admitted in conciliation:*

(a) If employees on whose behalf it has been sponsored are not workmen within the mean of the Act.

(b) If there is a subsisting settlement or award covering the same or substantially the same as any of the demand now raised.

(c) If any of the demand can be secured by recourse to the other existing labour legislator.

The Union should also be informed that to submit the required information in respect of the dispute raised by it and if the union failure to submit such information, the dispute should not be taken in conciliation.

15. *On 19-06-2019 the Petitioner was appeared before the Conciliation Officer and requested to call the order of admission of conciliation. It was informed that before going into the merit or demerit of the dispute they required to ascertain legal status of union, for that purpose certain documents were demanded i.e. demand notice related to alleged dispute, pre conciliation proceedings, notice before admission of dispute in Conciliation, office order for admission of dispute in Conciliation and other documents related to union locus and membership etc. But in absence of verification of union locus standi, membership, demand notice the conciliation officer blindly admitted the representation in conciliation without notice related to 63 persons. as shown in Annexure A.*
16. *The Res. 2 overlooked about the basic procedure and unilaterally admitted the dispute in Conciliation without demand notice or notice. The failure report dated 22-01-2020 was submitted to Res. 1. and Res. No. 1 blindly referred the dispute vide its order No. DYCL/AWB/IR/ 886 dated 28-01-2020 before Industrial Tribunal for adjudication.*
17. *It is clear that the R-3 did not raise demands with the management and only representation was sent to Res. No 2 . Therefore it cannot be termed as demand or industrial dispute. An*

industrial dispute must be a dispute between employer and employee. A mere representation to Assistant Labour Commissioner without a demands/dispute with their employer cannot become an industrial dispute.

..... If no dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employers, employers and workmen, and workmen and workmen. A mere demand to a Government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute. Consequently, the material before the Tribunal clearly showed that no such industrial dispute, as was purported to be referred by the State Government to the tribunal, had ever existed between the appellant Corporation and the respondents and the State Government, in making a reference, obviously committed an error in basing its opinion on material which was not relevant to the formation of opinion.

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Sindhu Resettlement Corporation Ltd. V/ s. Industrial Tribunal, Gujarat, Reported 1968 (16) FLR Page No.307:1968 (I) LLJ 834 (SC)

Para : 10. The next contention urged on behalf of the petitioner is that the reference itself is incompetent as no industrial dispute existed between the parties prior to the reference. According to the learned Counsel for the petitioner unless a dispute is raised before the management, it cannot acquire the character of an industrial dispute. Reliance in support of this proposition was made upon the decision of the Supreme Court in the case of Sindhu Resettlement Corporation Ltd. v. Industrial

Tribunal of Gujarat (AIR 1968 Supreme Court 529). It is necessary therefore to consider the facts of that case decided by the Supreme Court. In that case, Sri Ambwaney being an employee of the appellant-company was transferred to the subsidiary company by the principal company with his consent and he received retrenchment compensation from his new employer, when his services were terminated by the subsidiary company. Thereafter the respondent No. 3 demanded retrenchment compensation from the appellant company. This being refused his case was taken up by the union which asked for the payment of retrenchment compensation. After the Conciliation proceedings continued for some time, on the report of the Conciliation officer the Government of the State of Gujarat referred the dispute under Section 10 (1) of the Act for adjudication. The dispute referred related to the question of reinstatement of the workmen in the service of the appellant-company. The Supreme Court on these facts upheld the contention of the appellant that no such dispute about re-statement was raised before the management and hence the State Government was not competent to refer a question of reinstatement as an industrial dispute for adjudication by the Tribunal. The Supreme Court "noticed that what was claimed before the management of the appellant-company was payment of retrenchment compensation and at no time any dispute for reinstatement was raised The Supreme Court further noticed that although the Conciliation officer in his report under Section 12 (4) had stated that an industrial dispute did exist relating to the reinstatement of the workmen concerned, when the dispute came up for adjudication before the Tribunal, the evidence produced clearly showed that no such dispute had ever been

raised by the workman or the union with the management. Under these circumstances it has been held that an industrial dispute as defined must be a dispute inter alia between employer and workmen. If no dispute at all has been raised by the workmen with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. A mere demand to a Government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute. In view of the above decision of the Supreme Court, in my view, the workmen must first raise a demand on the management and in the absence of any such prior demand, there cannot be an industrial dispute which can be said to arise and exist. Even if a demand is made to a Conciliation officer and the communication by him to the management cannot constitute an industrial dispute. This view is supported by the decision of the Delhi High Court in the case of Fedders Llyod Corporation (P) Ltd. v. Governor, Delhi (AIR 1970 Delhi 60).

Messrs Andrew Yule & Company Ltd. V/s. Fifth Industrial Tribunal of West Bengal, Reported in 1974 Cal LJ 335

16. It is also clear from the pleadings before this Court that there is no averment to the effect that the Conciliation Officer had given an intimation fixing a date for commencement of the conciliation proceedings. The language of Rule 23 is unambiguous and a duty is cast upon the Conciliation Officer to give a formal intimation of his intention to commence the proceedings and also to set down the date from which such proceedings will commence. In the absence of such notice, the conciliation proceedings

cannot be deemed to have commenced.

17. The learned single Judge concedes that there is a dispute as to whether the Conciliation Officer issued notice to the authorities to submit the statements and admittedly the records had not been produced before the learned Single Judge. While so, the learned single Judge ought not to have held that merely because a number had been given to the proceedings, the proceedings had commenced. Even assuming that the management had been called upon to offer their remarks on the petition filed by the employee that would not mean that conciliation proceedings had commenced. As argued by the learned counsel for the appellant, the Act clearly gives the Conciliation Officer a wide discretion as to whether he should intervene in matters relating to non-public utility service. For this purpose, he can even hold a meeting of the representatives of both the parties either jointly or separately. He can adopt all means that are proper to satisfy himself as to the existence of industrial dispute. Unless a date is specified by him for commencement of proceedings, we cannot assume that the proceedings have commenced. In fact Rule 23(1) states that it is only with effect from that date, that the proceedings will commence. If, in fact such date had been given, the third respondent viz., the worker, would have brought to the notice of this Hon'ble Court that a date has been specified by the Conciliation Officer for commencement of proceedings. It has not been done in the instant case. When the Rules are clear, that the Conciliation Officer has a duty to set down a date for commencement of Conciliation proceedings, it is neither possible nor correct for this Court to assume that the Conciliation proceedings have commenced. Before commencement of Conciliation

proceedings, the Conciliation Officer has on a perusal of the records before him found that he had no jurisdiction to decide the dispute, since the Appropriate Government was not the State of Tamil Nadu. Therefore even at the threshold the matter had ended.

The Management of Menon Pistons Pvt. Ltd., Shirol Kolhapur V/s. The Labour Officer II, Madras, Reported in 2000-3-LW.71(Mad HC)

18. *The respondents wrongly came to an opinion that an industrial dispute did exist. The Ld. Industrial Tribunal registered the reference as Ref. (IT) No. 01/2020 but till this date the Res. 3 have not taken any steps for submission of statement of claim. Since March 2020 no contract labour as shown in the dispute is working in the factory. The Petitioner is aggrieved on unilateral decision of admission of dispute in conciliation without demand notice, its failure report and referring the dispute for adjudication before the Industrial Tribunal. Therefore it may be quashed and set aside with appropriate directions.”*

5. The written notes of submissions tendered by the learned advocate for respondent No.3/Union, dated 01.02.2023, are reproduced verbatim as under:-

“1. Industrial Dispute and powers of Conciliation Officer/Appropriate Government:

- 1.1. The grounds raised in the Petition are inconsistent with the settled position of law governing the field of taking cognizance of an “industrial dispute” for a tri-partite settlement through conciliation and on its failure for compulsory adjudication by reference of the Government*

to an industrial adjudicator.

1.2. The Petitioner's contention that the Conciliation Officer could not have initiated conciliation without there being a prior demand on the employer by the workmen and rejection by the former. The sum and substance is or the contention there cannot be an "industrial-dispute", unless there is a "demand" by one and rejection by others does not hold any water.

1.3. In fact, there is no such procedure as "admission" of industrial dispute for conciliation. Sections 11 and 12 of the Industrial Disputes Act, 1947 read-with Rule-11 of the Industrial Disputes (Bombay) Rules, 1957 empower the Conciliation Officer to initiate the Conciliation even when there is an apprehended industrial dispute. A written demand from the workmen is not a sine qua non for invoking the powers by Conciliation Officer under Section 11(2) and 12(1) and for the Government for making a reference of the dispute for adjudication under Section 10(1) of ID Act. A prior failure of Conciliation is not mandatory for invoking Section 10(1) by the Government. of the Act even without a prior failure of conciliation. [Ref.: Shambu Nath Goyal Vs. Bank of Baroda – 1978 (2) SCC 353].

1.4. It is not the case of the Petitioner that there is no industrial dispute between the parties and what is referred in not an industrial dispute. That per-se is sufficient to non-suit the Petition.

1.5. In the instant case, a written demand was placed before the Conciliation Officer, in which the sham and bogus contract between the employer and name-lenders and serious apprehension of loss of employment by the workmen are raised by the union. It is also indicated that their direct efforts for such oral demands did not bear any fruits. If cognizance of the industrial dispute is not taken by the Conciliation Officer or the Government, there would have been serious ramifications, of loss of employment. The plight of the workmen would be falling

from frying pan to fire. Instead of getting better conditions of service, the workmen would end-up losing whatever they have. The mischief cannot be remedied by such an approach.

1.6. The Petitioner is determined not to settle the demands espoused by the Union relating to 136 workmen. The only recourse is adjudication. The present Writ Petition is an attempt to sabotage and undermine the protection u/S. 33(1) of the ID Act. The inbuilt mechanism of not to cause any more deterioration of industrial peace and to maintain status-quo by the act of parties during the pendency of conciliation/adjudication, needs to be preserved by dismissing the Petition.

1.7. The Petitioner did nothing for settlement despite best efforts made by the Conciliation Officer. The intention of the Petitioner is clear, it did not want to settle the dispute, but wanted to dispense with the service of workmen en-mass. The Petitioner remained passive for 13 dates spreading over 6 months (11-06-2019 to 22-01-2020) during conciliation. The Government was left with no option but to refer the matter for adjudication to the Industrial Tribunal.

1.8. The Petitioner wants assistance of the Hon'ble Court to circumvent the rigors of Section 33 of the Industrial Disputes Act by getting the conciliation and the reference orders quashed. That is the discreet and oblique motive for filing the instant Writ Petition. The Petitioner wants to come out of the fait-accompli of its violating Section 33(1) of the Industrial Disputes Act, 1947 by annulment of the Conciliation Proceedings and the Reference Order. It wanted to perpetuate the palpable injustice inflicted upon the affected workmen at-large, who are 136 in number. The Petition, therefore, deserves to be dismissed it being tainted with malafides.

**2] SUPPRESSION OF MATERIAL FACTS –
MALAFIDE ACTION OF FILING WRIT PETITION:**

- 2.1 The Petitioner did not come before the Hon'ble Court with clean hands. Serious prejudice has been caused to 136 workmen and the Union owing to the conduct of the Petitioner in violating Section 33(1) of the Industrial Disputes Act, 1947. The Petitioner has suppressed the fact that it refused work and wages to 136 workmen covered by the reference, during the adjudication is in progress. The Petitioner did palpable injustice to the workmen by throwing them to the streets and by subjecting them to starvation.*
- 2.2 One the contravention of Section 33 of the Industrial Disputes Act, 1947 by the Petitioner from 18-04-2020, (the industrial dispute has been pending adjudication from 28-01-2020) the Union and the Workmen had filed Complaint (ULP) Nos. 64/2020, Complaint (ULP) No. 106/2020 and Complaint (ULP) No. 107/2020 before the Industrial Court, Aurangabad under Item 9 of Schedule IV of the MRTU and PULP Act. After receipt of the notice of Complaint (ULP) No. 64 of 2020 and appearance before the Hon'ble Industrial Court, the Petitioner ventured to challenge the Conciliation, Failure Report and Order of Reference through the instant Petition. This fact is suppressed by the Petitioner.*
- 2.3 The Complaints filed under MRTU and PULP Act are dismissed by this Hon'ble Court on the ground that the Industrial Court has no jurisdiction under the said Act to entertain the Complaint of the workmen, on the face of disputed employer-employee relationship. [Ref. Order dated 18-03-2021 passed by the Hon'ble High Court in WP/8080/2020], which was confirmed in SLP No. 8196/2021 by the Supreme Court through Order dated 05-07-2021*
- 2.4 Thereafter, the Union and affected workmen filed Complaint (IT) No. 01/2022 under Section 33-A of the Industrial Disputes Act before the Industrial Tribunal, Aurangabad. The Industrial Tribunal vide Order dated 17-01-2023 allowed Exh. U-2 in the said Complaint (IT) No. 1/2022 and directed the Petitioner-Employer to allow the workmen to resume the work and pay them regular wages. The Petitioner wants to sabotage the relief so granted in Complaint (IT) No. 1/2022 by seeking to quash the main industrial adjudication. [Ref.:*

Order dated 17-01-2023 passed below Exh. U-2 in Complaint (IT) No. 1/2022 and below Exh. C-2 in Complaint (ULP) No. 4/2023].

2.5 The Petitioner has also filed Complaint (ULP) No. 4/2023 before the Industrial Court, Aurangabad against the Respondent-Union and its member for injunction under Schedule III of the MRTU and PULP Act. The application of for interim relief below Exh. C-2 in the said Complaint is rejected by the I/c. Industrial Court, Jalna on 17-01-2023.

3. DISPUTES OF EMPLOYER- EMPLOYEE RELATIONSHIP :

3.1 It is now well settled that the issue of disputed employer-employee relationship has to be resolved by adjudication under the Industrial Disputes Act. This dispute cannot be resolved in conciliation. The Conciliation is a futile exercise. In such cases, the Government shall directly invoke its jurisdiction under Section 10(1) of the ID Act and refer the matter for adjudication. The Government should be circumspect and vigilant to act promptly and instantaneously on such occasions. Its failure shall affect a large number of workmen with serious consequences. In this case the Conciliation Officer and the Government is to be appreciated for their prompt action, which is in tune with the statutory mandates.

3.2 In view of a catena of judgments that the Courts under the MRTU and PULP Act do not have jurisdiction to adjudicate employer-employee issue, the workmen have no choice but to proceed under the Industrial Disputes Act. Raising a demand directly on the employer for taking them on its muster roll as its employees would result in instant termination of employment and the claim of absorption and permanency of those workmen covered by a sham and bogus contract shall be obliterated. If so terminated, the only recourse

would be to go first under Section 2-A of the ID Act claiming reinstatement. That means the workmen covered under a sham and bogus contract, can never raise an industrial dispute under Section 2(k) of the ID Act. At the behest of employer, every attempt to raise an industrial dispute will get frustrated and substantial claim of the workmen of absorption in direct employment shall ever remain an evasive dream like a mirage. A beneficial legislation cannot visualize such situation.

3.3 The above argument is fortified by the observations of the Supreme Court in **Vividh Kamgar Sabha Vs. Kalyani Steel [(2001) 2 SCC 381]**. In para. no. 5 it is observed that;

“... If there is dispute as to whether the employees are employees of the company, then that dispute must first be got resolved by raising a dispute before appropriate forum”.

So also in **Cipla Ltd. Vs. Maharashtra General Kamgar Union and Ors. [(2001) 3 SCC 101]** in para. no. 8 it is observed that;

“... That exercise of repudiation of the contract with one and establishment of a legal relationship with another can be done only in a regular Industrial Tribunal/Court under the ID Act”.

3.4 In the above circumstances, It is implied that Supreme Court did not visualize that situation of raising a demand on one who pretends that the workmen are not his but of another, as in the usual case of undisputed and indisputable employer-employee relationship. On the other hand the Supreme Court mandated that, the said issue be directly referred to the industrial adjudicator, even giving a go-bye to the conciliation.

3.5 The Petitioner has already filed its written statement before the Industrial Tribunal and the parties have

joined issues. The Petitioner cannot be permitted to short-circuit the proceedings before the Industrial Tribunal through the present Writ Petition.

3.6 In the above circumstances, the Appropriate Government has rightly invoked its jurisdiction under Section 10(1) of the ID Act, by referring the claims to the Industrial Tribunal for adjudication, which is legal, proper, valid, and operative.

4. It is, therefore, prayed that, the instant Writ Petition may kindly be dismissed with heavy costs.”

RAISING OF THE DEMANDS

6. The Union submitted its demands and raised an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 (herein after referred to as the “the ID Act”), vide communication dated 11.06.2019, directly addressed to the Assistant Commissioner Labour, who is the Conciliation Officer at Aurangabad. It was specifically prayed that the demands be considered immediately and necessary steps be initiated for arriving at a settlement. The Conciliation Officer took up the seven demands mentioned in the letter, by passing an order on 11.06.2019 and issued a notice to the parties for commencing the conciliation proceedings on 19.06.2019. By the communication dated 18.06.2019, the Union informed the petitioner

Management that the workers working in it's factory had become the members of the Union. By an accompanying communication dated 18.06.2019, the Factory Committee comprising of seven persons, was intimated to the Management.

7. The Management responded to the specific notice of the Conciliation Officer, vide it's communication dated 19.06.2019. It was stated in the said communication that the Union has held an illegal gate meeting at the factory gates. The Union Board and it's flag have been fixed near the gate of the factory, without prior permission. The Conciliation Officer has blindly admitted the demands of the Union in conciliation without hearing the Management, which never received any demand notice from the Union or it's members prior to intimating the formation of the Union. The names set out in the letter of the Union are not the employees of the Management. No demands have been received from the Union. The Management, therefore, put forth a list of eleven documents and prayed to the Conciliation Officer that the Union be directed to supply these documents to the Management and thereafter, a detailed reply would be filed. Until then, the order admitting the demands in conciliation, be recalled.

8. The Conciliation Officer commenced the conciliation proceedings w.e.f. 19.06.2019. The conciliation proceedings were held on the following dates:-

“19.06.2019, 19.07.2019, 27.08.2019, 19.09.2019, 20.09.2019, 04.10.2019, 22.10.2019, 08.11.2019, 19.11.2019, 02.12.2019, 12.12.2019, 07.01.2020 and 21.01.2020”

9. As the Management was clearly against arriving at any settlement with the Union, the Conciliation Officer submitted a failure report on 22.01.2020 to the appropriate Government i.e. the Deputy Commissioner of Labour, Aurangabad, who has then referred the dispute to the Industrial Tribunal at Aurangabad which has been registered as Reference (IT) No.1 of 2020.

EMPLOYER-EMPLOYEE RELATIONSHIP

10. Insofar as this relationship is concerned, there is a clear dispute emerging from the record. The Management claims that the members of the Union are not its direct employees. They have been deployed by various contractors. The Union has contended that though they have been deployed through contractors, it is apparent from the record that several contractors have had contracts with the Management. After the expiry of the

contracts, some have left, to be succeeded by new contractors. These workers have been shown to be engaged through the succeeding contractor. As such, it is contended that though the contractors have come and gone, the workers are the same, who continued working with the same Petitioner Management in the same industrial establishment. This proves that the contracts are sham, bogus and an eyewash.

11. In *Kalyani Steel (supra)* and *Cipla Limited (supra)*, the Hon'ble Supreme Court has laid down the law that in the face of such a dispute, the concerned workers have to invoke the mechanism provided under the Industrial Disputes Act, 1947 and such an issue can be gone into and adjudicated upon by the Industrial Tribunal. Hence, in our view, the Industrial Tribunal, Aurangabad can decide the said issue in the pending reference case.

INITIATION OF CONCILIATION PROCEEDINGS

12. This issue is the main controversy in the present writ petition. To avoid repetition, we would summarize in the light of the contentions of the Management and the Union reproduced above, that the Management is aggrieved that the workers directly approached the machinery under the IDA Act in

order to resort to the conciliation proceedings.

13. The Management has relied upon the manual for conciliation officers published by the erstwhile 'Government of Bombay', which was published by the Labour and Social Welfare Department, Bombay in March, 1959. A foreword by the then Minister for Labour and Law, Shri Shantilal H. Shah, dated 13.05.1959, mentions that the Bombay State was a pioneer in the system of conciliation, which began with the Bombay Trade Disputes Conciliation Act, 1934. Over a period of 25 years, the conciliators have developed practices and procedures and had built up traditions, which have been useful in the settlement of trade disputes. Considering the statistics as regards the number of disputes being 13598, out of which, 4136 were not pursued, 4677 were settled and 3964 conciliations resulted in failure, the concerned Minister had several rounds of discussions with the conciliation officers and also held a conference of conciliation officers at Poona in June, 1958. The accumulated experiences were noted and the manual was introduced for the guidance of future conciliation officers.

14. It would be an advantage to refer to the relevant provisions of the ID Act while considering the issue raised by the

Management before us. Sections 2(d), 2(e), 2(k), 10(1), 11, 12, 20, 21 and 38, of the ID Act read as under:-

- “2. *Definitions- In this Act, unless there is anything repugnant in the subject or context,--*
- (d) *“conciliation officer” means a conciliation officer appointed under this Act;*
- (e) ***“conciliation proceeding” means any proceeding held by a conciliation officer or Board under this Act;***
- (k) *“industrial dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”*
- “10(1) *[Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--*
- (a) *refer the dispute to a Board for promoting a settlement thereof; or*
- (b) *refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or*
- [(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or*
- (d) *refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:*

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court

under clause (c):]

Provided further that] where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.]”

- “11. Procedure and powers of conciliation officers, Boards, Courts and Tribunals.*
- [(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.]*
- (2) A conciliation officer or a member of a Board, [or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal] may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.*
- (3) Every Board, Court, [Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:--*
- (a) enforcing the attendance of any person and examining him on oath;*
 - (b) compelling the production of documents and material objects;*
 - (c) issuing commissions for the examination of witnesses;*
 - (d) in respect of such other matters as may be prescribed;*

and every inquiry or investigation by a Board, Court, [Labour Court, Tribunal or National Tribunal], shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

- (4) *A conciliation officer [may enforce the attendance of any person for the purpose of examination of such person or 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 award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), [in respect of enforcing the attendance of any person and examining him or of compelling the production of documents]].*

- [(5) *A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.*

- (6) *All conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).*

- (7) *Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.]*

- [(8) Every [Labour Court, Tribunal or National Tribunal] shall be deemed to be Civil Court for the purposes of [sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974)].]
- [(9) Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908 (5 of 1908).
- (10) The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.]”

“12. **Duties of conciliation officers.**

- (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.
- (2) 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.
- (3) If a settlement of the dispute or of any 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.
- (4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government **a full report** setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for

bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of **the report** referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

[Provided that, [subject to the approval of the conciliation officer,] the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.]”

“20. **Commencement and conclusion of proceedings.**

(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded--

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) 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 under section 17, as the case may be; or

(c) when a reference is made to a Court, [Labour Court, Tribunal or National Tribunal] under section 10 during the pendency of conciliation proceedings.

- (3) *Proceedings [before an arbitrator under section 10A or before a Labour Court, Tribunal or National Tribunal] shall be deemed to have commenced on the date or the [reference of the dispute for arbitration or adjudication, as the case may be] and such proceedings shall be deemed to have concluded 4[on the date on which the award becomes enforceable under section 17A.]”*

“21. *Certain matters to be kept confidential.*

There shall not be included in any report or award under this Act any information obtained by a conciliation officer, Board, Court, [Labour Court, Tribunal, Tribunal, National Tribunal or an arbitrator] in the course of any investigation or inquiry as to a trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through the evidence given before such officer, Board, Court, [Labour Court, Tribunal, National Tribunal or an arbitrator], if the trade union, person, firm or company, in question has made a request in writing to the conciliation officer, Board, Court, [Labour Court, Tribunal, National Tribunal or an arbitrator], as the case may be, that such information shall be treated as confidential; nor shall such conciliation officer or any individual member of the Board, [or Court or the presiding officer of the Labour Court, Tribunal or National Tribunal or the arbitrator] or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be:

Provided that nothing contained in this section shall apply to a disclosure of any such information for the purposes of a prosecution under section 193 of the Indian Penal Code (45 of 1860).”

“38. *Power to make rules.*

- (1) *The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.*
- (2) *In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--*
 - (a) *the powers and procedure of conciliation officers, Boards, Courts, [Labour Courts, Tribunals and National Tribunals] including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;*
[(aa) the form of arbitration agreement, the manner in which it may be signed by the parties, [the manner in which a notification may be issued under sub-section (3A) of section 10A,] the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;
(aaa) the appointment of assessors in proceedings under this Act;]
 - (b) *the constitution and functions of and the filling of vacancies in Works Committees, and the procedure to be followed by such Committees in the discharge of their duties;*
[(c) the salaries and allowances and the terms and conditions for appointment of the presiding officers of the Labour Court, Tribunal and the National Tribunal including the allowances admissible to members of Courts, Boards and to assessors and witnesses;]
 - (d) *the ministerial establishment which may be allotted to a Court, Board, [Labour Court, Tribunal or National Tribunal] and the salaries and allowances payable to members of such establishments;*
 - (e) *the manner in which and the persons by and to whom notice of strike or lock-out may be given and the manner in which such notices shall be communicated;*

- (f) *the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court, [Labour Court, Tribunal or National Tribunal];*
- (g) *any other matter which is to be or may be prescribed.*
- (3) *Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees.*
- [(4) *All rules made under this section shall, as soon as possible after they are made, be laid before the the State Legislature or, where the appropriate Government is the Central Government, before both Houses of Parliament.]*
- [(5) *Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in [two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]”*

15. Rules 11 to 13, 17 and 17A of the Industrial Disputes (Bombay) Rules, 1957, (the word “Bombay” is now replaced by the word “Maharashtra”), read as under:-

- “11. ***Conciliation Proceedings In Other Cases :-*** *Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which relates to a public utility service but no notice of a strike or lock-out is given under Rule*

76 or 77 or where the industrial dispute does not relate to a public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

11A. Powers To Transfer Conciliation Proceedings :-

- (1) If, for any reason, a vacancy (other than temporary absence) occurs in the Office of the Conciliation Officer, then, the Conciliation proceedings may be continued before another persons appointed as Conciliation Officer in his place, and such Conciliation Officer may proceed either de novo or from the stage at which the vacancy is filled.
- (2) Notwithstanding anything contained in sub-rule (1), the State Government or any other officer authorised by it in this behalf, may by order in writing transfer any proceeding pending before one Conciliation Officer to another and the Conciliation Officer to whom the proceedings are so transferred, may proceed either de novo or from the stage at which they were transferred.
- (3) Every order issued under sub-rule (2) shall be communicated to the parties concerned].

12. Meeting Of The Representative Parties :- The Conciliation Officer may hold a meeting of the representatives of both parties jointly or of each party separately.

13. Proceeding Of Conciliation Officer :-

- (1) The proceedings before a Conciliation Officer shall be held in camera.
- (2) The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.”

“17. Evidence :- A Board, Court, Labour Court, Tribunal or an Arbitrator may accept, admit or call for evidence at any stage of the proceedings before it or him, and in such manner as it or he may think fit.

17A. *Recording Of Evidence By Labour Court Or Tribunal :- The Labour Court or Tribunal, as the case may be, shall as the examination of each witness proceeds, make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Presiding Officer: Provided that the Labour Court or Tribunal, as the case may be, may where he considers necessary, so to do, in view of the nature of the particular industrial dispute pending before it follow the procedure laid down in Rule 5 of Order XVIII of the First Schedule to the Code of Civil Procedure, 1908].”*

[Emphasis supplied]

16. Section 10(1) enables the appropriate Government to refer the dispute to a board for promoting a settlement or to a court. Rule 11 of the rules, enables the Conciliation Officer to commence the conciliation proceedings by intimating the parties that he is beginning the conciliation from the date mentioned in the notice.

17. Section 12(1) indicates that the Conciliation Officer may hold conciliation proceedings in the prescribed manner. The words “*or where the dispute relates to a public utility service and a notice under section 22 has been given, shall*”, pertain to a dispute relating to a public utility service. As such, the earlier portion of Section 12(1) i.e. “*where an industrial dispute exists*

or is apprehended, the Conciliation Officer may,,” has to be read with the words *“hold a conciliation proceeding in the prescribed manner.”* Hence, it is only with regard to the dispute relating to a public utility service and a notice under Section 22 with regard to a strike or a lockout, that the Conciliation Officer is duty bound to hold conciliation proceedings on account of the word *“shall”*. In all other cases, the Conciliation Officer has to use his discretion to decide whether a conciliation proceeding has to be initiated or not. He is expected to exercise such discretion only with the intention of ensuring the a settlement is to be explored and while doing so, he has to keep the avowed object of the Act in focus, which is *‘An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes’*. He is not supposed to watch a situation escalate into a full blown industrial unrest. He is expected to act swiftly and ensure that an industrial unrest is prevented.

18. Shri Kawre, the learned Advocate for the Management, has canvassed that Section 12(1) is to be interpreted to mean that the Conciliation Officer has to first hold preliminary discussions before commencing the conciliation proceedings. He relies upon the judgment delivered by the

Madras High Court in *Management of Menon Pistons Private Limited vs. The Labour Court-II, Madras, 2000 (3) L.W. 71*.

19. We are of the view that the said judgment in Menon Pistons (supra), would be of no assistance to the Management since, firstly, the said judgment does not lay down the law that the Conciliation Officer has to initiate pre-conciliation meetings. There is no such provision in the ID Act which requires the said authority to convene pre-conciliation proceedings. Secondly, the said judgment was with regard to whether, a notice was issued by the Conciliation Officer to give a formal intimation of his intention to commence the proceedings. In the absence of such notice, the conciliation proceedings cannot be deemed to have commenced. In the instant case, it is undisputed that the Conciliation Officer has issued a notice dated 11.06.2019 to the Management to commence the conciliation proceedings from 19.06.2019 and the Management has also replied to the said notice vide its communication dated 19.06.2019.

20. Shri Kawre has then relied upon *Gujrat Ambuja Cement Private Limited vs. U.B. Gadhe, 2006 (1) GLR 269*. This judgment also does not assist the petitioner. The Gujarat High Court relied upon Rule 11 of the Industrial Disputes (Central)

Rules, 1957, which provides that the Conciliation Officer may hold a meeting of the representatives of both the parties, jointly or of each party, separately. Rule 12 prescribes that a Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit. He is expected to conclude the conciliation proceedings within 14 days, obviously to ensure that industrial unrest is avoided. In fact, the portion above paragraph 19 of *Gujrat Ambuja Cement Pvt.Ltd. (supra)*, reads as under :-

“9. As noted earlier Clause (e) of Section 2 of the Industrial Disputes Act defines term conciliation proceeding to mean any proceeding held by a conciliation officer or by Board under the Act. Sub-section (1) of Section 12 empowers the conciliation officer to hold conciliation proceedings under certain situations and mandates the conciliation officer holding conciliation proceedings wherein dispute relates to public utility service and notice under Section 22 of the Act has been given. For other cases, wherein the industrial disputes exist or is apprehended which either relates to public utility service, but notice under Section 22 has not been given or wherein such dispute does not relate to public utility service, the conciliation officer has a discretion whether to commence the conciliation proceedings or not.

1. Rule 11 of the said Rules in this regard provides that in such a case if the conciliation officer considers it necessary to intervene in the dispute, he shall give formal

intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein. Commencement of conciliation proceedings in all cases not covered by Sub-section (1) of Section 20 would therefore have to be held from the date where the formal intimation in writing has been given by conciliation officer declaring his intention to commence the conciliation proceedings with effect from such date as may be specified. It can therefore, be seen that conciliation proceedings would commence when the conciliation officer gives a formal intimation in writing to the parties concerned declaring his intention to commence the conciliation proceedings with effect from such date as may be specified therein. It is only for the cases covered under Sub-section (1) of Section 20 that a deeming fiction is created to provide that conciliation proceedings shall be deemed to have commenced on the date on which notice of strike or lock out under Section 22 of the Industrial Disputes Act is received. In the present case admittedly, no such notice under Section 22 was received. Again admittedly, conciliation officer never issued any formal notice under Rule 11 of the said Rules expressing his desire to commence the conciliation proceedings. In that view of the matter in my opinion conciliation proceedings had never commenced before the conciliation officer which would require the employer to follow the procedure laid down under Section 33 of the Industrial Disputes Act.”

21. This would indicate that the Conciliation Officer has the power to give a formal intimation in writing to the parties

concerned, declaring his intention to commence conciliation proceedings with effect from a particular date as may be specified therein. Commencement of the conciliation proceedings would be from the date specified in the notice by the Conciliation Officer declaring that the conciliation proceedings will be commenced from a particular date. This has been done by the Conciliation Officer in the instant case by issuing a notice dated 11.06.2019 informing the Petitioner Management as well as the Union that the conciliation proceedings would commence from 19.06.2019.

22. The Petitioner Management has then relied upon the judgment delivered by the *Karnataka High Court in Mico Employees Association vs. The State of Karnataka, 1987 (1) LLJ 300*. In the said judgment, the Karnataka High Court has relied upon the judgment delivered by the Honourable Supreme Court in *Shambu Nath Goyal vs. The Bank of Baroda, 1978 (1) LLJ 484 : (1978) 2 SCC 353* and has concluded that a mere placement of a 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 Management. In this context, the learned Advocate Shri Kawre has rightly contended

that the Management never received a charter of demands from the workers, prior to the demands being admitted in conciliation. Even before the Union intimated the Management on 18.06.2019, that a Union has been formed, the charter of demands was already served on the Conciliation Officer, who issued a notice dated 11.06.2019 indicating that the demands of the workers were being taken up in conciliation. The Management, therefore, contends that before it could accept or reject the demands, the Conciliation Officer had already admitted the said demands in conciliation. However, he concedes that the Management has rejected the demands of the Union outright and the matter is now subjudice before the Industrial Tribunal in a reference case, which was referred by the appropriate Government on the basis of the failure report.

23. The Petitioner has relied upon *Sindhu Resettlement Corporation Limited vs. Industrial Tribunal of Gujarat and others, 1968 AIR (SC) 529*. The facts from the said judgment, as indicated in paragraph 2, reveal that the dispute raised by the employee with the Management was confined only to compensation for retrenchment and did not relate to the validity of the retrenchment or reinstatement and, therefore, the

Government of Gujarat had no jurisdiction to refer the dispute to the Industrial Tribunal. Another issue raised was that since the validity of the retrenchment of the employee by the employer was not challenged, the Tribunal committed a manifest error in directing reinstatement, instead of awarding retrenchment compensation. It is in this context, that the Honourable Supreme Court concluded in paragraph 4 as under:-

“It was urged by Mr.Gopalkrishnan on behalf of the respondents that this Court cannot examine whether the Government, in forming its opinion that an industrial dispute exists, came to its view correctly or incorrectly on the material before it. This proposition is, no doubt, correct; but the aspect that is being examined is entirely different. It may be that the conciliation officer reported to the Government that an industrial dispute did exist relating to the reinstatement of respondent No.3 and payment of wages to him from 21.02.1958, but when the dispute came up for adjudication before the Tribunal, the evidence produced clearly show that no such dispute had ever been raised by either respondent with the Management of the appellant. If no dispute at all was raised by the respondents with the Management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employees, employers and workmen, and workmen and workmen. A mere demand to a Government, without a dispute being raised by the workman with their employer, cannot become an industrial dispute. Consequently, the material

before the Tribunal clearly show that no such industrial dispute, as was purported to be referred by the State Government to the Tribunal, had ever existed between the appellant Corporation and the respondents and the State Government, in making a reference, obviously committed an error in basing it's opinion an (sic on) material which was no relevant to the formation of opinion."

24. In the case in hands, the Union forwarded it's demands directly to the Assistant Commissioner (Labour), who is the Conciliation Officer under the ID Act, knowing fully well that the Management is totally against considering regularization of the contractual workers. The justification put forth by the Union is that, it has experienced in several factories that if the charter of demands on behalf of the workers is forwarded to the Management without referring them to the Assistant Commissioner (Labour), the Management terminates the contractual employees in order to render the workers to starvation and thereby increase the rigours of tardy litigation for the workers, who do not have the financial strength of litigating during unemployment.

25. The Assistant Commissioner (Labour) did not prematurely conclude that an industrial dispute exists, in order to forward a failure report to the Appropriate Government. Had this

been done without notice to the employer, it would have amounted to a patent illegality. What was actually done by the Assistant Commissioner (Labour) was that he took up seven demands mentioned in the demand letter dated 11.06.2019 tendered by the Union and issued a notice to the Management, immediately on 11.06.2019 informing that the conciliation proceedings would commence on 19.06.2019 at 4:00 pm. As such, the notice of the Assistant Commissioner (Labour) in his capacity of being a designated conciliation officer, was within the framework of Rule 11 of the 1957 Rules (reproduced above), which clearly indicates that after the Conciliation Officer receives any information about an existing or apprehended industrial dispute and he considers it necessary to intervene in the dispute, even when such dispute does not relate to a public utility service, he shall give formal intimation in writing to the parties concerned declaring his intention to commence the conciliation proceedings w.e.f. such date as may be specified therein.

26. He has specifically stated that demand Nos.(i) to (vii) mentioned in the demand letter are admitted in conciliation

and the conciliation proceedings would commence on 19.06.2019. His failure report dated 22.01.2020, after conducting the conciliation proceedings over a period of seven months, was tendered after all the demands of the workers were rejected by the Management. In fact, from the very first meeting in conciliation, the Management had rejected the demands of the Union. The Conciliation Officer has noted that the Management hardly showed any response to the demands of the workers and he was compelled to conclude the conciliation proceedings, after 7 months of negotiations. He could have done so in 14 days as prescribed, when the management had no desire to negotiate. Yet, he kept on trying for 7 months. Since the demands indicated an industrial dispute, he submitted his failure report. Thereafter, it was the appropriate Government, as defined under Section 2(a) of the ID Act, who is the Deputy Commissioner (Labour), who concluded that an industrial dispute exists and referred the said demands of the workers to the Industrial Tribunal. Accordingly, the Industrial Tribunal registered the same as Reference (IT) No.01/2020.

27. The Petitioner has relied upon the judgment delivered by the learned Single Judge of the Calcutta High Court

in *Messrs. Andrew Yule and Company Limited vs. Fifth Industrial Tribunal of West Bengal and others*, 1974 Cal LJ 335.

Reliance on this judgment is misconceived as the Calcutta High Court concluded that a reference can be made only if an industrial dispute existed relating to the reinstatement of the workmen concerned and the evidence produced clearly showed that no such dispute regarding reinstatement of the workmen was ever raised (*Sindhu Resettlement Corporation Limited* (supra)). Reference of an industrial dispute is a later stage which is necessarily preceded by conciliation proceedings.

28. The Madras High Court in *The Management of Menon Pistons Pvt. Ltd., Shirol, Kolhapur V/s. The Labour Officer II, Madras and others*, 2000-3-LW.71(Mad HC), has held in paragraph Nos.17 and 18 as under:-

“17. It is also clear from the pleadings before this Court that there is no averment to the effect that the Conciliation Officer had given an intimation fixing a date for commencement of the conciliation proceedings. The language of Rule 23 is unambiguous and a duty is cast upon the Conciliation Officer to give a formal intimation of his intention to commence the proceedings and also to set down the date from which such proceedings will commence. In the absence of such notice, the conciliation proceedings cannot be deemed to have commenced.

18. *The learned single Judge concedes that there is a dispute as to whether the Conciliation Officer issued notice to the authorities to submit the statements and admittedly the records had not been produced before the learned Single Judge. While so, the learned single Judge ought not to have held that merely because a number had been given to the proceedings, the proceedings had commenced. Even assuming that the management had been called upon to offer their remarks on the petition filed by the employee that would not mean that conciliation proceedings had commenced. As argued by the learned counsel for the appellant, the Act clearly gives the Conciliation Officer a wide discretion as to whether he should intervene in matters relating to non-public utility service. For this purpose, he can even hold a meeting of the representatives of both the parties either jointly or separately. He can adopt all means that are proper to satisfy himself as to the existence of industrial dispute. Unless a date is specified by him for commencement of proceedings, we cannot assume that the proceedings have commenced. In fact Rule 23(1) states that it is only with effect from that date, that the proceedings will commence. If, in fact such date had been given, the third respondent viz., the worker, would have brought to the notice of this Hon'ble Court that a date has been specified by the Conciliation Officer for commencement of proceedings. It has not been done in the instant case. When the Rules are clear, that the Conciliation Officer has a duty to set down a date for commencement of Conciliation proceedings, it is neither possible nor correct for this Court to assume that the Conciliation proceedings have commenced. Before commencement of Conciliation proceedings, the Conciliation Officer has on a perusal of the records before*

him found that he had no jurisdiction to decide the dispute, since the Appropriate Government was not the State of Tamil Nadu. Therefore even at the threshold the matter had ended.”

29. It is, therefore, seen that there were no pleadings before the Division Bench of the Madras High Court, which recorded that *“there is no averment to the effect that the Conciliation Officer had given an intimation fixing a date for commencement of the conciliation proceedings. The language of Rule 23 is unambiguous and duty is cast upon the Conciliation Officer to give a formal intimation of his intention to commence the proceedings and also to set down the date from which such proceedings will commence. In the absence of such notice, the conciliation proceedings cannot be deemed to have commenced.”* We are in agreement with this conclusion. Though the law crystallized by the Honourable Supreme Court in ***Sindhu Resettlement Corporation Limited (supra)***, was not cited, the conclusion drawn in paragraph 17 is in tune with ***Sindhu Resettlement Corporation Limited (supra)***. At the cost of repetition, we record that the Conciliation Officer in the case before us has issued a notice informing the Management that the demands have been received and the conciliation proceedings

would commence on 19.06.2019. The Management participated in the said proceedings and did not approach the High Court to challenge the same, until the reference of the dispute was made to the Industrial Tribunal, by the Appropriate Government.

30. In *Gujarat Ambuja Cement Private Limited (supra)*, the learned Single Judge Bench of the Gujarat High Court has concluded in paragraph 18 that the Conciliation Officer has discretion to hold the conciliation proceedings where an industrial dispute is apprehended. It is further held that he shall give a formal intimation in writing to the parties declaring his intention to commence the conciliation proceedings with effect from such date as may be specified therein. In paragraph 19, it is concluded, on the available material on record and the provisions of law, that there was no conciliation proceeding pending before the Conciliation Officer when the employer dismissed the employees from service. It is further held that the deeming fiction of instantaneous commencement of the conciliation proceeding is applicable to public utility services when a notice of strike or lock-out has been issued. In all other cases, the conciliation proceedings would commence when the conciliation officer gives a formal intimation in writing to the parties

concerned declaring his intention to commence the conciliation proceedings with effect from such a date as may be specified therein. Hence, in the present case, if the arguments of the Management are to be accepted assuming that they are correct, the commencement of the conciliation proceedings would be from the date of the meeting on 19.06.2019, which was scheduled by the Conciliation Officer.

31. In *Mico Employees Association V/s. State of Karnataka, 1987 (1) LLJ 300 (Kar HC)*, the Single Judge of the Karnataka High Court concluded in paragraph 12 as under:-

“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 Management (*Shambu Nath Goyal v. Bank of Baroda (1978-I-LLJ-484)*). 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 I 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 proceedings. 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 under Section 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.....”

In *Mico Employees’ Association (supra)*, the parties themselves desired that certain meetings be held in the chambers of the Minister. It was an admitted position that no notice for initiating conciliation proceedings was issued by the Conciliation Officer.

32. In *Mysore Sugar Company Employees’ Union vs. Commissioner of Labour (State Conciliation Officer) and others, 1968 (1) LLJ 491*, the earlier conciliation proceeding 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 discussions in regard to the controversies between the parties and eventually, on 19.07.1966, he issued notice to them intimating his intention to commence the conciliation proceedings which began on

22.07.1966. On the same day, the impugned settlement was reached between the Management and the Union.

33. In the instant case, the Conciliation Officer received the charter of demands on 11.06.2019. Considering the demands, though they were not delivered on the Management, the notice was issued declaring that seven demands were being taken up in conciliation. The notice was issued to the Management informing it that the conciliation proceedings would be conducted from 19.06.2019. Apparently and rightly, he did not tender a failure report without granting opportunities to the Management to participate in the conciliation proceedings. No order was passed by the Deputy Commissioner (Labour) concluding that an industrial dispute exists so as to be referred to the Tribunal instantaneously, until he received the failure report on the conclusion of the conciliation proceedings.

34. The grievance of the Petitioner Management appears to be that the Conciliation Officer should have only held discussion meetings (pre-conciliation), without commencing the conciliation proceedings. According to the Management, unless there are preliminary rounds of discussions, the Conciliation Officer cannot commence conciliation proceedings and it cannot

be deemed to be a conciliation proceeding. We can see the reason behind the Petitioner advancing such contention, which is quite obvious. It wanted itself to be insulated against the effects of Section 33 (read *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Shri Ram Gopal Sharma and others, AIR 2002 SC 643*). We are informed that the Petitioner altered the service conditions of the employees at issue and terminated their services on the ground that they are contractual employees. The complaint under Section 33 of the ID Act has been filed by the Union and the Industrial Tribunal has concluded that the employer has violated Section 33. Hence, the Petitioner relies upon the Manual for conciliation officers. It is contended that unless mutual discussions are held between the Union and the Management, the Conciliation Officer under Chapter III of the Manual, should not take up conciliation proceedings. We are of the view that Clause 20 of the Manual and for that reason, the Manual itself, is by way of an assistance to the Conciliation Officers to follow a particular manner or path for dealing with the demands of Workers/Union. The Manual, which is directory in nature, however, does not prohibit commencement of the conciliation proceedings under Section 12 of the ID Act, 1947.

35. In *Associated Cement Staff Union, Mumbai vs. State of Maharashtra and others*, 2009 (3) *Mh.L.J.* 915, this Court recorded the facts of the case in paragraph 5 as under:-

“5. The Petitioners by their justification letter dated 3rd December, 2007, served on the second respondent tried to resolve the dispute under the mechanism of Industrial Disputes Act. The second respondent Assistant Commissioner of Labour, according to Petitioners instead of initiating conciliation proceedings, started preliminary discussions. This procedure is unknown to the provisions of the Industrial Disputes Act. The 3rd respondent by letter dated 3.1.2008 contended that the demands cannot be made as it is not a part of remuneration. Preliminary discussions took place and ultimately the second respondent by his letter dated 18.1.2008 refused to intervene in the matter as in his opinion the demand had nothing to do with the conditions of service or co-related to it and the same is governed by the SEBI (Employee Stock Option Scheme) Guidelines, 1999 and the provisions of the Companies Act, 1956. The second respondent thus came to the conclusion that it is not connected with terms of employment or non-employment. According to Petitioner, the second respondent contradicted itself by giving a finding that the ESOP cannot be a service condition as it is not part of remuneration. Then it means that it is a service conditions in case of one set of employees. An inference is a service therefore, it is submitted arises that it condition in case of a set of employees. However, 3rd respondent has hesitation in extending the same to the workmen represented by the Petitioner. According to Petitioner, the second respondent had no power to decide the issue as there is no

defined matter which can be termed as service conditions. The conditions of service are liable to change by passage of time. The guide-lines of the security and exchange Board of India are only regulatory and in any case what should be terms of the employment and or non-employment can be decided under the mechanism of Industrial Disputes Act.”

36. After noting that the Conciliation Officer did not forward any failure report, this Court formulated two questions in paragraph 10 as under:-

- “10. The questions, therefore, that we are called upon to answer are*
- “(a) whether on a demand being made by the Union representing the workmen or substantial number of workmen working in the company and on failure by the company to accept the demand, is the Conciliation Officer bound to take the matter in conciliation?*
- (b) Is a demand which has to have the statutory sanction of the general body of the shareholders of a company and beyond the powers of the Board of Directors partake of an industrial dispute?”*

37. This Court then concluded in paragraphs 15, 16 and 17 as under:-

- “15. Having said so, and considering the provisions of Section 12, the power conferred on the Conciliation Officer is limited to initiation of conciliation proceedings and submitting a failure report to the appropriate government. It is not for the Conciliation Officer to enter into*

the merits of the industrial dispute. The decision whether to make reference or not to make reference, if prima facie industrial dispute exists is within the exclusive jurisdiction of the appropriate Government. The formation of opinion whether an industrial dispute exists is of the appropriate Government.

A Conciliation Officer can initiate conciliation proceeding only when prima facie an industrial dispute exists or is apprehended pertaining to terms of employment and conditions of service. The Conciliation Officer cannot enter into the merits of the dispute. What is relevant to note is that if ex facie on the consideration of the demands, they do not partake or have the character of conditions of service or terms of employment, the Conciliation Officer cannot be called upon to enter into conciliation proceedings as prima facie demands would not fall within the definition of an industrial dispute. If he cannot enter into conciliation proceedings, the question of submitting a failure report would not arise. The failure report is a consequence of entering into conciliation proceedings. The distinction therefore, is that once the Conciliation Officer enters into conciliation proceedings, the only jurisdiction vested in him is to submit a failure report. However, where on the conciliation Officer being called upon to enter into conciliation proceedings, if on the prima facie consideration he forms an opinion, that the predicates of an Industrial dispute do not exist, then it is open to him to decline to enter into conciliation, though normally the appropriate course will be to send his report to the appropriate Government and it is the appropriate Government to decide whether to make for a reference or decline to make a

reference.

16. *In the instant case, the Conciliation Officer has declined to enter into conciliation. By his communication dated 18.1.2008, the Conciliation Officer has clearly set out that the demand raised by the Union in the matter of allotment of shares to employees is not in any way connected to service conditions of employees and that is governed by the SEBI guide-lines. This exercise of power by the conciliation officer is neither quasi judicial or judicial. It is administrative. On failure therefore, to enter into conciliation, it will be open to this court in the exercise of its extra ordinary jurisdiction to examine the order declining to enter into conciliation.*
17. *In our opinion, therefore, normally a conciliation officer ought not to decline to enter into conciliation proceedings. The Conciliation Officer should leave that for the decision of the appropriate Government whether to make a reference on the failure report that he has to send. If however, on a plain reading of the demand, it does not prima facie partake of an industrial dispute, the Conciliation Officer, may decline to enter into conciliation. On the facts of the present case, having come to the conclusion that the demand raised does not partake of an industrial dispute this will not be ordinary a fit case for us to jurisdiction.”*

38. It is thus, concluded that the power conferred on the Conciliation Officer is limited to initiation of conciliation proceedings and submitting a failure report to the appropriate Government. The Conciliation Officer cannot enter into the

merits of the industrial dispute. Whether to forward a reference to the Industrial Tribunal or not, is within the domain of the appropriate Government. A conciliation officer can initiate the conciliation proceedings only when he finds, prima facie, that there is an industrial dispute. As concluded, ex-facie, if on consideration of the demands, they do not partake or have the character of conditions of service or terms of employment, the Conciliation Officer may come to a conclusion not to enter into a conciliation proceedings. If he cannot enter into a conciliation proceeding, the question of submitting a failure report would not arise as it is a consequence which follows a conciliation proceeding. It was, therefore, concluded that once the conciliation officer commences the conciliation proceeding, the only jurisdiction vested in him is to submit a failure report, if no settlement is arrived at between the parties.

39. In *Shambu Nath Goyal v. Bank of Baroda, 1978 (1) LLJ 484 : 1978 (2) SCC 353*, the Honourable Supreme Court noted the fact that no demand, oral or in writing, was made upon the Management in respect of the workman and hence, there was no industrial dispute in existence. Therefore, the reference was incompetent. The Industrial Tribunal upheld the preliminary

objection of the Bank. The Honourable Supreme Court allowed the Appeal by concluding in paragraphs 5 and 6 as under:-

“5. *A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the disputes or difference is connected with the employment or non-employment or the terms of employment or, with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute Would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine ,qua non, unless of course in the case of public utility service, because Section 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are 'dispute' or 'difference'. What is the connotation of these two words? In Beetham v. Trinidad Cement Ltd., Lord Denning while examining the definition of expression 'Trade dispute' in Section 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:*

"By definition a 'trade dispute' exists whenever a 'difference" exists and a difference can exist long before the parties become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening".

6. *Thus the term 'industrial dispute' connotes a real and Substantial ,difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the Undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non- employment or the terms of employment or*

with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.”

40. It is, therefore, held in ***Shambu Nath Goyal (supra)***, that there should be a ‘difference’ between the parties and the difference or dispute should be connected with the employment or non-employment or the terms of employment or with the conditions of labour. It is further held that, *“For coming into existence of an industrial dispute, a written demand is not a sine qua non, unless of course in the case of public utility service, because Section 22 forbids going on strike without giving a strike notice.”* This, therefore, settles the legal position, as to what may constitute an industrial dispute in the assessment of the Conciliation Officer.

CONCLUSION

41. The contention of the Petitioner Management would have been well placed, considering the industrial scenario decades ago. However, it is to be noted that, the industrial scenario, in the last about 20 years, has changed. The moment a

Union submits the charter of demands, the owner of the factory either terminates the members of the Union or suspends the office bearers. The protection granted to such workers under Section 33 of the ID Act, 1947, is rendered superfluous and available only on paper. Section 33 is virtually rendered ineffective, rendering the workers to litigate in a starving condition.

42. Raising a demand or espousing improvement in service conditions, is not a crime. As has been said by the Late Justice V.R. Krishna Iyer that “*To be poor, in this land of daridra Narayana, is no crime*” (See: *Jolly George Verghese and another vs. The Bank of Cochin, AIR 1980 SC 470*). We have noticed that, in the litigation between the employer and the employees/workmen, if a Union raises demands on behalf of the contract labourers, the Principal Employer terminates the contract before the commencement of the conciliation proceedings. This takes away the lawful protection available to the workers under Section 33 as the Management takes a stand that there is no employer-employee relationship, prior to the commencement of the conciliation proceedings.

43. The learned Advocate for the Union submits that

even if a notice under Regulation 115 of the Industrial Courts Regulations framed under the MRTU & PULP Act, 1971, intimating the employer that a ULP complaint is being filed before the Industrial Court, the employer terminates those workers whose cause is being espoused in the complaint. He further adds that the Respondent Union and the contractual employees represented by it, had a serious apprehension that the workers would suffer termination of service or alteration in the terms and conditions of employment, the moment the demands are served on the Management. The Union, therefore, decided to counter such unfair means adopted by the Management by directly approaching the conciliation officer, with the full knowledge that the claim of the workers seeking regularization in the service of the principal employer, would never be accepted by the Management. He submits that the union's serious apprehension turned out to be true. Even after the conciliation proceedings commenced, the Management vindictively altered the service conditions of the workers by terminating them. This was followed by a complaint under Section 33 of the ID Act and the workers succeeded in proving before the Industrial Tribunal in the pending reference case, that the employer had illegally

altered their service conditions.

44. This indicates that the dynamics in the conflict/tussle between the employer and employees/Union, are changing, rather have undergone a sea change. The Managements are alleged to be inventing new methods for neutralizing the workers/ union and their demands. Severing employer-employee relationship or altering the service conditions to the prejudice of the demanding workers with the intention of weakening their bargaining power, appears to be the first choice of employers, which has struck fear in the hearts of the workers and unions. It is becoming more and more common these days that if an employee raises any demands or approaches the Court, his services are dispensed with. Being helpless on account of having lost the protection of law and with his bargaining power reduced to a naught due to unemployment having been foisted upon him, he is on his knees and at times is compelled to compromise against his wishes. In this backdrop, directly approaching the Conciliation Officer would not be an illegality or an anathema. If the Management can take recourse to unethical means for truncating the rights of the workers, a minor shift by the workers or the Union in approaching the Conciliation

Officer directly, instead of approaching the Management with it's demands, in our view, in such changing times, is a way/ means or methodology adopted by the Union to ensure that the workers, who are demanding justice, are not left unprotected at the mercy of the employer.

45. Normally, we would have agreed with the Petitioner Management that unless the employer formally rejects the demands of the workers, the conciliation proceedings cannot be commenced. This would be true in case of a failure report being submitted by the Conciliation Officer in the absence of issuance of any notice of hearing to the Management. This would also be true if an industrial dispute is referred by the appropriate Government to the Industrial Tribunal, without giving the Management an opportunity to participate in the conciliation proceedings and before it could reject the demands of the workers.

46. It is now well settled that a conciliation officer has to commence the conciliation proceedings, even on prima facie noticing or apprehending the dispute/ difference between the employer and employees. Admitting the demands in conciliation for commencing the conciliation proceedings, is what is normally

and actually expected from the Conciliation Officer (*Sindhu Resettlement Corporation Limited, Associated Cement Staff Union and Shambu Nath Goyal (supra)*).

47. In the peculiar facts of this case, it is apparent that the Petitioner Management rejected the demands of the workers in the very first meeting of the conciliation proceedings held on 19.06.2019. The discomfort that was brewing between the Petitioner Management and the contractual workers, led them to formation of a Union. The conflict lines were already drawn between the Petitioner Management and the Workers. The issue is whether, it would be illegal for the conciliation officer, who has received the demands from the Union, to immediately commence the conciliation proceedings. The answer is obvious in the light of the law laid down by the Honourable Supreme Court in *Sindhu Resettlement Corporation Ltd. (Supra)* and *Shambu Nath Goyal (supra)* and by the High Courts in *Gujarat Ambuja Cement Pvt. Ltd. (supra)* and *Associated Cement Staff Union (supra)*.

48. The contention of the Petitioner Management, is founded/based on the formality that unless the Management rejects the demand, why should the Conciliation Officer initiate

the conciliation proceedings. In today's industrial scenario, this would be a fallacy as the Management is likely to take the advantage of the time span available, between the raising of the demands and the commencement of the conciliation proceedings, by changing the service conditions of the workers during the interregnum and then take a stand that the workers are no longer working in it's establishment. This eventually has happened in the case before us.

49. The best that could happen is that the conciliation proceedings would be successful and a settlement would be signed in Conciliation u/s 18. If not, what could happen is that the conciliation proceedings would fail and the Conciliation Officer would tender a failure report to the appropriate Government. In the instant case, the Conciliation Officer issued a notice for conducting the conciliation proceedings, to all the parties to the dispute. After seven months of negotiations and after the Management showed least interest, as the records reveal, the conciliation proceedings failed. The failure report was tendered and for the last three years, the industrial adjudication proceedings are in progress.

50. In *State of Punjab and others vs. Jagjit Singh and*

others, 2017 (1) SCC 148, the Honourable Supreme Court has held as under:-

- “57. *There is no room for any doubt, that the principle of ‘equal pay for equal work’ has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of ‘equal pay for equal work’ has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.*
58. *In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others*

similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

51. In view of the peculiar facts as recorded above, we conclude that though, normally, it would be appropriate to serve demands on the employer and a copy be submitted in the office of the Conciliation Officer, it would not be an anathema to approach the Conciliation Officer for commencement of the conciliation proceedings, if the workers apprehend a serious retaliatory action against them, by the employer, for raising demands. In view of the settled position of law as above, the main grievance of the Petitioner Management that without serving a charter of demands upon the Management, there cannot be a prima facie conclusion that a difference or dispute exists between the parties, would be justified in normal circumstances. However, in the peculiar facts and circumstances of a particular case, as like the case before us, it would not be impermissible for a union/workers to approach the Conciliation Officer directly, in order to protect the employment of the workers who have raised demands upon the Employer or the Principal Employer, as the

case may be.

52. There is yet another reason for us to come to the above conclusion. The reference proceedings are pending for the last 3 years. The Petitioner Management has terminated the contract and has rendered the contractual employees, unemployed. The Industrial Tribunal has passed orders against the Management u/s 33 of the ID Act. Causing interference in this matter, would turn back the clock by 3 years and the parties will again have to be relegated to the first stage in the matter, that is, the Conciliation proceedings. These parties have already undergone the said process and turning back the clock would only lead to completing a formality, which has already been completed.

53. **This Writ Petition is, therefore, disposed off.**

Rule is discharged. No order as to costs.

54. After this judgment was pronounced, the learned Advocate for the Petitioner points out that since the Union has not yet filed its statement of claim and the matter will be unnecessarily prolonged, a direction be issued to the Union, which is a second party Union in Reference (IT) No. 1 of 2020. He further makes a request that the proceeding before the

Industrial Tribunal be expedited since the pendency of the proceeding is causing undue hardships to the management.

55. The learned advocate for the Union does not oppose the time line to be granted for filing of the statement of claim, but opposes a time bound programme for decision in the reference case.

56. Considering the comparative hardships and the request made by the Petitioner, the said request is accepted. The Union, which is Respondent No.3 herein and second party in the Reference proceeding, shall file it's statement of claim, on or before 02.05.2023. In so far as the early decision in the pending proceeding is concerned, we accept the request of the Management and would expect the Industrial Tribunal, Aurangabad to decide the Reference (IT) No.1 of 2020, on or before 30.04.2024.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)