

(2000) 10 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 1807 of 1996 with 338 of 1997

Bharat Petroleum Corporation Ltd.

APPELLANT

Vs

Workmen Employed in the Refinery Division of Bharat
Petroleum Corporation Ltd. and Another

RESPONDENT

Date of Decision : 06-10-2000

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3(24)

Constitution of India, 1950 — Article 41

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 22, 24, 25

Citation : (2001) 2 ALLMR 48 : (2001) 2 BomCR 224 : (2001) 2 BOMLR 221 :
(2001) 88 FLR 1 : (2002) 4 LLJ 354

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Mr. J.P. Cama, Biren Saraf, instructed by Craford Bayley and Company, Mr. Gadkari and Mr. S.S. Pakale, for the Appellant; Mr. Gadkari, Mr. S.S. Pakale, Mr. J.P. Cama and Biren Saraf, instructed by . Crawford Bayley and Company, for the Respondent

Judgement

R. J. Kochar, J.—Grant of 50% relief and denial of 50% relief cannot always be considered as justice according to law. The award of the Central Industrial Tribunal has exactly done so by granting 50% wages to the employees and denying them 50% of the wages. Both the parties have filed the above writ petitions to challenge the same. Hereinafter, both the parties would be referred to as "the employer corporation" and "the employees union".

2. The facts in nutshell can be stated as follows :-

On 29th January, 1976, the Government of India nationalised two erstwhile Burma Shell Companies whereby all the assets, liabilities and business of the said Companies came to be vested in a Government Company. The employees became public sector employees and therefore, they demanded the reliefs of permanency to all the workmen recruited after nationalisation and that the employees recruited after nationalisation insisted to get the benefits of the

settlement, entered into in 1973-74 by the erstwhile Companies with its workmen. In the year 1978-79, the employees filed two complaints of unfair labour practices against the employer corporation under the M.R.T.U. & P.U.L.P. Act, 1971, mainly for the aforesaid two sets of reliefs. On 24th January, 1980, a charter of demands was submitted by the workmen, for permanency, for increase in age of retirement and revision of payscales. I am not referring to the other events which have taken place during interregnum period such as demonstrations, one day's strike to protest against the arrest of President of Union Dr. Datta Samant march by the employees to the refinery staff colony to press their demands etc. The trade union activities and agitations were on increase, culminating in a threat to serve a strike notice, if the management did not accept their demands. This was recorded in a letter dated 7th November, 1981 addressed by the union to the management of the Corporation. The union served an ultimatum in its letter dated 28th December, 1981 that their major demands should be met within 10 days.

3. It appears that about 250 workmen assembled on 5th January, 1982 outside the administrative building and demonstrated for two hours by remaining unauthorisedly absent, from the work. Under the shadow of the trade union agitations, both the parties, however, were continuing mutual discussions and negotiations. By its letter dated 12th January, 1982, to the Secretary, Department of Labour, the management placed on record the inside developments and the situation prevailing in the factory premises. It appears that the management was desirous and willing to have a long term settlement on a condition that the employees Union should withdraw the pending cases filed by them. On 13th January, 1982, the workmen informed the management that 92% of the workmen had voted for going on an indefinite strike. It appears that a general meeting of the workmen, members of the union was convened to take secret ballot to find out the willingness or otherwise of the workmen to go on an indefinite strike. In the secret ballot held on 12th/13th January, 1982, according to Union itself, a large number of workmen favoured such a strike. It is an admitted position that the management was informed about the result of the secret ballot that the workmen would go on an indefinite strike to press their demands. It is, however, pertinent to note here that no formal strike notice was given and no date for commencing of such strike was fixed and communicated by the Union to the management. According to the union, even before such a strike notice could be issued, the management started shutting down the refinery plant from midnight of 13th January, 1982 and early 14th January, 1982. According to Union, though they had communicated the result of the secret ballot that the majority of the workmen were willing to go on an indefinite strike, it was not as yet decided finally and no such strike notice was served on the management. It is the case of the union that when they reported for work on 14th January, 1982, they found that there was no work in some of the departments because of back process of shutting down of plants was set in motion and the management officers were present at such places. As a result of shutting down, of back

process, the workmen were without work on 14th January, 1982 and on 15th January, 1982 till midnight. As a protest against such abrupt shutting down of the plant, a section of the workmen held demonstrations in the premises. According to the management on 14th January, 1982, though the workmen had entered the premises of the factory, they did not do any work. According to it, the workmen in maintenance L.P.G. plant, wagon filling areas, bitumen protection area and tanker filling areas abstained from work and continued to shout slogans while process technicians in the L.P.G. plant and workmen in utilities, securities and fire station continued to work. In the aforesaid circumstances, both the parties, however, continued discussions. It is the case of the management that they had made an interim offer to the workmen but the same was rejected. It is also the case of the management that at 7.30 p.m. on 14th January, 1982, in a gate meeting a decision was taken to reject the offer of the management and to continue the strike till all the demands were accepted. The management was also informed that the other unions of the Process technicians, fire utilities and securities would abstain from work within 24 hours next. According to management on 15th January, 1982, the workmen in L.P.G. filling plant, bitumen filling and maintenance entered the refinery but did not do any work. Again on the same day, members of the process Technicians Associations Union, fire security Utility etc. also abstained from work and none of the labour category workmen attended to work from 11.45 p.m. and therefore the management was compelled to phase out catalytic plant and sought help of process technicians in the same. However, such help was refused. In the aforesaid circumstances, according to the management it was compelled to phase out operating plant one by one and had informed the Government of Maharashtra the whole situation which had arisen in the refinery. According to the management, the clerical staff, however, continued to work till 15th January, 1982 but stopped working thereafter. The management placed all these events on the record of the State Government and also unions and continued to display notices exerting the workmen to join back on duty.

4. Both the parties, however, continued to negotiate and finally reached a settlement on 17th June, 1982, better late than never. The Union had given an undertaking to resume normal duties and to continue to cooperate in maintaining all existing work norms and practices, maintaining discipline, improve efficiency and productivity and discouraging absenteeism and avoiding wasteful practices. As far as the wages for the strike period (lock out period according to the union) from 14th January, 1982 to 16th June, 1982, the management did not accept the demand of the union to pay wages for the said period to the workmen.

5. According to union, the workmen had never commenced the strike though such a mandate came from the secret ballot. According to it no such strike notice was given but the management stopped the working in anticipation of the strike and, therefore, according to the union it was an illegal stoppage of work refusing to give work to the workmen amounting to an illegal lock out. The union contended that the workmen were reporting for work on 13th, 14th and 15th

January, 1982 but they were not given work. The logic of the contention is that in spite of the overwhelming vote in favour of an indefinite strike, there was no final decision to strike the work indefinitely. The management was merely communicated the result of the secret ballot but was not given a strike notice. The workmen entered the refinery and reported for work but they were not given work and they were refused work which according to union amounted to an illegal and unjustified lock out. According to the union on 16th January, 1982, the management declared a lock out by notice falsely alleging that the workmen had gone on an illegal strike and called upon them to give an undertaking of good conduct bond and that insistence by the management for such an undertaking before workmen could be allowed to enter the refinery amounted to an illegal lock out. According to the union, it was also an unjustified lock out as no untoward incident had taken place and no violent situation was prevailing in the refinery. The union placed whole responsibility on the management's adamant stand for insisting for a long term settlement and for withdrawal of the pending cases as condition precedent. On 19th January, 1982, the union appears to have approached the management informing the management that they were not on strike and they also approached the Commissioner of Labour for intervention. It is alleged by the union that the management did not heed the suggestion of the Commissioner of Labour for interim settlement. In the aforesaid circumstances though, however, a final settlement was arrived at on 17th June, 1982, the dispute of wages during the period from 14th January, 1982 to 16th June, 1982 was not amicably settled. The management accepted the proposal that no disciplinary action would be taken -against any of the workmen who participated in the alleged illegal strike but did not accept their demand for wages for that period. The workmen, therefore, raised an industrial dispute to get wages for the said period of "illegal lock out". Both the parties completed their pleadings and adduced oral evidence before the Tribunal. The industrial dispute was referred for an adjudication to the Tribunal u/s 10(l)(c) read with Section 12(5) of the Industrial Disputes Act, 1947. By this award dated 13th May, 1995, the learned Member of the Industrial Tribunal has put blame on both the parties and has observed that one unjustified act cannot justify another unjustified act. He has held that the union's attitude in resorting to the type of agitation which compelled the management in shut down certain plants and it was not a justified step and that it could be equally said that the attitude of the management in insisting upon the undertaking before the workmen were allowed to resume work and making it a condition precedent was not justified. Finally, he has held that the workmen were not entitled to full wages for the period and has, therefore, awarded half the wages observing that the management was not justified in denying them wages altogether.

6. Both the learned Counsel have assailed the impugned award being illegal, improper and unjustified. Both have taken me through the documentary and oral evidence adduced by both the parties before the Tribunal. Shri Gadkari the learned Counsel for the Union strenuously urged that though the substantial

large majority of the workmen favoured an indefinite strike in the secret ballot, there was no strike notice issued by the Union. The workmen were not on a strike much less an illegal strike. According to him, the workmen had reported for work on 13th January, 1982 and 14th January, 1982 and also on 15th January, 1982 but they were refused their normal work and there was no work to be done by them. He also pointed out from the oral evidence of the management's witness that the workmen who were present in the department had helped and co-operated with the officers of the management in shut down process in the plant to avoid any hazardous event. Shri Gadkari submitted that if the workmen were on strike, they would not have come forward to help and co-operate with the officers in the process of shutting down of the plant. According to him, as soon as they were communicated the outcome of the secret, ballot, the management started the process of shutting down of the plant in anticipation of a strike and therefore, it was the management which first effected an illegal lock out by stopping the plant and machinery and by resorting to shutting down of the plant at the first instance. As a result of this action, initiated by the management, it was an illegal lock out and, therefore, the workmen were entitled to full wages for the period as it was in contravention of sections 24 and 25 of the Industrial Disputes Act, 1947. He further submitted that not only the lock out was illegal but it was even unjustified as there was no justification for the management to have initiated and effected the lock out, apprehending a strike without a strike notice having been issued by the union. He also submitted that the insistence by the management for an undertaking of good conduct before the workmen were allowed to join the work, amounted to an illegal lock out. According to him, it further proves that the workmen were ready and willing to work and that they were reporting for work every day.

7. Shri Gadkari, summarised the pending demands of the workmen as under :-

(i) implementation of 1973-74 settlement between the erstwhile management and unions, after the nationalisation of those Companies. There were about 900 workmen concerned in the demands. The workmen also wanted the management after nationalisation to accept the public sector wage pattern;

(ii) Permanency/regularisation of the temporary workmen who were continued as temporary for years together.

(iii) About 380 such temporary workmen were paid only a consolidated wages, which was lesser than the public sector undertaking payscale, though the work done by both the categories was the same.

8. Shri Gadkari did not dispute that the union/workmen had also filed a complaint under the provisions of the M.R.T.U. & P.U.L.P. Act, 1971 before the Industrial Court for the same demands and that those complaints were pending the decision from the Industrial Court as on 13th January, 1982. The learned Counsel in his usual fairness did not dispute that the manufacturing process in the refinery is hazardous if not properly and carefully attended and looked after.

He also specifically mentioned that it was not the management alone which was concerned with the dangerous and hazardous effects, but even the workmen were equally concerned as even their lives and the lives in the vast colonies in the neighbourhood were at peril, if the work process was not carefully attended. He, therefore, strenuously urged on the basis of the oral evidence of the management witnesses, that the workmen were actively helping the management personnel in the process of shutting down of the plant so that there was no risk of any untoward incident. Coupled with this hand of co-operation extended by the workmen, the learned counsel further pointed out that the workmen themselves had entered the factory and the work place and had reported for work, but on account of the prior shut down of the plant there was no work available for them. As a protest, there were demonstrations on the premises, admitted the learned Counsel. According to him, however, the management was not at all justified in asking the workmen to given an undertaking as a condition precedent for allowing the workmen to work. As a matter of fact, such an undertaking was not at all necessitated, required and justified. It was finally submitted by the learned Counsel that the workmen were not on strike but they were locked out from 14th January, 1982 to 17th January, 1982 and that it was an illegal lock out and that the workmen were entitled to get full wages for the said period. Shri Gadkari relied upon the following Judgments :-

- (i) Northern Dooars Tea Co. Ltd. v. Workmen of Dem Dima Tea Estate
- . (ii) Pradip Lamp Works Patna v. Workmen of Pradip Lamp Works Patna and Anr.
- (iii) Vamen Maruty Gharat and Ors. v. M. S. Apte and Ors.
- (iv) The Statesman Limited v. Their Workmen.

In the case of Northern Dooars Tea Co. (supra), the Supreme Court directed the management to pay half the wages for the period between the date of expiry of the strike and the date on which the workmen were permitted to resume their work as a result of the settlement. The Industrial Tribunal had recorded a finding that the action of the management in declaring and continuing the lock out was not fair or bona fide and it was directed to pay a portion of the wages for the period of lock out. In the present case, the facts are totally different and considering the nature of the industry, I have come to a definite conclusion that the steps taken by the management to start shutting down of the process was fully Justified under the eminent threat of indefinite strike to be commenced pursuant to the decision of the workmen to go on an indefinite strike. We cannot afford to lose sight of the nature of the industry with which we are concerned. The ratio of the above judgment, therefore, is not applicable in the present case.

So far as the case of Pradip Lamp Works Patna (supra) is concerned, I fail to understand how this judgment would assist Shri Gadkari in the facts and circumstances of the present case. In the case cited, an industrial dispute relating to dismissal of 10 workmen was before the Conciliation Officer. It was

the case of the management that the said industrial dispute was not espoused by a registered union but actually it was espoused by a substantial number of workmen. The challenge to the reference was turned down by the Supreme Court holding the reference valid. This judgment has absolutely no relevance in the present case.

In the case of Vamen Maruty Gharat (*supra*), the Issue before the Division Bench of our High Court was whether the insistence by Company on admission by workmen that the strike was illegal as a condition precedent to their being allowed to resume their duties was held to be an illegal and improper action on the part of the Company and therefore, it was held to be a lock out within the meaning of Section 3(24) of the Bombay Industrial Relations Act, 1947. In the present case, the undertaking insisted by the management was totally different and was only a very formal and innocuous undertaking that after entering the refinery the workman would do his normal work in a disciplined manner. There was no insistence by the management on the workmen that they should admit that they were on an illegal strike. From the facts and circumstances in that case, the Division bench had taken that view which has no application in the present case.

As far as the decision in the case of Statesman Limited (*supra*) is concerned, in that case the Supreme Court in the peculiar facts and circumstances before it assessed the blameworthy conduct of the parties and apportioned the blame on both. The facts in nutshell before the Supreme Court were that the workmen had gone on an illegal strike following which the management had declared lock out. Thereafter, despite the workers undertaking to keep peace, the management continued the lock out. Finally, the Industrial Tribunal held that the blame for the strike and the lock out had to be apportioned to both the sides and in that view payment of half wages during the lock out period was awarded. The award of the Industrial Tribunal was accepted by the Supreme Court. In the case at hand, as a matter of fact, there was no lock out by the management. As a precautionary measure in the sensitive process of refinery it had started shutting down the process of working to avoid danger and hazard to the life and property not only of the refinery and factory but also to the thickly populated neighbourhood of the factory. The workmen had decided to go on an indefinite strike without specifying the date and without giving any legal notice. In these circumstances, the allegations of the workmen was the preparation to shut down the process amounted to a lock out and therefore, they have claimed full wages for the said period. In the case before the Supreme Court, both the parties were blamed for their unworthy conduct in the present case. I do not find any unworthiness in the conduct of the management. The workmen were prepared for an indefinite strike and from the next date they did not start work but started loitering in the refinery after entering the refinery. There was no strike notice. The management on the other hand anticipating an indefinite strike started to shut down the process as a precautionary measure, which is essential in such industry. The management had offered the workmen to resume duty by signing a very

innocuous or innocent, normal undertaking which the majority of the workmen refused to do. It is significant that all those workmen who had signed such an undertaking and entered the refinery were paid their wages for the said period. The facts in our case, therefore, are totally different from the facts before the Supreme Court.

9. Shri Cama, the learned Counsel for the employer Corporation urged that there was no lock out effected by the Corporation, much less an illegal lock out. He refuted the charge of the union that the Corporation had in fact issued a lock out notice dated 16th January, 1982 and therefore, it was an illegal lock out. Shri Cama pointed out that in the said letter the facts and events which transpired in the past were placed on record. He further pointed out that there was no denial by the union of the facts which were set out in the said letter. He maintained that, in fact, 92% of the workmen had voted in favour of an indefinite strike in their secret ballot in the meeting convened for that purpose and that the management was informed about the same and from the next day itself, they struck work and abstained from working. The strike, which according to the learned counsel was illegal and unjustified, continued till both the parties signed a long term settlement dated 17th June, 1982. From the settlement, the learned Counsel pointed out clause 2.2 (ii)(e) wherein the union has given "an undertaking" to resume normal duties immediately and in lieu of the said undertaking, the Corporation agreed not to take any disciplinary action against the workmen. It was also pointed out that as a part of settlement in the aforesaid clauses, the union had also given an undertaking not to raise or pursue during the period of settlement, any demand involving directly or indirectly any financial commitment on the part of the Company in respect of the permanent labour workmen. Shri Cama made a grievance that in spite of the aforesaid undertaking, the union has demanded full wages for the period from 14th January, 1982 to 17th June, 1982, which is contrary to the said undertaking and in violation of the settlement. Shri Cama pointed out that in view of this mutual long term settlement between the parties and in order to maintain cordial relations, no disciplinary action of any nature was taken against the workmen for the illegal and unjustified strike resorted to by them. Shri Cama maintains that they have honoured the general promises while the union has backed out by raising the present industrial dispute. Shri Cama concluded that the workmen were on an illegal strike and therefore they were not entitled to any wages for the said period of illegal strike. He placed heavy reliance on the following Judgments:-

(i) Engineering Mazdoor Sabha v. S. Taki Belgrami;

(ii) Industrial Tubes Manufacturing Co. Ltd. v. S. R. Samant, Judge, Industrial Court and Ors.

(iii) H. M. T. Ltd. v. H. M. T. Head Office Employees' Association and Workmen of Indian Telephone Industries Ltd. v. Management of Indian Telephone Industries Ltd..

(iv) Syndicate Bank and Anr. v. Umesh Nayak with Canara Bank and Ors. v. Jambunathan & Ors. with State Bank of India & Ors. v. State Bank Staff Union.

(v) Bank of India v. T. S. Kelawala.

In the case of Engineering Mazdoor Sabha (supra), the Division Bench of our High Court has observed that where misdemeanor and misconduct of workmen went to the length of endangering lives of loyal workmen and officers of Company and had the effect of heavy financial losses to Company and of destroying credit with its customers. Company was absolved from payment wages for period of illegal lock out as the lock out was justified. In our case, the management has taken very prudent and wise step to avoid any such consequence to take place and therefore, they cannot be blamed and their action cannot be dubbed as a lock out much less an illegal lock out.

The ratio in the case of Industrial Tubes Manufacturing Co., (supra) is not applicable in the facts of the present case. The undertaking which was insisted in that case was of serious nature. Particularly the workman giving such undertaking was required to admit that he was on a strike and that he was willing to withdraw from the same. In those circumstances, the Division Bench construed whether insistence of such an undertaking would amount to an unfair labour practice as contemplated by the M.R.T.U. and P.U.L.P. Act. Even Shri Gadkari drew support from the aforesaid judgment while stressing his point of undertaking.

In the case of H.M.T. Ltd. (supra) the Supreme Court after having held that the strike was illegal and that employees were not entitled to wages during the strike period, it further held that the strike was unjustified. In the case cited the workmen after calling off the strike continued to disrupt working of factories from within the factory premises. As a consequence of which lock out was declared and the Supreme Court held that it was not an illegal lock out, even if provisions of Section 22 of the Industrial Disputes Act were not complied with. The Supreme Court did not grant wages for the lock out period. In our case, the management acted with prudence to avoid any disruption in the working of the factory from within the factory premises as admittedly the manufacturing process involved several hazards and dangers and as the shutting down of the plant required a period of 72 hours, the action of the management in starting the shutting down of the process to meet any risky situation cannot be called a lock out.

In all the aforesaid decisions the consequences were of very serious nature as no anticipatory measures were taken. In our case the management has done so. The Supreme Court has very significantly observed in the case of H. M. T. Ltd. that even if the lock out was in contravention of section 22 it was held to be justified and no wages were payable for that period.

WHETHER STRIKE OR LOCKOUT ?

10. The only question which requires to be determined is whether the workmen had resorted to strike from 14th January, 1982 and continued the same till 17th June, 1982 and if so, whether the said strike was an illegal strike as contemplated by the provisions of the Industrial Disputes Act, 1947 and/or M.R.T.U. & P.U.L.P, Act, 1971 and further whether the alleged strike was justified or was unjustified. The entitlement of the workmen to get wages for this period would depend on the answers to the aforesaid question. By a letter dated 7th November, 1981, the employees' Union reminded the employer corporation about the charter of demands submitted on 24th July, 1980 and their demands for confirmation of temporary workmen and also raising of retirement age upto 60 years as referred in the letter dated 5th November, 1981. It was recorded by the union that the management had not initiated to negotiate on the charter of demands and the aforesaid demands mentioned in the letter dated 5th November, 1981. It was alleged that the management was adopting non co-operative attitude and, therefore, the union had issued a threat that they were left with no alternative but to serve the management a strike notice to be posted in a separate cover. By a letter dated 13th January, 1982, the management sought an appointment with the union's Chairman to discuss the demands made by the union. It was the Chairman and Managing Director of the Corporation who expressed his desire to meet the Chairman of the Union and discuss the demands. I may mention here that the management was anxiously awaiting a reply from the union. In spite of the said anxiety to settle the dispute with the union communicated on behalf of the Chairman and Managing Director of the Corporation, the union in its meeting held on 13th January, 1982 invited a mandate in the meeting by way of secret ballot as to whether to resort to an indefinite strike for their demands. I fail to understand how, on the one hand the union expected the management to negotiate with the union and at the same time it continued its agitation approach of its intention to resort to an indefinite strike. The union appears to have tried to prevail upon the workmen to adopt and emphasise the agitation approach without waiting for a meeting with the Chairman and Managing Director of the Corporation.

11. It appears that the workmen were convinced in the meeting to vote for an indefinite strike. I have avoided to use the word "Instigation" to go on an indefinite strike. At this stage itself, I may mention here that the union's getting mandate in the secret ballot for indefinite strike was totally unjustified and unwarranted as the management was very much anxious to negotiate with the union and it did not want to have any confrontation with the workmen. By adopting such a coercive method, the union had created an unaffordable and uneasy disturbance at the work place. The union also filed two complaints of unfair labour practices before the Industrial Court for the very same demands i.e. implementation of the settlement and regularisation of the temporary workmen and parity of pay scales etc. Having approached to the Court of law, there was absolutely no justification for the unions to have exerted the workmen to give a mandate for an indefinite strike. It is very significant to note that 92% of the

workmen had voted for an indefinite strike. Having gone to the extent of exerting the workmen to vote for an indefinite strike, the leadership of the union perhaps could not control and prevail upon the workmen to wait for some more time and not to commence the strike immediately on the next date. After the meeting of 13th January, 1982, the management was orally informed that 92% of the workmen wanted an indefinite strike. From the production charts, Shri Cama pointed out, that work was slowed down. He has further drawn my attention to a letter dated 12th January, 1982 addressed to the Secretary, Department of Labour, Government of Maharashtra wherein the employer corporation had kept informed the State Government about the agitations of the workmen in the refinery and had clearly expressed that the industrial relations situation in the refinery was deteriorating. The management has noted the events date wise in the said letter, including the gate meeting held on 11th January, 1982 and also another proposed gate meeting to be held on 13th January, 1982 to announce a strike with effect from 7.00 a.m. on 14th January, 1982. The management has also placed on record that the workmen had resorted to go slow tactics which are reflected in the production figures i.e. usually 24000 to 25000 cylinders of the domestic gas are filled every day but on 11th January, 1982 in all the three shifts only 14,000 cylinders were filled in. This situation had very seriously affected the consumers creating a crisis in the market and in the supply of domestic cylinders to the consumers. The management further expressed its apprehension of the militant element in the union taking extreme postures creating an apprehension of untoward incidents likely to affect safety and security of the plant and personnel. A serious jeopardy to both was noted in the said letter under reference.

12. It is not possible for me to accept the contention of Shri Gadkari that though 92% of the workmen had voted in favour of an indefinite strike as no strike notice was given, the workmen had not commenced the strike. Considering the background and the events which took place at a very fast speed, the situation appears to have gone beyond the control of the union's leadership and as apprehended by the management, the militant elements appear to have overtaken the sober and reasonable elements in the union. If 92% of the workmen had voted for an indefinite strike, they could not be controlled and could not be directed to report for work on 14th January, 1982 from 7.00 a.m. and not to resort to strike. In its letter dated 12th January, 1982, the management had already communicated to the State Government that the workmen were likely to go on strike from 14th January, 1982 as it was gathered from the talks in the factory.

13. By a notice dated 16th January, 1982, the management has put on record that the workmen in all the departments, (except operations, laboratory, fire and security) entered the premises at 7.45 hrs. on 14th January, 1982 but instead of performing their duties they were found loitering around premises in large groups and shouting slogans resulting in operations in all such departments coming complete stand still. It was also placed on record that the process

technicians union had also given an ultimatum that they would abstain from work from 23.45 hrs. on 15th January, 1982. Similarly the union representing the personnel in fire, security and utility services had also given an ultimatum that they would also abstain from work effectively from 23.45 hrs. on 15th January, 1982. The Union of the workmen also informed the management that their members still continued to abstain from work. The management, therefore, warned the workmen that their strike was an illegal one and that they will not be paid wages for the said period. It was also explained to the workmen that without the assistance of the employees in various departments, which are inter dependent, no operations can be started and carried on, except at a very high risk of explosion which would put life and plant in jeopardy not only within the refinery premises but also in the neighbouring areas. It is further significant to note that to eliminate every possible risk and in the interest of life and also the plant it was decided by the management to bring all the process in the plant to a halt for the time being until the union's call off their strike and writes to the management that their members will extend full co-operation and restore complete normalcy in work. It was further notified that with a view not to endanger safety of personnel the workmen would refrain from entering the refinery premises until the strike was called off and normalcy was restored with full discipline. It is, therefore, clear that by way of complete precaution and as a prudent and reasonable employer, the management has notified to the workmen that unless and until they were to call off the Illegal strike, they were advised not to enter the refinery. If the management was not to take such a stringent and timely decision, the possibility of any danger to the plant could not be ruled out. No management can run any risk in the sensitive factories like refinery. It is an admitted position that the operations in the refinery are inter dependent. If the first operation is started, in that case the end operation also must work. If the gas is supplied at the point of beginning at the end point filling of such gas in the cylinder must also be done at the same time. If the workmen at the end process do not do the work of filling of the cylinder with gas, there is every possibility of explosion in the plant. If the management were to fail to shut down the plant even after learning the decision of the indefinite strike taken by the workmen in their meeting, the entire plant and the lives of the people at large would have been in danger and extreme jeopardy. It was, therefore, most essential and necessary for the management to first take the step of shut down the plant at the initial point whereby all the subsequent processes could be stopped. If they had failed to take such prompt and precautionary measure, they would have been certainly accused of not only gross but even criminal negligence. No risk of any nature can be taken in such industries. If the plant had not been shut down then the process would have continued without being operated and attended by the workmen and technicians causing great danger to the plant and the human life at large. I may mention here that even a small mischief by one workman would have been enough to cause leakage of the gas and even explosion of horrible consequences. It is an admitted position that it takes at least 36 to 72 hours to bring the plant to complete halt and therefore the decision of the

management to shut down the plant on 13th January, 1982 itself, was utmost necessary to eliminate any risk if the workmen did not report for work and resorted to strike the work. Any such calculator measure in the refinery anticipating strike by the workmen cannot be called an act of lock out of the factory. It was a precautionary measure to meet the crucial and critical situation which would have arisen as a result of the strike by the workmen. As I have already narrated that the whole plant is interdependent and the process is continuous one, if the beginning point is started the end point also must work and receive the gas. When the management sensed the situation it has taken a most wise and prudent decision to shut down the plant at the beginning point of the process. This decision of the management cannot be termed as a lock out or much less an illegal lock out. It is very significant to note that a number of workmen who gave an undertaking of normal working were allowed to enter the refinery. Had there been a lock out declared by the management, no such workmen would have been allowed to enter the refinery at all. I am also not able to agree with the submissions of Shri Gadkari that an act of insistence for an undertaking of normal disciplined work and behaviour by the workmen on the work place would tantamount to refusal to give work and to prevent the workmen unlawfully from entering their work place. In the face of the situation which was prevailing, it is not possible to hold that the management was totally wrong and had acted illegally when it had insisted from the workmen an innocuous and normal undertaking of doing work normally and maintaining discipline in the refinery was an illegal act or it amounted to a lock out. I do not find anything wrong, illegal or unusual in the following undertaking which was required by the management from the workmen who wanted to join duties.

"I, Shri..... Reference No..... of..... Department, wish to resume work with effect from I assure the Company that I shall ensure full production, maintain all existing work practices and shall maintain complete discipline of the establishment"

If the workmen were not on a strike and if they were willing to work there should not have been any hesitation on their part to sign such a normal undertaking as what they were subscribing was their duty. It became necessary for the management in view of the extra ordinary situation created by the decision of the 92% of the workmen in a secret ballot to go on an indefinite strike. The management has displayed umpteen number of notices calling upon the workmen to call off their strike and resume work. One of the letters addressed by the management to the union on 3rd June, 1982 places on record amongst other things in respect of the pending demands of the workmen, that the workmen would not be entitled to wages during the period from 14th January, 1982 till they resumed normal duties. It was very clearly asserted that the workmen were on an illegal strike. The management also assured the union that it was ready and willing to have a mutual satisfactory long term settlement even with the help of the conciliation machinery. By a letter dated 17th June, 1982, the management assured the union that as a special case no disciplinary action

against those who had participated in or instigated others to participate in the "recent industrial relations situation in the refinery during the period 1.1.1982 till date" be taken. There was however no assurance of payment of wages for that period. It is also significant to note that there is no reply which is shown to me from the union to the letter dated 3rd June, 1982 or to any of the notices displayed by the management repeatedly warning the workmen that there were on an illegal strike and that they should call off the strike and join their normal duties. There is not even a single letter on record to say that the management had effected a lock out and that the workmen were always ready and willing to resume their work.

14. Shri Mandal on behalf of the management has described the whole process of working in the refinery in minute details. He has given all the technical operations which involve complicated procedure and require greatest care and precaution to be taken. He has stated that the refinery handles inflammable hydro carbon material and any release of such material in the atmosphere can create a hazardous situation resulting in fire or explosion. He has given great emphasis on the care to be taken to hand over the equipment handling, different types of gases and that any defect or leakage must be detected and attended immediately. He has also pointed out that the availability of the critical services is essential for the staff and proper operation of the refinery. He has further stated on oath that the consequences that are likely to emanate from the absence of critical support for the operations of the refinery are extremely grave in terms of the danger to life and property in the refinery and in the thickly populated areas surrounding it. He has given in detail the process plant equipments and method and manner of their handling, he has also stated that due to a non availability of maintenance support to the process plant a crisis situation had developed in the refinery on 14.1.1982. He has further stressed that for the proper and safe running of a process plant it is imperative that maintenance support should be available round the clock to attend to any faults or breakdown of equipment/ machinery in process units which is liable to arise at any time. He further says that absence or withdrawal of such support could result in a grave safety hazard. He further states that keeping the over all safety of plant and personnel in mind as also the safety of the community inhabiting the surrounding vicinity it was decided to curtail production and scale down operations gradually. He has commented that the union did not extend its co-operation, though he has candidly admitted that some of the workmen present did co-operate voluntarily considering, the safety hazard. In view of the warlike situation in the refinery the management had started process of shutting down of the operations from the night shifts of 14th January, 1982. He has also stated that it takes approximately 72 hours to shut down the CCU units. It was admitted by him that the chances of hazards occurring were more while shutting down a plant than while it was in operation. He stated that plants are shut down periodically for servicing and over-oiling the machinery and that is called as plant shut down. The shutting down at the relevant time was emergency shut down to safeguard the plant, personnel

and the human life. Shri More, examined on behalf of the union has not disputed the technical operations and process and the hazards. Shri More has naturally emphasised the factor that though the workmen had decided to go on strike the date and time was not fixed and that it was the management which shut down the plant and therefore no work was available and therefore according to him, there was no strike by the workmen. He has even admitted that there was some degree of high risk of fire in the entire operation including the L.P.G. filling. He has also admitted that the maintenance staff was also required to attend the emergency situation for a safe operation. Shri More was well aware of the sensitive installments around the refinery, such as B.A.R.C., Tata Electric and R.C.F. and H.P.C.L., Naval Communication Centre and several other residential colonies. It is significant to note that Shri More has admitted that the gate meeting was convened for the purpose of taking mandate from the workmen for going on an indefinite strike and that there was discussion in the meeting on that point and that 92% of the workmen present had voted in favour of an indefinite strike. He has also admitted that no strike notice was given. He has also admitted that those workmen who had reported for work on 14th January 1982 and thereafter, did the work whatever was available and that the management never stopped them from entering the refinery. He has further categorically admitted that between January. 1982 and June. 1982, those workmen who reported for work were allotted work and paid wages.

15. I have considered the oral evidence of both the witnesses. There is absolutely no doubt in my mind that the workmen after recording their mandate in the secret ballot i.e. 92% of the workmen, in favour of an indefinite strike, though they reported for work in the first shift of 14th January, 1982, they did not start work as they could not be in a mood to do so and therefore, they carried on their agitation programme on the premises of the refinery itself. Demonstrations were held on the premises of the refinery. They were simply loitering in the departments without doing any work. The management was informed immediately after the end of the meeting in the evening of 13th January, 1982 that a decision to go on an indefinite strike was taken in the meeting. No wise, prudent, good and alert management would keep quiet till the end or beginning of the strike. A full-fledged and very tight preparations to meet such eventuality was required. After learning the decision of the workmen only a grossly negligent management would have kept quiet and would not have acted to prepare to meet such a situation. The operations in the establishment like refinery are obviously and admittedly very risky and hazardous. Even a small and minor defect or an inadvertent act of negligence also would prove fatal. It is on record that in the year 1988, such an explosion did take place in spite of the best precaution. It was the case of fire and explosion together. Extremely intensive care must be taken in such establishment which are very sensitive areas. They must be treated as intensive care units of the Nation. It is of no use calling names to the management that it had created a bogie of explosion. The management has been vigilant and kept its officers on their toes to act very

swiftly after knowing the decision of the workmen to go on an indefinite strike, without waiting for a formal strike notice. In such sensitive units it is never expected that the management should have waited for formal strike notice and should have allowed the workmen to go on strike and then alone it should have started shutting down operations. According to me, the management was absolutely right in deciding to start shutting down operations phase wise as it takes about 72 hours to completely shut down the plants as processes are continuous and round the clock. The management had to meet very effectively what it calls the specter of strike. I, therefore, do not find any blameworthy act on the part of the management. It had rightly started the shutting down operations which according to me, cannot be termed as a lock out as contemplated under the industrial law. Any such precautionary measures taken in anticipation to meet an eventuality of an indefinite strike, does not amount to a lock out. The consequence of failure to prepare to meet such a situation would have been simply fatal and hazardous. I do not, therefore, agree with the findings recorded by the Industrial Tribunal recorded in para 29 of the Impugned award that the aforesaid act of the management was unjustified. On the contrary I hold that if the management had not acted in the manner in which it had acted, it would have been totally unjustified and criminal inaction on the part of the management. Like an efficient fire brigade the management did not wait for a formal alarm call. It had seen the fire and geared its machinery to put off the same. I would indeed commend the act of the management which was in the interest of not only the refinery and its plant and machinery but also in the interest of the lives of workmen and the thickly populated neighbouring habitation. It was in the interest of the community as a whole. I entirely disagree with the findings of the Tribunal that it was an unjustified act on the part of the management to have started shutting down operations on and from 13th January, 1982. The learned Member of the Tribunal also lost sight of admitted position that the workmen were allowed to enter the factory and those who reported for work were paid their wages and that no one was stopped from entering the refinery. This is the evidence of Shri More on behalf of the workmen. This evidence is totally opposite to the plea of the workmen that there was a lock out effected by the management. Furthermore, in the warlike situation like the one which prevailed on and from 13th January, 1982, it was but natural for the management to have taken a further precautionary measure to have required every workman who was to enter the refinery to sign a simple undertaking that he was entering the refinery to do his normal work as a disciplined workman. It is not the case of the workmen that in any normal circumstances, such an undertaking was ever insisted by the corporation. In an extra ordinary situation the management has insisted for an ordinary undertaking as a condition to allow the workmen to enter the refinery. If the workmen are allowed to enter the factory with a condition of undertaking to make them aware of their duty, such an act of the Corporation is not at all illegal, unjustified or improper. I, therefore, cannot hold that such insistence of an ordinary undertaking required to be signed by the workmen as a condition precedent to enter the factory amounts to an act

of lock out, much less an illegal lock out.

16. I, therefore, finally conclude that the Industrial Tribunal was wrong in putting the blame on the management for taking precautionary measures to start shutting down of the plant to meet the extra ordinary situation arising from the workmen not doing their normal work pursuant to their decision to go on an indefinite strike. I, further hold that the management did not effect any lock out much less an illegal lock out from 14th January, 1982 entitling the workmen to get full wages from 14th January, 1982 to 17th June, 1982. I further hold that the workmen were on an illegal strike from 14th January, 1982 to 17th June, 1982 disentitling them from getting any wages for that period. The workmen entered the factory or the refinery on 14th January, 1982 but did not do any work. Admittedly there was no strike notice and therefore, the concerted refusal and cessation of work by the workmen amounted to an illegal strike as contemplated under the Industrial Disputes Act, 1947. There is abundant evidence against the workmen to show that they were on an illegal strike. There was no response from them to any of the umpteen number of notices issued by the management and the workmen were not at all justified in refusing to sign the undertaking of a normal working. There is absolutely no evidence on record to show that the workmen had informed the management at any time during the said period that they were ready and willing to work as they were not on any strike and that they were in fact locked out by the management. They could have approached the adjudicating machinery placing before it the fact that they were not on strike but they were locked out. If they were not on strike in that case, I see no reason or harm or prejudice that would have caused to the workmen or the union to have signed the ordinary undertaking as a condition to resume the work. There is not even a single letter placed on record by the union to say that they were not on strike or that the strike was called off and that the workmen were ready and willing to work. It would have been difficult for the management to defend its case of strike by the workmen in such circumstances. The management has indeed proved its bona fides by allowing the workmen to enter the factory or refinery and by making payment of wages to those who attended the work. Had there been a lock out the management would never have allowed anybody to enter the refinery. I, therefore, conclude that the workmen were on an illegal strike from 14th January, 1982 to 17th June, 1982 and therefore, they are not entitled to get any wages for that period as they were on an illegal strike. As a bargain at the fag end of the situation, which has resulted in a welcome bilateral settlement dated 17th June, 1982, the management had agreed not to take any disciplinary action against the workmen for their participation in the strike and for instigation for such a strike. The management has waived its right to take such disciplinary action. It has further clarified that no wages for that period, however, would be paid.

17. According to me, the strike resorted to by the workmen from 14th January, 1982 and continued by them till 17th June, 1982 was totally unjustified. Their demand or dispute was pending before the Industrial Court. They should have

waited for the result of the said litigation. Their demand was for regularisation or permanency of temporary workmen and for implementation of settlement. The Industrial Court was seized of both these major demands. There was, therefore, absolutely no good reason or any justification for the workmen to have decided to go on an indefinite strike. Secondly, having submitted their charter of demands for rise in wages, D. A. etc., they could not have resorted to a strike to achieve those demands. They ought to have approached the adjudication machinery provided u/s 10 and 12 of the Industrial Disputes Act. In my opinion any strike much less a prolonged or indefinite strike to achieve economic demands such as rise in wages and D. A. etc. or even for bonus is totally unjustified. Merely because the adjudication machinery or Court proceedings takes some delay in final decision the workmen who are gainfully employed getting at least minimum wages have no moral right and justification to resort to the extreme weapon of strike. Those who are privileged to be in the employment of the public sector enjoying good service conditions, including good wages and who are assured of job security cannot strike at the very root of the national economy which depend more on the functioning of the public sector undertakings. I can very well understand the agitations coming from the areas of those young men and women who are unemployed and who are underprivileged and who are living the life of drudgery and/or abysmal poverty. I, however, do not understand the use of such extreme and killing weapon of strike, which is very often resorted to by those whose economic arms are stronger than those living below the poverty line. I fail to understand the wisdom of the strikes for annual bonus as well. In such a strike, the employees stand to lose much more by way of loss of their wages or salary than what they get by bonus. By such totally unjustified and uncalled for strikes, a great harm and injury is caused to the national economy. The public sector employees are not expected to give strikes to the country, if they cannot give anything else. The strike in the present case was not a responsible act on the part of the workmen.

18. I, however, fail to understand why the management also kept quiet for a period of about 6 months and did not act in the manner provided under the law. The strike of six months in such a public utility of the refinery has caused tremendous hardship and harassment to the society. The consumers were not getting cooking gas for days and months together and the finger was pointed out at the ongoing strike. The management also simply raised its finger towards the workmen that they were on strike. What causes more concern to me is the total inaction on the part of the Government which utterly failed in taking immediate action in the matter. The first thing, which could be done was to take action u/s 10 to refer the industrial dispute between the employer corporation and the workmen for adjudication and then to take prompt decision to prohibit such strike u/s 10(3) of the Industrial Disputes Act. The Legislature has given ample powers to the Government to act in every such situation. The Legislature does not expect the Government machinery to be only a silent spectator. It is not that the Central Government or the State Government have never prohibited any strikes

or lock outs. It was expected of the Government to have issued prohibitory orders to prevent continuance of the strike or the lock out and it would have referred all the questions for adjudication to the Industrial Tribunal. The Government allowed the society and consumers to suffer endlessly. According to me, the Government is to be blamed for such a situation which was brought about by the erring workmen.

19. The excuse of delay or inordinate delay in the Court proceedings is also not available to the workmen or the unions as the adjudication machinery has always been vigilant and alert to see the emergent situation and to give top most priority to such matters, wherein the question of continuing strike and continuing lock out is involved. All such matters are always given top most priority and preference by the adjudication machinery. If the Government had referred the Industrial disputes between the employer corporation and the workmen and prohibited the strike/lockout with a request to the adjudicating Tribunal to dispose of the reference on priority basis, the Industrial Tribunal would certainly have decided the matter as expeditiously as possible within the human limits. I can only say that urge in the mind of the administration was lacking to spare the community from avoidable hardships and harassment. Much more sense of responsibility is expected from the public sector management and employees and the administration. All the three have to be exceptionally sensitive to the public interest and public needs. What the nation demands from them is only a little forbearance, endurance and sacrifice as against the privileges of employment conferred by the nation on them. The right to work as enshrined in Article 41 is to be within the limits of the State's economic capacity and development. The economic limits do not vanish or disappear after the citizen is given employment under the State or under any of its instrumentalities or in any public organisation. The right to work continues to be subjected to the economic constraints of the employer i.e. the State or its instrumentalities. All such public sector employees will have to confine their demands within the economic capacity of the public corporation or public establishment or organisation. Article 41 further significantly refers to the development of the nation. The economic capacity and the development both go in hand in hand. The demands of the employees' union in the present case for rise in wages, D.A. etc. could not be achieved by coercive methods of use of strike. The economic constraints/capacities and development are the factors which are required to be adjudged or adjudicated upon by the Court machinery, considering both the sides i.e. the economic capacity of the employer and also wage levels and other service conditions of the employees. If the right to work is to be realised within the economic capacity and development as contemplated under Article 41, the same factor continues to operate even after achievement of work. Any demand for bonus or ex gratia or rise in wages and/or D.A. are also subjected to economic constraints or capacity provided under the said Article. The employees' union in the present case appear to have over-stretched the demands and tried to accomplish the same by coercive method of strike which, according to me, was

totally unjustified.

20. Those who cry for right to work do not have right to strike work. This strike and for that matter every strike and every lock out causes loss of lakhs or crores of rupees to the nation. A prolonged strike is a suicidal act on the part of the workmen. The unions which lead such strikes have nothing to lose except perhaps the membership of such unit which finally is taken on the brink of ruination along with the workmen. The strike in the refinery continued for about six months making more scarce the already scarce petroleum products including the cooking gas. Who will compensate the consumers and the society that was made to suffer for no fault of theirs? It is high time that ail and every such strike/s in the public sector undertakings and the public utility industries, the statutory local authorities and bodies, public hospitals and service instrumentalities of the State and by those who are well paid, much more than the minimum wages or award wages, for their demands for higher wages, dearness allowances, bonus etc. should be banned by law. Let the Legislature provide for compulsory and quick wage adjudication by an appropriate forum for the economic demands of all those workmen drawing wages exceeding the legislatively determined level. The organised working class has rarely made sacrifices for the well being of the unorganised large tilling and toiling masses, for the society and the consumers. On the contrary all of them have been held at ransom for the selfish ends of getting higher wages, various allowances and bonus. Their struggle ought to have been for holding price line and dearness under control to benefit the whole society. As a Nation we cannot afford luxury of prolonged strikes by the Haves of the society. Such strikes have crippling effects on the society. They must be put down with iron hands. Having collected fat pay packets for the whole year, how annual strike for annual bonus can ever be justified? The organised section of the working class surely falls in the class of "Haves" and it possesses enough strength to strike at the society to take away a greater part of the bread leaving very little for the large section of the "Haves-Not" having no strength to even to cry for their legitimate share in the loaf of the bread. The socialist state and the socialist state wedded to the Directive Principles of Governance under Chapter IV of the Constitution cannot and should not tolerate the muscle power of the organised section of the society. However, it is the bounden duty of the socialist state to provide for an efficient and expeditious adjudication machinery to resolve the disputes and grievances of the employees without any avoidable delay. The six months old strike by the refinery workmen during pendency of adjudication of their disputes before the Industrial Court was totally unjustified and therefore, they are not entitled to get any wages for their illegal strike period. Besides, we cannot forget that the management of the employer corporation was always ready for a long term settlement but it was the union that did not accept the offer for the reasons best known to the union. What more and what else can be expected from the Management?

21. In these circumstances and for all the reasons recorded hereinabove I quash and set aside the impugned award of the Industrial Tribunal to the extent it

grants 50% of wages to the workmen. According to me, the workmen are not entitled to get any wages for the period from 14.1.1982 to 17.6.1982 as they were on an Illegal strike and that there was no lock out by the Corporation and applying the principles of no work no wages, as held by the Supreme Court in the cases Syndicate Bank, Canara Bank and Kelawala's case (supra), they will not be entitled to get any wages for the said period. The petition filed by the employer corporation is. therefore, allowed and rule is made absolute and the writ petition filed by the employees being W.P. No. 338 of 1993 is dismissed.

22. Both the parties to bear their own costs.

23. Issuance of certified copy of this judgment and order is expedited.