
(1994) 12 BOM CK 0064
In the Bombay High Court
Case No : Writ Petition No. 92 of 1992

Anz Grindlays Bank Plc., Bombay

APPELLANT

Vs

S.N. Khatri and Others

RESPONDENT

Date of Decision : 07-12-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 2, 20, 22
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 22, 24, 25, 30, 32

Citation : (1995) 70 FLR 597 : (1995) 2 LLJ 877

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Judgement

S.H. Kapadia, J.—By this writ petition, Grindlays Bank seeks to challenge Award passed by Central Government Industrial Tribunal on 1st November, 1991 in Reference No. CGIT-11/1989 by which the Industrial Tribunal directed the Bank to pay 50% of the strike wages to the employees of the Bank for the period 5th November, 1979 upto 4th February, 1980. By the impugned Award, the Industrial Tribunal came to the conclusion that the strike was illegal. However, on facts of the case, the Industrial Tribunal went into the justifiability of the strike and came to the conclusion that the strike was justified and, therefore, awarded 50% of the wages for the said period 5th November, 1979 upto 4th February 1980. The above Writ Petition No. 92 of 1992 is filed by the Bank. During the pendency of the Writ Petition No. 92 of 1992, the Federation preferred Writ Petition No. 2551 of 1994 challenging the finding of the Tribunal that the strike was illegal. The said Writ Petition No. 2551 of 1994 is filed by the Federation, inter alia, on the footing that during the pendency of the earlier writ petition filed by the Bank, the Supreme Court has laid down a decision for the first time in the case of Syndicate Bank v. K. Umesh Nayak, (reported in 1994 2 CLR 753 in which it has been held that a strike in a Public Utility Service, if held to be illegal, then the question of justifiability did not arise. If the strike is both legal and justified, the workers are entitled to wages for the strike period, but where the strike is illegal

although justified, the workers are not entitled to wages for the strike period. In other words, strike has to be both legal and justified. In the above circumstances, the Federation preferred Writ Petition No. 2551 of 1994, challenging the Award of the Tribunal to the extent to which it has been held that the strike was illegal although justified. Accordingly, both the above writ petitions are heard together and disposed of by a common judgment. At the outset, it may be mentioned that in view of the Judgment of the Supreme Court in Syndicate Bank's case (supra), the controversy before me has been narrowed down. As stated above, in the aforesaid Judgment, the Supreme Court had clearly laid down, after considering the earlier Cases Laws dealing with strikes in Public Utility services, that the workers who seek wages for the strike period are required to prove that the strike is legal and justified; where the strike is illegal, but justified they are not entitled to wages for the period of strike. It is also laid down in the above judgment that the question of justifiability of a strike is to be decided by the Industrial Adjudicature under the Industrial Disputes Act, 1947. In the present case, as stated hereinabove, the Industrial Tribunal had held that the strike was illegal, particularly because, it had commenced in violation of provisions of Section 22(1)(b) and Section 22(1)(d) of the said Act, 1947.

2. The facts of this case, briefly, are as following Petitioner-Bank is a Banking Company as defined u/s 2(bb) of the Industrial Disputes Act, 1947. It has 56 branches in India. It employs approximately 3000 workers in India. On 16th September 1970, petitioners arrived at a settlement with All India Grindlays Bank Employees' Federation (hereinafter referred to as, "the said Federation"). On 3rd July 1975, the Federation passed a Resolution that items covered by the above settlement of 16th September 1970 should be once again raised and demanded. Pursuant to the said demand on 15th September, 1975, settlement was arrived at between petitioners and the Federation for bonus for the years 1974-1975. However the Bonus Act 1975, was amended by the Parliament. The Banks were taken out of the purview of the said Act by the amendment. On 1st October 1975, the Reserve Bank of India addressed a letter to the petitioner-bank directing the Bank not to make payment of bonus under the above settlement. On 22nd February 1978, Federation addressed a letter to the Bank demanding bonus for the years 1976-1977. According to the Bank in view of the provisions of the Bonus Act, as they then stood, there was no justification for the said demand. Accordingly, they informed the Federation. Accordingly, on 19th July 1978, the Federation forwarded its Resolution asking the petitioners to resume negotiations. On 16th August 1978, Federation demanded bonus for 1976-1977 once again. At the same time on 26th August 1978, Federation addressed a letter to the petitioners to desist from introducing mechanisation in any of its Branches. According to the petitioners, this was contrary to the settlement (Industry-wise) dated 19th October 1966, by which mechanisation was sought to be introduced in the Banking Industry. On 17th October 1978, the Federation demanded bonus " 20% for the year 1977 to all employees without any ceiling. On 29th November 1978, strike notice was given by the Federation

to the Bank stating that it proposed to go on strike on 15th December 1978. Thereafter conciliation proceedings were initiated by the Regional Labour Commissioner under the Industrial Disputes Act, 1947. On 27th December 1978, settlement was arrived at between the Federation and the Bank and the strike notice dated 29th November 1978 came to be withdrawn. Once again, the Federation raised certain demands, on 22nd May 1979, petitioners addressed a letter to the Federation calling for meetings on 14th and 15th January 1979. In the said meeting, the Bank also sought discussion regarding its demands which included mechanisation. The said meeting ended in a dead-lock. However, on 5th June 1979, settlement took place with the Delhi Union on mechanisation, but on 23rd July 1979 once again, the Federation addressed a letter to the Bank opposing mechanisation as per (Industry-wise) settlement of 1966. Ultimately on 22nd October 1979, the Federation gave a strike notice which is the subject matter of the present dispute. By the said notice, the Federation threatened the Bank with a strike if their demands were not conceded. As per the said strike notice, 25 demands were pending with the Bank from 1973 and since the Bank did not concede, the said demands as per the said strike notice, the employees threatened the Bank that they would launch a continuous strike action from 5th November 1979. The strike notice is dated 22nd October 1979. A bare reading of this notice indicates that it has not been addressed to the designated Officer viz., Conciliation Officer as required under Rule 71 of the Central Rules framed under the Industrial Disputes Act, 1947. Ultimately, on 5th November 1979, the said strike commenced. The said strike commenced before conclusion of the conciliation proceedings. In this connection it may be mentioned that after giving strike notice on 22nd October 1979, the Federation addressed a letter on 23rd October 1979 correcting the notice dated 22nd October 1979 and also placing on record the Managements offers. On 26th October 1979, the Regional Labour Commissioner addressed a letter to the Federation specifically informing them that the strike notice was not in a proper form.

Despite the said warning and intimation given by the Regional Labour Commissioner, the Federation commenced the strike on 5th November 1979. Prior to 5th November 1979, meeting also took place before the Conciliation Officer/Regional Labour Commissioner on 3rd November 1979. Before conclusion of the conciliation proceedings the Federation commenced the strike on 5th November 1979. To complete the chronology of events, it may be mentioned that failure report was submitted by the Regional Labour Commissioner/Conciliation Officer to the Central Government on 7th November 1979. On 12th and 13th November 1979, meeting was called by the Conciliation Officer. However, the strike had commenced on 5th November 1979. The Bank contended before the Conciliation Officer that the strike was not legal. This was in the meeting with the Conciliation Officer on 12th and 13th November, 1979. On 9th December 1986, the Federation addressed a letter to the Bank demanding strike wages for the abovementioned period 5th November 1979 upto 4th February 1980. Ultimately, the said demand was admitted in conciliation on 14th December 1988. On 3rd

February 1989, the Government referred the matter to the Central Government Industrial Tribunal. Finally, on 1st November 1991, the impugned Award came to be declared by the Central Government Industrial Tribunal which is under challenge in both the above writ petitions.

3. Mr. Rele, the learned counsel appearing on behalf of the Bank submitted that in the present case, the Industrial Tribunal has come to the conclusion that the strike which commenced on 5th November 1979 was illegal in as much as the said strike had commenced before expiry of 14 days" of giving of the strike notice dated 22nd October 1979. Similarly, the strike commenced on 5th November 1979 when conciliation proceedings before the Conciliation Officer were pending. Mr. Rele submitted that in the circumstances, the provisions of Section 22(1)(b) and Section 22(1)(d) of the said Act, 1947 stood violated. Mr. Rele submitted that the conciliation proceedings concluded on or about 3rd November 1979 and u/s 22(1)(d) strike could not commence for a period of 7 days after conclusion of the conciliation proceedings and since it had commenced on 5th November 1979, the strike had commenced before expiry of 7 days after conclusion of conciliation proceedings on 3rd November 1979 and, therefore, Mr. Rele contended that even Section 22(1)(d) stood violated. Mr. Rele further submitted that Section 20 of the Industrial Disputes Act, 1947 deals with commencement and conclusion of the conciliation proceedings. He further submitted that reading Section 20 with Section 22 of the Industrial Disputes Act in the context of the facts of the present case, it was clear that the strike commenced on 5th November 1979 was illegal and the Tribunal was right in coming to the conclusion that the said strike was illegal. However, according to Mr. Rele, the Tribunal erred in coming to the conclusion that substantial compliance while giving the strike notice, particularly with regard to the form of the strike notice, would be sufficient and that the provisions of Section 20 and Section 22 are not mandatory, particularly with regard to the form of the strike notice. Mr. Rele submitted that in view of Rule 71 read with the prescribed form and also in the light of the provisions of Sections 20 and 22, the form of the strike notice is required to be mandatorily complied with. Mr. Rele Submitted that Section 20 expressly lays down that conciliation proceedings shall be deemed to have commenced on the date on which notice of strike u/s 22 is received by the Conciliation Officer. u/s V(2)(b), a conciliation proceeding shall be deemed to have concluded where no settlement is arrived at, and when the report of the Conciliation Officer is received by the appropriate Government. Mr. Rele submitted that u/s 22(1) which falls under Chapter V, it is laid down that no person employed in a public utility service shall go on strike in breach of contract within 14 days of giving such notice or during pendency of any conciliation proceedings before a Conciliation Officer. He accordingly submitted that prohibition on a person employed in public utility service to go on strike commences from giving of strike notice. Similarly, conciliation proceedings in cases of strikes in public utility service also commences from giving of strike notice. Mr. Rele submits that the Legislature has given this mandate as applicable

to public utility service because in cases of public utility service, it is not only the employer and the employee whose rights are in issue, but public at large are affected. It is for this reason also that the appropriate Government is given 7 days" period after conclusion of the conciliation proceedings ending in a failure report to decide such steps as it deems fit, particularly in the matter of strikes and lock-outs in public utility services. Mr. Rele, therefore, submitted that looking to the scheme of Sections 20 and 22 as applicable to public utility services, the Tribunal should have held that the strike notice dated 22nd October 1979 was not valid, particularly because it was not in the prescribed form and it was not addressed to and sent to the appropriate authorities/Designated Officer mentioned in the proscribed form read with Rule 71 of the Industrial Disputes (Central) Rules framed under the Industrial Disputes Act, 1947. Mr. Rele further submitted that the Supreme Court has time and again laid down in earlier Judgments i.e., judgments prior to Syndicate Bank's case (supra) that once a strike is held to be illegal, question of justifiability does not arise. At this stage it may be mentioned that the demand of the workman is for wages during the strike period. Mr. Rele further submitted that reading of the Judgment of the Supreme Court in Syndicate Bank's case (supra), which in turn, refers to large number of earlier Judgments of the Supreme Court, the Court had come to the conclusion that in cases of public utility services, strikes, if found to be illegal, question of justifiability does not arise. In other words, the employees employed in a public utility service, shall be entitled to wages for the strike period only if they prove that the strike was legal and justified. Mr. Rele further submitted that in the present case, therefore, the Industrial Tribunal should not have gone into the question of justifiability once it has come to the conclusion, on the above facts, that the strike was illegal. Mr. Rele further submits that in any event even on the merits of the case, in the context of justifiability, the Industrial Tribunal has erred in coming to the conclusion that the demands of the employees were not addressed to by the Bank although they have been pending from 1970. Mr. Rele further submitted that the above facts indicate that none of the demands/ disputes were pending from 1970. Mr. Rele further submitted that the above facts indicate, at the highest, that the demands start from the year 1975. That broadly, the demands were in respect of bonus and other allowances as far as the employee is concerned whereas as far as the Bank is concerned, the Bank's demand was that the totality of the package is required to be examined, particularly when the Bank was entitled to introduce mechanisation pursuant to the Industry-wise settlement of 1966 and in the above facts and circumstances of the cases, merely because the industrial disputes has ultimately concluded by way of Justice Tulpule's Award in 1985 it cannot be the basis for coming to the conclusion that the strike resorted to by the employees was justified. The Industrial Tribunal had erred in upholding the plea of the employees, that the said strike was justified. Mr. Rele placed heavy reliance in that context on paragraph 22 of the Judgment of the Supreme Court in Syndicate Bank's case (supra), which in turn, has relied upon the earlier judgments of the Supreme Court in Chandramalai Estates case (reported in The Management of

Chandramalai Estate, Ernakulam Vs. Its Workmen and Another, which has held that merely raising of the demand does not indicate justifiability to go on strike. The test, according to Shri Rele, appearing on behalf of the Bank, has not at all been considered by the Industrial Tribunal and, therefore, the Tribunal was wrong in coming to the conclusion that because the demands were pending, the strike was justified. Mr. Rele submitted that the above facts clearly indicate that at every possible opportunity, the Bank has conceded the demands. The Bank has repeatedly tried to settle the matter, particularly with regard to bonus. That the Bank was also entitled to mechanisation being introduced in the Bank which has not been taken into account by the Tribunal. In the above circumstances, Mr. Rele submits that the entire Award of the Tribunal should be set aside.

4. Mr. Pongalia, learned counsel appearing on behalf of the Federation submitted that the judgment of the Supreme Court is not applicable to the facts of the present case. That the said judgment of the Supreme Court in Syndicate Bank's case (supra) applies only to public Undertakings like Nationalised Banks. According to Shri Pongalia, Grindlays Bank is a public utility service, but not a public Undertaking because it is in private sector and it makes profits which is not the case with public Undertakings like Nationalised Banks. Mr. Pongalia further submitted that the petitioner-Bank is involved in Security Scam which is indicative of the fact that the said Bank does not act in public interest. It is not a Public Undertaking. It is only concerned with profit-making. In the circumstances, it is contended that the ratio of the judgment of the Supreme Court in Syndicate Bank's case (supra) is not applicable. Mr. Pongalia also further submitted that in any event, in the present case, provision of Section 22 of the Industrial Disputes Act are not in pari materia with Section 24(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to, for the sake of brevity, as "the said Act, 1971"). He further submits that similarly, Section 22(1)(d) of the Industrial Disputes Act is in pari materia to Section 24(1)(c) of the said Act, 1947 and of that be the case, relying on the judgments of this Court in Premier Automobiles Ltd. v. G. R. Sapre & Ors. (reported in 1981 LIC 221 Mr. Pongalia contended that even if the strike had commenced illegally from 5th November, 1979 and even if the strike was illegal on and from 5th November 1979, it became legal by 10th November 1979 i.e., 7 days after conclusion of the conciliation proceedings on 3rd November 1979 and, therefore, the employees were entitled to full wages from 10th November 1979 to 4th February 1980 and 50% wages from 5th November 1979 upto 10th November 1979. Mr. Pongalia submits that provisions of the said Act, 1971 dealing with illegal strike are in pari materia with provisions dealing with illegal strike under the Industrial Disputes Act and if that is so, he contends that the said strike became legal from 10th November, 1979. Mr. Pongalia further submitted, however, that if this Court comes to the conclusion that Judgment of the Supreme Court in Syndicate Bank's case (supra) is held to be applicable and if the provisions of the said Act, 1971 are not applicable to the illegal strike under the Industrial Disputes Act, then question of justifiability will

not arise. He, however, submitted that the law laid down in the Syndicate Bank's case (supra) by the Supreme Court is law laid down for the first time and, therefore, the Federation was entitled to file Writ Petition No. 2551 of 1994.

5. Before examining the legal provisions, it may be mentioned that in view of the judgment of the Supreme Court in Syndicate Bank's case (supra). I am not inclined to examine the question of justifiability. In view of the clear mandate embodied in the judgment of the Supreme Court in Syndicate Bank's case (supra) to the effect that once a strike is held to be illegal, question of justifiability does not arise and that the employees in public utility services were not entitled to seek wages for the strike period unless they prove that the strike was legal and justified. I do not wish to examine the judgment of the Industrial Tribunal in the context of justifiability. Therefore, the only question which I am required to examine in the present case is whether the strike which commenced on 5th November 1979 was an illegal strike. Further, whether the strike which commenced illegally became legal on and from 10th November 1979 as contended on behalf of the Federation. These are the only two basic points which I am required to answer in this case. Before coming to the rival contentions on the legality of the strike, provisions of the Industrial Disputes Act, 1947 and provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 are required to be examined. The object of the Industrial Disputes Act, 1947 as indicated in the Preamble is to provide for investigation and settlement of Industrial Disputes. This is not purpose of the U.L.P. Act, 1971. The object of enacting the U.L.P. Act, 1971, inter alia, is to define and provide for prevention of certain unfair labour practices and also to provide for declaring certain strikes and lock-outs as illegal strike and lock-out. These two objects clearly indicate that as regards public utility services, the scheme of the lock-outs is distinct and separate. Section 2(bb) defines Banking Company to mean a Banking Company as defined u/s 5 of the Banking Companies Act, 1949. Section 2(n) defines public utility service to mean any section of an Industrial Establishment or any Industry specified in the first Schedule which the appropriate Government may, it satisfied that public interest so requires, by Notification in the Official Gazette declare to be a public utility service, for the purposes of Industrial Disputes Act. The first Schedule to the Industrial disputes Act indicates that the Banking Industry is covered by provisions of Section 2(n)(iv) of the Industrial Disputes Act, 1947. In the above circumstances, the petitioner-Bank is a public utility service. There is no separate distinct category to a public Undertaking as contended by Mr. Pongalia. Under the Provisions of the Industrial Disputes Act, 1947, Banking Industry forms part of the first schedule. Petitioner-Bank forms part of a Banking Industry and, therefore, it is a public utility service. In the above circumstances, at the very outset, it may be mentioned that the judgment of the Supreme Court in Syndicate Bank's case squarely applies to the present case. There is no such distinction under the Industrial Disputes Act, 1947. Section 22 of the Industrial Disputes Act, 1947 contains a head-note which stated prohibition of strike and

lock-outs. Section 22 finds place in Chapter V which deals with strikes and lock-outs. Section 22(1) lays down that no person employed in public utility service shall go on strike in breach of contract, inter alia, within 14 days of giving such notice or during pendency of any conciliation proceedings before a Conciliation Officer and 7 days after conclusion of such proceedings. Commencement and conclusion of conciliation proceedings is spelt out u/s 20 of the said Act, 1947. A conciliation proceeding shall be deemed to have commenced on the date on which notice of strike u/s 22 is received by the Conciliation Officer. Where no settlement is arrived at and a Failure Report is submitted by the Conciliation Officer, the conciliation proceeding shall be deemed to have included. In this connection, it may be mentioned that the report of the Conciliation Officer must be received by the appropriate Government and the period of 7 days, contemplated by Section 22(1)(d) commences after conclusion of conciliation proceedings i.e., after receipt of the report by the appropriate Government. In this connection, judgment of the Supreme Court in the case of *Workers of The Industry Colliery, Dhanbad Vs. Management of The Industry Colliery*, is important. In that case, the only question raised was whether the strike was illegal. The facts of that case were as follows. On 13th October 1948, the workers gave notice of strike u/s 22(1) of the Industrial Disputes Act proposing to call one day strike on the expiry of 6th November 1949 for fulfilment of certain demands. The strike notice was in accordance with the rules framed under the Act. The notice was received in the office of the Regional Labour Commissioner on 10th October 1949. The Regional Labour Commissioner held conciliation proceedings on 22nd October 1949. The workers declined to participate in the said proceedings. On the same day, the Regional Labour Commissioner addressed a letter to the Chief Labour Commissioner stating that after notice of strike he had issued notices to the parties for conciliation, but the employers were not ready to discuss the demand although the employers were ready to do so. The letter ended with a request that the Government may be informed. This report was received by the Chief Labour Commissioner on 25th October 1949, but the same was not communicated to the appropriate Government in time. In the meantime on 7th November 1949 the workers went on the one day strike as per the strike notice. By order dated 2nd February 1950, the Regional Labour Commissioner declared the strike as illegal. Being aggrieved by the said decision, the matter came before the Industrial Tribunal and ultimately in the Supreme Court. Analysing the provisions of Section 22 of the Industrial Disputes Act, the Supreme Court, after considering provisions of Sections 12(4) and 12(b) in contradistinction to Section 20(2)(b), found that the word received in Section 20(2)(b) has been used by the Legislature deliberately because the Government must have 7 days period of time to consider the position after the Government has received the report from the Conciliation Officer. The Supreme Court, in the above case, took into account the said provisions as applicable to public utility service. The Supreme Court observed that the Government has to make up its mind as to what further steps it should take. The Supreme Court rejected the contention advanced on behalf of the workmen that they were not

responsible for the appropriate Officer not communicating the decision to the Government in time by coming to the conclusion that the Industrial Disputes Act makes it very clear that time was the essence of the Act and that requirements of the relevant provisions must be punctually obeyed. This judgment also fortifies the contention of Shri Rele that the strike notice which the employees in public utility service is required to give must be in accordance with Rule 71 of the Central Rules framed under the Industrial disputes Act read with the prescribed form No. "L" and if the strike notice is not in the prescribed form, then the strike which commences pursuant to such a notice would be illegal (see also *Municipal Committee Vs. Industrial Tribunal and Others*, . Now coming to the various provisions of the U.L.P. Act, 1971, as stated above, the U.L.P. Act has been enacted with the object of preventing unfair labour practices and also for declaring certain types of strikes and lock-outs as illegal. Chapter V of the U.L.P. Act, 1971 consists of Sections 24 and 25 which deal with illegal strikes and lock-outs. Section 24(1) defines illegal strike. Section 25(1) empowers State Government or the employer to make a reference to the Labour Court for declaration that the strike is illegal. Section 25(2) gives power to the State Government or to the recognised Union to make a similar reference for a declaration that the lock-out is illegal. u/s 25, reference can be made either when the employees propose to go on strike or commence the strike. Section 25(3) enjoins on the Labour Court to make a declaration regarding illegality of the strike in open Court. The declaration made u/s 25(3) of the said Act shall be recognised as binding and has to be followed in all the proceedings under the U.L.P. Act as indicated by Section 25(4). u/s 25(5) of the said Act, where any strike is declared to be illegal and the said strike is withdrawn within 48 hours of such declaration, such strike shall not, for the purposes of this Act, be deemed to be illegal under this Act . u/s 30 of the said Act, the Industrial Tribunal is empowered to declare that the respondents have committed unfair labour practices. u/s 30, the Industrial Court has also been given the power to give directions to persons guilty of unfair labour practices to cease or desists from unfair labour practice and to take such affirmative action as may, in the opinion of the Court, be necessary. u/s 30(2) of the Act, power is given to the Court to pass interim orders including temporary relief or restraining order including directions to withdrawn temporarily the unfair labour practice complained of. u/s 32, it is provided that the Court shall also have the power to decide all matter arising out of complaints under the Unfair Labour Practices Act. In other words, reading Section 25(2), Section 25(3) and Section 25(5) of the Unfair Labour Practice Act, the Court has to decide whether the strike is legal or illegal and after coming to the conclusion that it is illegal, the Court has to make a declaration and if such a strike, which is declared as illegal, is withdrawn within 48 hours, then for the purposes of the U.L.P. Act, such a strike will not be deemed to be illegal. The words "for the purposes of this Act" u/s 25(5) clearly indicate that the procedure laid down u/s 25 of the Unfair Labour Practices Act, 1971 is distinct and it declares strike which is illegal, not to be illegal by a deeming fiction only for the purposes of the said Act, 1971.

6. In the light of the provisions of Sections 22 and 24 of the Industrial Disputes Act, 1947 and in the light of the provisions of Sections 24 and 25 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 it is, therefore, very clear that u/s 22 there is prohibition on a person employed in public utility service to go on strike in breach of contract within 14 days of giving such notice or before the expiry of the date of strike specified in any such notice or during pendency of any conciliation proceedings before a Conciliation Officer and 7 days after conclusion of such conciliation proceedings. Such an absolute prohibition is not indicated in Sections 24 and 25 of the U.L.P. Act, 1971. As stated above, the U.L.P. Act declares a strike which has commenced or continued without giving to the employers, notice of the strike in the prescribed form or within 14 days of giving of such notice or during pendency of the conciliation proceedings and 7 days after conclusion of such proceedings, to be illegal. It is true that on a bare comparison of the text of the two Sections under the Industrial Disputes Act and under the U.L.P. Act, some similarity is there, but if one analyses the scheme of Section 22, as applicable to public utility service, it is clear that the continuance of strike under the U.L.P. Act which is illegal could be subsequently rendered legal. In other words, the illegality at the inception could be cured. It is in that light that the Legislature under the U.L.P. Act has indicated that if an illegal strike is withdrawn within 48 hours after the Court declares the strike to be illegal, then for the purposes of the U.L.P. Act, such a strike will not be deemed to be illegal. It is only to that extent that the legal fiction is created under the U.L.P. Act. On the other hand, there is no such fiction contemplated by Chapter V of the Industrial Disputes Act. On the other hand, Mr. Rele is right in his submission that in public utility service, the Parliament has thought it fit to lay down the commencement and conclusion of conciliation proceedings, particularly because the Parliament realised that in public utility service, the Government also should be given time and opportunity to consider and think over the matter after conciliation proceedings and in a Failure Report and after the said report is handed over to the Government. It is in that light that the judgment of the Supreme Court in the abovementioned case of Industry Colliery, (supra) assumes importance. The said judgment clearly indicates that time is the essence of the Industrial Disputes Act and requirement of Section 22 must be punctually obeyed and carried out. Mr. Rele is, therefore, right in contending that the strike notice should comply with the prescribed form under Rule 71 of the Central Rules framed under the Industrial Disputes Act, 1947 and that the Industrial Tribunal erred in coming to the conclusion that substantial compliance would be sufficient. In the present case, the strike notice is not in the prescribed form. It has not been addressed to the Designated Officers like the Conciliation Officer. Even otherwise there is nothing to indicate the date on which it has been sent to the Conciliation Officer. The date of the receipt by the Conciliation Officer is also not indicated. This is very relevant particularly because time is the essence of Section 22 of the Industrial Disputes Act, 1947. On more fact may be mentioned that although the Industrial Tribunal is right in coming to the conclusion that the strike commenced is illegal because

it has commenced in violation of Section 22(1)(b) and Section 22(1)(a), the Industrial Tribunal erred in rejecting the Bank's contention that it was not in the prescribed form and it was not sent to the Designated Officers. It was not even addressed to them. It may also be mentioned that the Conciliation Officer specifically drew attention of the Federation vide letter dated 26th October 1979 pointing out that the notice was not in the prescribed form. Despite the said letter dated 26th October 1979 addressed by the Conciliation Officer to the Federation informing them that the notice is not in the proper form, the Federation did not take cognisance of the said letter and despite the said letter, commenced the strike on 5th November, 1979. As concluded by the Industrial Tribunal, the conciliation proceedings ended on 3rd November, 1979. 7 days period ended on 10th November, 1979. The strike commenced on 5th November 1979. In the above circumstances, the strike was clearly illegal. As stated hereinabove, Section 25(5) of U.L.P. Act, 1971 which lays down that the illegality of the Strike could be cured is the exclusive provisions of the U.L.P. Act. There is no such procedure prescribed under Chapter V of the said Act. The above view is also supported by the judgment of the Division Bench in the case of Industrial Tubes Manufacturing Co. Ltd. Vs. S.R. Samant, Judge, Industrial Court and others, . The Division Bench of this Court, after considering Section 25(5) of the U.L.P. Act, 1971 ruled that u/s 25(5) of the U.L.P. Act, 1971 illegality created by breach of Section 24(1) of the U.L.P. Act alone could be cured. If there is illegality created by Section 24 of the Industrial Disputes Act, the same cannot be cured by applying Section 25(5) of the U.L.P. Act. This is on the footing that Section 25(5) of the U.L.P. Act expressly lays down that the illegality is deemed to be cured only for the purposes of the U.L.P. Act. The Division bench categorically observed that if the strike is illegal under the Industrial Disputes Act, withdrawal of the strike within 48 hours can not wipe out the illegality by resorting to provisions of Section 25(5) of the U.L.P. Act. Similarly, in view of the decision of the Supreme Court in the case of Industry Collieries (supra) which has held that time is the essence of the Industrial Disputes Act and Section 22 of the said Act is required to be punctually obeyed, it is clear that the said provisions are mandatory and not directory as held by the Industrial Tribunal.

7. In the above circumstances, I find merit in the writ petition filed by the Bank. I do not find any merit in the writ petition filed on behalf of the Federation. Accordingly, the decision of the Industrial Tribunal dated 1st November 1991 in Reference C.G.I.T. No. 11/89 is hereby set aside. Accordingly, rule in Writ Petition No. 92 of 1992 is made absolute. Consequently, Writ Petition No. 2551 of 1994, filed by the Federation fails and rule stands discharged. The Bank Guarantee given by the petitioners in Writ Petition No. 92 of 1992 shall stand discharged as the Bank has succeeded in the said Writ Petition. Prothonotary and Senior Master is directed to return the Bank Guarantee to the petitioners in Writ petition No. 92 of 1992. However, in the facts and circumstances of the case, there will be no order as to costs.

8. Certified copy expedited.

9. Mr. Nesari applies for stay of this order.

10. Stay rejected.