

**(2014) 06 BOM CK 0153**

**In the Bombay High Court**

**Case No :** Letters Patent Appeal Nos. 228 of 2006 and 117 of 2007

Ambure P.A.

APPELLANT

Vs

Vyapari Sahakari Bank Maryadit

RESPONDENT

**Date of Decision :** 27-06-2014

**Acts Referred:**

Bombay General Clauses Act, 1904 — Section 7  
Bombay Industrial Relations Act, 1946 — Section 3, 42, 42(4), 58, 63  
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 2, 24, 25(1), 28, 28(1)

**Citation :** (2014) 5 ABR 388 : (2014) 6 BomCR 814 : (2014) 4 MhLj 745

**Hon'ble Judges :** Abhay Shreeniwas Oka, J;A.A. Sayed, J

**Bench :** Division Bench

**Advocate :** V.P. Vaidya, Advocate i/by Anjali Helekar, Advocate for the Appellant;  
K.S. Bapat i/by Sarang Satish Aradhye for Respondent No. 1, Advocate for the Respondent

## Judgement

A.S. Oka, J.—These Appeals have been taken up for final disposal together as by a common Judgment and Order dated 7th June, 2006, two Writ Petitions filed by the first Respondent have been decided by the learned Single Judge.

2. The first Respondent is a Co-operative Bank duly registered under the Maharashtra Co-operative Societies Act, 1960. The Appellants are the employees of the first Respondent Bank. On 4th March, 1989, a letter of demand was submitted by the Appellants and others to the first Respondent. The demand was for revision of pay scales, grant of dearness allowance at enhanced rate, etc. The Appellants issued notice of strike in accordance with sub-section (1) of section 24 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU and PULP Act"). The said notice of strike was issued on 6th April, 1989 in accordance with the Rules framed in the year 1975 under the provisions of MRTU and PULP Act. By the said notice, the Appellants informed the first Respondent that the employees of the first Respondent were proposing to go on a strike with effect from 21st April, 1989 on

account of failure of the first Respondent to comply with the demands.

3. The first respondent made an application under Sections 78, 79, 80A and 97 of the Bombay Industrial Relations Act, 1946 (for short "BIR Act") before the Labour Court at Solapur praying for a declaration that the strike commenced by the Appellants with effect from 21st April, 1989 be declared as illegal. The contention raised in the said application was that a call for strike was given without giving a notice of change as contemplated under sub-section (2) of section 42 of the BIR Act. A reply was filed by the Appellants to the said application in which it was contended that a notice under sub-section (1) of section 24 of the MRTU and PULP Act was given on 6th April, 1989. It was contended that as strike has been commenced after giving a notice under the MRTU and PULP Act, proceedings under BIR cannot be initiated in view of the bar created by section 59 of the MRTU and PULP Act.

4. On 24th April, 1989, the Appellants filed a complaint u/s 28(1) read with Item 8 of Schedule IV of the MRTU and PULP Act against the first respondent before the Industrial Court at Solapur. The allegation in the said complaint was that the first respondent recruited the employees during the strike which was not an illegal strike. Initially, ad-interim relief was granted in the said complaint. The said ad-interim order was vacated by order dated 16th May, 1991.

5. An application made by the first respondent under the BIR Act was decided by the learned Judge of the Labour Court, Solapur by a Judgment and Order dated 5th August, 1989. The learned Judge rejected the application by holding that the strike continued by the employees of the first respondent since 21st April, 1989 is not illegal. Being aggrieved by the said order, the first respondent preferred a Revision Application u/s 85 of the BIR Act before the Member of the Industrial Court at Solapur. By a Judgment and Order dated 15th January, 1996, the said Revision Application was dismissed. The learned Member of the Industrial Court held that as a notice was given by the Appellants under sub-section (1) of section 24 of the MRTU and PULP Act, the application made by the first Respondent under the BIR Act was not tenable. It was held that as a notice was issued under sub-section (1) of section 24 of the MRTU and PULP Act, it was not necessary for the Appellant to serve a separate notice under sub-section (2) of section 42 of the BIR Act.

6. As far as complaint filed by the Appellants is concerned, by a Judgment and Order dated 17th January, 1996, the said complaint was allowed and it was declared that the first respondent has committed unfair labour practice under Item 8 of Schedule IV of the MRTU and PULP Act and, therefore, the first Respondent was directed to cease and desist from practising the same.

7. The first respondent filed Writ Petition No. 3170 of 1996 for taking exception to the Judgment and Order dated 19th January, 1996 passed by the Industrial Court on the complaint filed by the Appellants. Writ Petition No. 3173 of 2006 was filed by the first Respondent for challenging the concurrent orders passed by

the Labour court and the Industrial Court on the application made by the first Respondent under the BIR Act claiming a declaration that the strike was illegal.

8. By a common Judgment and Order dated 7th June, 2006 impugned in these Letters Patent Appeals, the learned Single Judge allowed both the Writ Petitions. The learned Single Judge held that MRTU and PULP Act and BIR Act were complementary to each other and, therefore, it was necessary for the Appellants to comply with the provisions of sub-section (2) of section 42 of the BIR Act. The learned Single Judge held that the strike was therefore illegal under the provisions of BIR Act. Hence, the application made by the first respondent under the BIR Act was allowed and the complaint filed by the Appellants was dismissed.

9. Letters Patent Appeal No. 117 of 2007 has been preferred by the Appellants for challenging the aforesaid Judgment and Order passed in Writ Petition No. 3173 of 1996. Letters Patent Appeal No. 228 of 2006 has been preferred by the Appellants for challenging the aforesaid Judgment and Order in relation to the Writ Petition No. 3170 of 1996.

10. It is not in dispute that the provisions of both the Acts were applicable to the first respondent at the relevant time. There is no dispute about the service of notice under clause (a) of sub-section (1) of section 24 of the MRTU and PULP Act by the Appellants to the first respondent. The main question in this appeal is whether the Appellants were under an obligation to give a notice in accordance with subsection (2) of section 42 of the BIR Act before calling a strike. In other words, the question is whether a strike commenced or continued after following the procedure under clause (a) of sub-section (1) of section 24 of the MRTU and PULP Act can be said to be illegal under the provisions of the BIR Act on the ground of failure of the Appellants to give a notice under sub-section (2) of section 42 of the BIR Act.

11. The learned counsel appearing for the Appellants pointed out that both the MRTU and PULP Act and BIR Act are the State laws. He submitted that both the Acts contain the provisions regarding strikes and lock-outs. Therefore, it is not necessary to comply with the provisions in both the acts as regards the strikes. Inviting our attention to sub-section (1) of section 24 of the MRTU and PULP Act, he pointed out that there are specific provisions which provide that violation of certain provisions of BIR Act makes the strike under the MRTU and PULP Act illegal. Non-compliance with sub-section (2) of section 42 of BIR Act has not been incorporated as a ground under sub-section (1) section 24 of the MRTU and PULP Act, though non-compliance with certain other provisions of BIR Act finds place in sub-section (1) of section 24. He urged that MRTU and PULP Act is a complete Code as far as the issue of strike is concerned and, therefore, there was no necessity of serving an approach notice under sub-section (2) of section 42 of the BIR Act. He urged that an application filed by the first Respondent under BIR Act for declaration that the strike is illegal was not maintainable inasmuch as in the MRTU and PULP Act there is a provision made for filing an application for the same relief. As notice of strike was given under the provisions

of MRTU and PULP Act, the first Respondent could always have taken recourse to the provisions of BIR Act for contending that the strike was illegal. The learned counsel relied upon a decision of the Division Bench of this Court in the case of Nagpur District Central Co-operative Bank vs. State of Maharashtra and others 1 and submitted that approach notice was not necessary as the Appellants had complied with the requirements of section 24 of the MRTU and PULP Act by issuing a notice.

12. The learned counsel appearing for the first Respondent submitted that both the enactments co-exist. He invited our attention to the provisions in both the Acts as regards the illegal strike. He urged that the ingredients of illegal strike provided in the two statutes are different. He further urged that under the BIR Act, there are penal provisions for penalising the employees who take recourse to illegal strike but no such provision has been incorporated in the MRTU and PULP Act. He urged that under the BIR Act, a person who instigates an illegal strike can be punished but no such provision has been incorporated in the MRTU and PULP Act. He pointed out that under the MRTU and PULP Act, there is a provision which lays down that if a strike is declared as illegal and is withdrawn within 48 hours from such declaration, such a strike shall not for the purpose of the said Act be deemed to be illegal. He urged that there is no such provision under the BIR Act.

13. He invited our attention to the provisions of section 78 of the BIR Act and in particular clause (c) of sub-section (1) of section 78 which conferred power on the Labour Court to decide whether a strike is illegal under the said Act. He pointed out that the section 25(1) of the MRTU and PULP Act provides that the Government or Employer can make a reference to the Labour Court for claiming a declaration that the strike is illegal. Relying upon the decision of the Apex Court in the case of Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, , he urged that an endeavour should be made to give effect to both the statutes. He also placed reliance on the observations made by the Apex Court in the case of Mahendra L. Jain and Others Vs. Indore Development Authority and Others, . He also relied upon the decision of the Apex Court in the case of Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, . He invited attention of the Court to the observations made by the Division Bench of this Court in the case of Kanak Industries Vs. General Labour Union (Red Flag) and Shri B.S. Bhadange, Industrial Tribunal, . He also invited our attention to the decision of the Division Bench of this Court in the case of Industrial Tubes Manufacturing Co. Ltd. Vs. S.R. Samant, Judge, Industrial Court and others, and especially paragraph No. 13 of the said decision. He urged that the decision relied upon by the Appellants in the case of Nagpur District Central Co-operative Bank will have no application to the facts of the case.

14. We have given careful consideration to the submissions. There is no dispute that the provisions of the BIR Act are applicable to the first Respondent and that the first Respondent is an "employer" within the meaning of sub-section (14) of

section 3 of the BIR Act. There is no dispute that the first Respondent is an "Industry" within the meaning of sub-section (19) of section 3 of the BIR Act.

15. It will be necessary to make a reference to sub-section (3) of section 2 of MRTU and PULP Act which reads thus :-

2(3) Except as otherwise hereinafter provided, this Act shall apply to the industries to which the Bombay Industrial Relations Act, 1946, Bom. XI of 1947, for the time being applies, and also to any industry as defined in clause (j) of section 2 of the Industrial Disputes Act, 1947, XIV of 1947, and the State Government in relation to any industrial dispute concerning such industry is the appropriate Government under that Act;

Provided that, the State Government may, by notification in the Official Gazette, direct that the provisions of this Act shall cease to apply to any such industry from such date as may be specified in the notification; and from that date, the provisions of this Act shall cease to apply to that industry and, thereupon, section 7 of the Bombay General Clauses Act, 1904, Bom. I of 1904, shall apply to such cessor, as if this Act has been repealed in relation to such industry by a Maharashtra Act.

16. There is no dispute that by virtue of sub-section (3) of section 2 of the MRTU and PULP Act, the provisions of the said Act are applicable to the first Respondent. There is nothing placed on record to show that a notification as contemplated under the proviso to subsection (3) of section 2 of the MRTU and PULP Act was issued by the State Government.

17. In sub-section (1) of section 24 of MRTU and PULP Act, the definition of illegal strike has been incorporated which reads thus :-

24. Illegal strike and lock-out :-In this Act, unless the context requires otherwise,-

(1) "Illegal strike" means a strike which is commenced or continued-

(a) without giving to the employer notice of strike in the prescribed form, or within fourteen days of the giving of such notice;

(b) where there is a recognised union, without obtaining the vote of the majority of the members of the union, in favour of the strike before the notice of the strike is given;

(c) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of matters covered by the notice of strike;

(d) where submission in respect of any of the matters covered by the notice of strike is registered u/s 66 of the Bombay Act, before such submission, is lawfully revoked;

(e) where an industrial dispute in respect of any of the matters covered by the

notice of strike has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceedings or before the date on which the arbitration proceedings are completed or the date on which the award of the arbitrator comes into operation, whichever is later;

(f) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of strike;

(g) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court u/s 72, 73 or 73A of the Bombay Act, during such arbitration proceedings or before the date on which the proceeding is completed or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of strike;

(h) in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by notice of strike.

Provided that, nothing in clauses (g) and (h) shall apply to any strike, where the union has offered in writing to submit the industrial dispute to arbitration under sub-section (6) of section 58 of the Bombay Act or section 10A of the Central Act, and

(i) the employer does not accept the offer; or

(ii) the employer accepts the offer but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act, and thereafter, the dispute has been referred for arbitration of the Industrial Court u/s 73A of the Bombay Act, or where the Central Act applies, while disagreeing on the choice of the arbitrator, the employer does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf, and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act; or

(i) during any period in which any settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

18. Section 97 of the BIR Act deals with the illegal strikes. Clause (b) of sub-section (1) of section 97 provides that strike shall be illegal if it is commenced or continued without giving a notice in accordance with the provisions of sub-section (2) of section 42. Subsection (2) of section 42 provides for giving a notice of change by an employee. Sub-section (2) of section 42 reads thus :-

42(2) Any employee desiring a change in respect of an industrial matter not specified in Schedule I or III give a notice in the prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(3) When no settlement is arrived at in any conciliation proceeding in regard to any industrial dispute which has arisen in consequence of a notice relating to any change given under sub-section (1) or sub-section (2), no fresh notice with regard to the same change or a change similar in all material particulars shall be given before the expiry of two months from the date of the completion of the proceeding within the meaning of section 63. If at any time after the expiry of the said period of two months, any employer or employee again desires the same change or a change similar in all material particulars, they shall give fresh notice in the manner provided in sub-section (1) or (2), as the case may be.

(4) Any employee [or a representative union] desiring a change in respect of (i) any order passed by [the] employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, [except item (5) thereof] shall make an application to the Labour Court [and as respects change desired in any industrial matter specified in item 5 of Schedule III, to the Industrial Court];

Provided that no such application shall lie unless the employee [or a representative union] has in the prescribed manner approached [the] employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

19. We have perused the notice of demand served by the Appellants to the first Respondent Bank. The demands are as the regards revision of pay, revision of dearness allowance as well as additional allowances. Therefore, the said demands or change sought by the employees were not specified either in Schedule I or Schedule III of the BIR Act. Admittedly, the Appellants have not served a notice as provided under sub-section (2) of section 42 of the BIR Act.

20. At this stage, it will be necessary to make a reference to the sub-section (1) of section 78 of the BIR Act :-

78. Powers of Labour Court.-(1) A Labour Court shall have power to-A. decide-

(a) disputes regarding-

(i) the propriety or legality of an order passed by an employer acting or purporting to act under the standing order;

(ii) The application and interpretation of standing orders:

(iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III [except item (5) thereof] and matters

arising out of such change;

(b) industrial disputes-

(i) referred to it u/s 71 or 72;

(ii) in respect of which it is appointed as the arbitrator by a submission;

(c) whether a strike, lock-out, [closure, stoppage] or any change is illegal under this Act.

21. Thus, a jurisdiction has been conferred on the Labour Court to decide whether a strike is illegal in accordance with the provisions of the BIR Act. Sub-section (1) of section 79 provides that the proceedings in respect of the industrial matter falling under clause (c) of paragraph A of sub-section (1) of section 78 of the BIR Act shall be commenced on an application made by any employer or an employee directly affected or a representative union. Therefore, on an application made by an employer, by exercising powers under sub-clause (c) of clause (A) of sub-section (1) of section 78, a Labour Court can grant a declaration that the strike commenced by the employees is illegal under the said Act.

22. As stated earlier, clauses (a) to (k) of sub-section (1) of section 97 are the grounds on which a strike under the BIR Act shall be illegal. Failure to give a notice in accordance with sub-section (2) of section 42 is a ground on which a strike commenced or continued becomes illegal. Sub-section (3) of section 97 is also relevant which reads thus :-

97(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen clear days notice of a strike not falling under clauses (a), (g), (h) or (I) of sub-section (1) was given to the employer and the Labour Officer, and the strike was not commenced either before the expiry of the period of notice or after six weeks from the date of expiry, the employees who resume work within forty-eight hours of a Labour Court or the Industrial Court declaring such strike to be illegal shall incur no penalty under this Act in respect of such strike:

Provided that nothing in sub-section (3) shall apply to any strike which has within the period of notice been declared u/s 99 to be illegal.

23. In the present case, the strike falls under clause (b) of subsection (1) of section 97. Therefore, the employees will not be entitled to benefit under sub-section (3).

24. We have already reproduced sub-section (1) of section 24 of the MRTU and PULP Act.

There are distinct 9 grounds incorporated therein by virtue of which a strike becomes illegal. It is true that grounds (c) and (d) of sub-section (1) of section 24 are the grounds of breach of provisions of BIR Act. An argument is canvassed that the failure to give notice under sub-section (2) of section 42 of the BIR Act



is not one of the grounds incorporated under sub-section (1) of section 24 of the MRTU and PULP Act.

25. Under the BIR Act, a strike becomes illegal on the basis of separate set of grounds incorporated under sub-section (1) of section 97. Obviously, if any of those grounds exist, the strike contemplated under the BIR Act becomes illegal. If one of the grounds contemplated by sub-section (1) of section 24 of the MRTU and PULP Act exists, the strike contemplated by the MRTU and PULP Act becomes illegal. Both the enactments co-exist and, therefore, effect will have to be given to the provisions of both the Acts.

26. We have already referred to the power conferred on Labour Court u/s 78 of the BIR Act. The power is to declare that a strike is illegal under the BIR Act. Section 97 of BIR Act defines illegal strike. Under clause (b) of sub-section (1) thereof, a strike commenced or continued without giving a notice in accordance with the provisions of section 42 will be an illegal strike. The power of the Labour Court u/s 78 is to declare whether a strike is illegal within the meaning of the BIR Act. The jurisdiction of the Labour Court while dealing with an Application u/s 78 of the BIR Act is confined to examining the issue whether the strike was illegal within the meaning of the BIR Act. The learned Judge of the Labour Court in paragraph 8 of the Judgment came to the conclusion that notice u/s 24 of the MRTU and PULP Act ought to be construed liberally. Thus, the view seems to be that a liberal construction must be adopted to the notice issued on 6th April, 1989. Perusal of the notice dated 6th April, 1989 shows that the same has been specifically issued under subsection (1) of section 24 of the MRTU and PULP Act read with Rule 22 of the Rules framed under the said Act. Rule 22 prescribes the format of a notice of strike. What is issued is a notice of strike under clause (a) of sub-section (1) of section 24 of the MRTU and PULP Act. Under subsection (2) of section 42 of the BIR Act, what is contemplated is a notice by any employee desiring a change in respect of an industrial matter not specified in Schedule I or III in the prescribed form. The said notice is required to be served to the employer through the representative of employees. The form of such notice is prescribed being Form "L" in the Rules framed under the BIR Act. What is required under sub-section (2) of section 42 is a notice of change in industrial matters. Industrial matters are defined under clause 18 of section 3 of the said Act. The industrial matters are matters relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode or terms and conditions of employment. The notice contemplated by sub-section (2) of section 42 of BIR Act and the notice contemplated by sub-section (1) of section 24 of the MRTU and PULP Act are completely different not only in form, but also in substance. Under the earlier Act, it is a notice of change desired by an employee in connection with industrial matters and under the subsequent Act, it is specifically a notice of call for the strike. Therefore, by no stretch of imagination, a notice under sub-section (1) of section 24 of the MRTU and PULP Act can be treated as a notice of change under sub-section (2) of section 42 of the BIR Act. Even by construing the notice dated 6th April, 1989 very liberally, it

cannot be termed as a notice under subsection (2) of section 42 of the BIR Act. Therefore, the finding of the learned Single Judge that strike was illegal within the meaning of BIR Act cannot be faulted with. Therefore, it is difficult to find fault with the impugned order of the learned Judge to the extent to which he allowed application of the first respondent u/s 78 of the BIR Act.

27. As far as the complaint filed by the Appellants u/s 28 of the MRTU and PULP Act is concerned, what was alleged was unfair practice under clause 8 of Schedule IV of the said Act. Clause 8 is "to recruit employees during a strike which is not an illegal strike". Thus, if there is a strike in accordance with the MRTU and PULP Act which is not illegal within the meaning of sub-section (1) of section 24, the act of recruiting employees during the strike amounts to unfair labour practice. There is no dispute regarding the service of notice of strike in the prescribed form as contemplated by clause (a) of sub-section (1) of section 24 of the MRTU and PULP Act. It is not the case of the first respondent that any of the clauses of sub-section (1) of section 24 are attracted thereby rendering the strike illegal. There is no finding recorded by any of the authorities including the learned Single Judge that the strike was illegal in terms of sub-section (1) of section 24. Reference to illegal strike in clause 8 of Schedule IV is obviously to a strike which is illegal under the MRTU and PULP Act. Even the learned counsel appearing for the first respondent has argued that the concept of illegal strike under the BIR Act and the concept of illegal strike under the MRTU and PULP Act are different. Thus, the illegal strike referred to clause 8 of Schedule IV of MRTU and PULP Act has to be an illegal strike under the said Act. In the present case, the strike was called after complying with the requirements of the MRTU and PULP Act by serving a notice under clause (a) of sub-section (1) of section 24 of the said Act in the prescribed form. As the strike is not illegal in accordance with the MRTU and PULP Act, the action of the employer of recruiting employees during the strike will amount to unfair labour practice under clause 8 of Schedule I V. If the strike is illegal in accordance with the BIR Act but legal in accordance with MRTU and PULP Act, the employer cannot contend that clause 8 of Schedule IV is not attracted as the strike is illegal not under the MRTU and PULP Act, but under the BIR Act. The employer can successfully defend the allegation of unfair labour practice under clause 8 of Schedule IV provided he proves that the strike was illegal within the meaning of MRTU and PULP Act. As stated earlier, the failure to give notice under sub-section (2) of section 42 of BIR Act is not a ground incorporated under sub-section (1) of section 24 of the MRTU and PULP Act on the basis of which a strike under the MRTU and PULP Act can become illegal.

28. As far as the applicability of clause 8 of Schedule IV is concerned, the Labour Court has recorded a finding of fact that it is an admitted position that the first respondent-Bank recruited employees on temporary basis during strike. Therefore, there was no reason for the learned Single Judge to interfere with the order passed by the Industrial Court on a complaint filed under the MRTU and PULP Act. To that extent, the impugned order of the learned Single Judge will

have to be set aside.

29. We must note here that none of the decisions relied upon by the parties deal with the issue arising in these Letters Patent Appeals. Even in the case of Nagpur District Central Co-operative Bank, this issue did not arise. What was held therein was that it is not necessary to give any approach notice under sub-section (4) of section 42 of BIR Act before any employee moves the Labour Court for grant of any relief under MRTU and PULP Act. On the contrary, in paragraph 10, it is observed thus :-

10. Before parting with this judgment it is necessary to bear in mind that an approach notice is mandatory or is a condition precedent in view of the proviso to section 42(4) of the BIR Act if any employee has to move the Labour Court thereunder for necessary relief. It cannot be said to be intended that the said requirement which is mandatory for claiming relief under the BIR Act is also mandatory for claiming the relief under the Act. The approach notice, therefore, cannot be held to be necessary to be given before an ex-employee can move the Labour Court for necessary relief under the Act.

30. Therefore, Letters Patent Appeal No. 228 of 2006 must succeed.

31. Hence, we pass the following order :-

#### ORDER

(i) Letters Patent Appeal No. 117 of 2007 is dismissed and the Judgment of the learned Single Judge to the extent to which it holds that the strike was illegal under the provisions of the BIR Act is upheld. Accordingly, application made by the first respondent bearing Strike B.I.R. Application No. 1 of 1989 to that extent stands allowed;

(ii) Letters Patent Appeal No. 228 of 2006 is hereby allowed. The impugned Judgment and Order of the learned Single Judge to the extent to which Writ Petition No. 3170 of 1996 was allowed, is set aside and the Judgment and Order dated 17th January, 1996 passed by the learned Member of the Industrial Court on complaint (ULP) No. 45 of 1989 is restored. The Writ Petition No. 3170 of 1996 stands dismissed. There will be no orders as to costs in both the Appeals.

1 LPA No. 25 of 1987 decided on 13th March, 1987 by the Nagpur Bench.