lays stress on the first making the second secondary ; [8] the minority lays stress on the latter and seeks to make the principle of reservation subject to that. That there are dangers inherent in the majority approach is obvious.[9] It would have been preferable if Article 16(4) has been interpreted narrowly and not broadly and the majority had paid more attention to Article 335 which contains a very explicit directive in favour of the narrow interpretation and also because Article 16(4) is only an exception to Article 16(1) which should not be made illusory by broadening the ambit of Article 16(4).

M. P. J.

Conciliation Officer must concur in a settlement arrived at the conciliation proceedings — Bata Shoe Co. v. Ganguly [1]

Recently the Supreme Court in *Bata Shoe Co.* v. *Ganguly*, [1] held that "a settlement which can be said to be arrived at in the course of conciliation proceedings is not only to be arrived at during the time the conciliation proceedings are pending but also to be *arrived at with the assistance of the conciliation officer and his concurrence ;.....* ". [2]

The implication of this holding is clear that once the conciliation proceedings are started the parties are not free to come to an agreement without the concurrence of the Conciliation Officer. If such an agreement is reached by the parties, it will not be legally binding on the parties.

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8. The majority has also drawn attention to Article 335 but the view it has taken of Article 16(4) makes Article 335 no better than a directive principle. The minority view, on the other hand, makes Article 335 more meaningful. The majority stated : " Reservation of appointments or posts may theoretically and conceivably mean some impairment of efficiency ; but the risk involved in sacrificing efficiency of administration must always be borne in mind when any State sets about making a provision for reservation of appointments or posts." Further, " reservation cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees ". Ayyangar, J., pointed out a danger in the majority approach in this way : " In some of the top grades, there are single posts in the service. If, at any point of time, the incumbent is not a member of the backward class, it would certainly be a case of inadequate respresentation as regards that post which would mean that such posts which are single may be reserved for all time to be held by members of the backward classes, because if at any moment such a person ceases to hold the post there would be inadequate representation in regard to that post.

1. A.I.R. 1961 S.C. 1158.
2. *Ibid.*, at p. 1162. Emphasis added.

The requirement that the Conciliation Officer must give his concurrence in the agreement by the parties, has been pointed out for the first time by the Supreme Court.

There was a strike in the factory of Bata Shoe Co. from February 23, 1954, to March 20, 1954. During the strike the company dismissed a number of employees for participating in an illegal strike. Conciliation proceedings regarding the reinstatement of the strikers had begun some time before March 1, 1954. The joint negotiations between the company and the Union were continued. The Conciliation Officer fixed September 3, 1954, as date for joint meeting, but the parties came to an agreement on September 2, 1954. The Conciliation Officer was apprised of this settlement and the Conciliation Officer, accordingly cancelled the date of joint meeting of September 3, 1954. Later, the Conciliation Officer wrote to the employer that the Union was opposing certain reinstatements and fixed September 6, 1954, for further conciliation proceedings. The employer protested against holding any further negotiations, since the parties had reached an agreement on September 2, 1954, and hence did not attend the conciliation meeting. Presumably the Conciliation Officer made the Report under section 12(4) to the Government and the Government referred the matter to the Industrial Tribunal for adjudication.

Before the Supreme Court the company challenged the reference on the ground, that a settlement had been arrived at during the course of conciliation proceedings on September 2, 1954, which specifically dealt with the case of these sixty workmen and as such the reference was bad.

The Supreme Court held that the settlement had not been arrived at *during the course of conciliation proceedings* and was not binding under section 18 of the Act, hence it would not bar a reference by the Government.

The Court read in section 12(2) that the duty of the Conciliation Officer is not only to bring the parties to an agreement but to see that the agreement is just and fair. The Conciliation Officer is required, the Court pointed out, to assist the parties to come to an agreement and also to exercise his mind to see that the terms of the agreement are just and fair. This is so because an agreement arrived at "in the course of conciliation proceedings" will be binding not only on the parties involved in the dispute but also on all the persons employed in the establishment and all persons who subsequently become employed in

the establishment.[1] In the state of affairs where there is no majority Union system the concurrence of the Conciliation Officer in the agreement will serve as a guarantee of protection of the interest of the rest of the employees.

The question arises: How to gather the concurrence of the Conciliation Officer? How far a party to a dispute or the workers to whom that agreement is binding, can challenge the agreement on the ground that the Conciliation Officer did not exercise his mind?

Conciliation Officers are normally heavily overloaded with work. In the circumstances it will be unrealistic to expect them to exercise their minds on the justness and fairness of the terms of every agreement. The signature of the Conciliation Officer on the mutually arrived agreement will be treated as his concurrence and inference will be drawn that he had exercised his mind.

An important factor that cannot be overlooked is that if the concurrence of the Conciliation Officer is made an essential to an agreement arrived at in the course of conciliation proceedings it may undermine the spirit of collective bargaining. In India, in most of the cases, the chapter of collective bargaining is opened by bringing the conciliation machinery in operation.

A.P.A.

Article 32 of the Constitution and Res judicata—Article 226 and the Constitution (Eleventh) Amendment Bill, 1961.

The Supreme Court has time and again asserted that the liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life;[2] that the Court as the *Sentinel* on the *quivive*[3] has the duty imposed by the Constitution to protect these fundamental rights, and that a breach by the State of these rights cannot be waived.[4] The right to move the Supreme Court by appropriate proceeding for the enforcement of the fundamental rights is guaranteed by Article 32[5] which is itself one of the guaranteed rights. A problem for the elucidation of which the Constituent

1. Industrial Disputes Act, 1947, section 18(3)(d).
2. *Romesh Thappar* v. *State of Madras*, [1950] S.C.R. 594.
3. *State of Madras* v. *V. G. Row*, A.I.R. 1952 S.C. 196.
4. *Basheshar Nath* v. *Commissioner of Income-tax*, A.I.R. 1959 S.C. 149.
5. Article 32(1). The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
   (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition,