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**(1998) 03 BOM CK 0014**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 475 of 1998**

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| Bharatiya Kamgar Karmachari Mahasangh | APPELLANT  |
| Vs                                    |            |
| G.K.W. Ltd. and Others                | RESPONDENT |

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**Date of Decision :** 18-03-1998

**Acts Referred:**

**Citation :** (1999) 1 LLJ 719

**Hon'ble Judges :** F.I. Rebello, J

**Bench :** Single Bench

**Advocate :** Colin Gonsalves, for the Appellant; K.K. Singhvi and C.U. Singh, instructed by Gagrut and Co, for the Respondent

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## Judgement

F.I. Rebello, J.—Leave to amend. Amendment to be carried out during the course of the day:

The petitioners in both the petitions have raised the following two questions :

(1) Whether in a complaint filed under Item 9 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for breach of agreement, etc. does the Industrial Court have jurisdiction to go into the issue whether the lock-out is justified?

(2) Whether on the material on record would it be said that the lock-out is legal?

2. Considering the nature of the matter and the contentions of the Respondents that the matter is concluded by judgments of this Court, parties have advanced argument at length. This detailed order at the stage of admission is for the aforesaid reason.

3. The Respondent Company by notice dated January 18, 1998 declared its intention to effect lock-out with effect from February 5, 1998. Even before the lock-out was effected work was suspended from January 18, 1998. The recognised Union Petitioner in Writ Petition No. 475 of 1998 filed a complaint being Complaint (ULP) No.75 of 1998 under Items 9 and 10 of Schedule IV of the

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the MRTU & PULP Act) complaining of unfair labour practices on the part of the respondent company. The said complaint was presented on January 23, 1998 i.e. before the lock-out was given effect to. An application for interim relief was also moved on the said date.

Another group of employees numbering 19 in number along with the Petitioner No. 20, the Union of which they are members filed Writ Petition No. 517 of 1998. These 19 petitioners working in the office section of the respondent company also filed complaint before the Industrial Court alleging unfair labour practices on the part of the respondent company under Item 6 of Schedule II and Items 5, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. They have also prayed for interim relief. Various documents were annexed, including the proceedings earlier initiated to lay off 150 workers.

Item 6 of Schedule II reads as under:

"Proposing or continuing a lock-out deemed to be illegal under this Act."

Item 9 of Schedule IV reads as under:

"Failure to implement award, settlement or agreement".

The Industrial Court by its impugned order dated February 17, 1998 in both the cases rejected the application for interim relief. The Industrial Court prima facie has come to the conclusion that the lock-out was legal and in a proceeding under the Act the Industrial Court is not called upon to go into the issue whether the lock-out was justified and accordingly rejected the application for interim relief.

4. It is contended on behalf of the petitioners in both the petitions that merely because the lock-out may be legal by itself would not mean that the lock-out is justified. To deny wages the respondents would have to show that the lockout apart from being legal is justified. It is contended that Item 9 of Schedule IV would be attracted and as such workmen would be entitled to the wages even during the period of lockout. It is further contended that the Industrial Court even at an interim stage has jurisdiction to go into the issue and grant interim relief.

On behalf of the respondents it is contended that whether the strike is justified or not cannot be gone into by the Industrial Court under Item 6 of Schedule II and as such the order of the Industrial Court is legal and proper. It is further contended that the petitions are only against interim reliefs and this Court would have no jurisdiction to grant interim relief on the facts and circumstances of this case. It is further contended that Item No. 9 would only be attracted in the event there was an agreement, settlement or award whereby the workers were entitled to be paid wages even during the pendency of lockout. There was no such agreement or settlement and as such Item No.9 would not be attracted. Apart from that the complaint would not lie under the MRTU and PULP Act but the aggrieved Union or employees would have to resort to Industrial adjudication. It

is further contended that the issue has been concluded by judgments of this Court and it is not open and on this Court also the petitions should be rejected.

5. Before deciding whether the petitioners have made out prima facie case for admission it will be necessary to decide whether the issue has been concluded by judgments of this Court. Reliance is placed by the Respondents in the case of Mazdoor Congress and others Vs. S.A. Patil, Member, Industrial Court and others, . A Single Judge of this Court while considering a complaint filed under Item 6 of Schedule II has taken a view that the Industrial Court would have no jurisdiction to go into the issue whether the strike was justified or not. The learned Single Judge relied on another judgment of another single Judge in the case of Billion Plastics (P) Ltd. v. Dyes and Chemical Workers Union 1983 (46) FLR 98. Reference thereafter is made to a judgment of the Division Bench of this Court in the case of Maharashtra General Kamgar Union, Bombay Vs. Solid Containers Ltd. and others, . The learned Judge who pronounced the judgment in the case of Mazdoor Congress (supra) presiding over the Division Bench in General Kamgar Union Congress v. Solid Containers (supra) has confirmed the view taken by him in Mazdoor Congress (supra).

At the outset it may be pointed out that on a plain reading of Item 6 of Schedule II the expression used is proposing or continuing a lockout "deemed" to be illegal under this Act. A lock-out can be deemed to be illegal under the Act only if it has been declared to be illegal pursuant to a declaration under Sub-section (5) of Section 25. Therefore, on a plain reading of Sub-section (5) of Section 25 read with Item 6 of Schedule II what is clear is, that an act of unfair labour practice will be committed by an employer if inspite of the lock-out being declared illegal, the lock-out is continued beyond forty-eight hours. Ex-facie, therefore, once the Court has given a declaration that lock-out is illegal and the employer inspite of such declaration does not within 48 hours withdraw the lock-out, then it is deemed to be illegal under this Act. In such a complaint of unfair labour practice under Item 6 of Schedule II all that the Court or Tribunal will enquire is whether there has been a declaration that the lock-out is illegal and nothing else. The question of considering whether the lock-out is justified cannot be gone into.

Referring to the facts of Mazdoor Congress v. S.A. Patil and Ors. (supra) what was directly in issue was Item 6 of Schedule II of the MRTU & PULP Act. In that case the lock-out had been declared with effect from April 4, 1977. A complaint was filed on April 25, 1977. Pending the complaint the company issued a final notice on May 4, 1977 effecting a lock-out with effect from May 19, 1977. On an application being moved by workers interim relief was granted to lift the lock-out. A petition came to be tiled by the Company and interim relief sought was rejected. Thereafter by judgment dated February 24, 1986 the Industrial Court held that the company was guilty of indulging in unfair labour practices as contemplated under Item 6 of Schedule II of the Act and by way of consequential relief the company was directed to pay wages during the period the company was found to have indulged in the illegal lock-out. This is how the petition came

to be filed. There was also a finding that the lock-out for the subsequent period i.e. commencing from May 19, 1977 to August 3, 1977 was not illegal, This was the subject matter before the learned single Judge in the Writ Petition preferred by the Union against the said finding of the Industrial Court. It is true that in para 7 of the said judgment the Court posed the question whether the workers after finding the lock out between May 19, 1977 and August 3, 1977 to be legal, whether the workers would be entitled to the wages for that period. The learned single Judge held that the scope of the enquiry under the Act is limited to recording a finding whether an unfair labour practice had been committed. The learned Judge relied on the observations of the learned single Judge in the case of Billion Plastics (P) Ltd. (supra). The learned Judge held that the said judgment answers the issue. The learned Judge held that the scope of the enquiry in a complaint was limited to finding whether an unfair labour practice had been committed. The question of unfair labour practice under Item 9 was not in issue in the said judgment and in so far as the said judgment is concerned it cannot be said to have concluded the said issue.

Even in the case of Billion Plastics (P) Ltd. (supra) the petitioner company had filed an application for interim relist u/s 30(3) of the MRTU & PULP Act to restrain the workmen from going on an illegal strike. The rejection of this interim relief was the subject matter of the Writ Petition before the learned single Judge. The learned single Judge dismissed the petition. However, while so dismissing the learned Judge observed that the Industrial Court has got jurisdiction to restrain either the employer or employees from resorting to unjustified lock-out or strike. Thereafter the learned single Judge observed that what is covered by Item 1 of Schedule III is the strike which is deemed to be illegal under the said Act. If the strike is legal under the Act then obviously it is not covered by Item 1 of Schedule III. It is in that context that the Court has observed that the justifiability of the strike is beyond the scope of Section 30 of the Act. This judgment, therefore, can, therefore, be of no assistance for the proposition that is sought to be canvassed.

In the case of the Maharashtra General Kamgar Congress (supra) the issue once again came up for consideration. The learned Judge reiterated that under Item 6 of Schedule II it is not permissible for the Industrial Court to go into the truth or otherwise or the justification or otherwise of the reasons which have led the management to declare a lock-out. The learned Judge thereafter observed that a lock-out becomes illegal only if the employer after a lockout is declared illegal does not within 48 hours withdraw the lock-out. It is thereafter observed that the question as to how much wages are to be paid to the workers for the period of lock-out cannot be gone into by the Industrial Court while deciding the complaint regarding the illegal lock-out. The learned Judge thereafter observes in any case no wages can be made payable when the lock-out is legal. No doubt a reference is made to Item 9 of Schedule IV in para 21 of the judgment. The issue in these petitions was not directly in issue and apart from the passing reference to Item 9 there is no discussion or reasoning as to why Item 9 is not attracted.

The learned Judge speaking for the Division Bench in support of the said contentions relied on the judgment in the case of *Syndicate Bank and Ors. v. K. Umesh Nayak* 1994 II LLJ 836, and also his own judgment in *Mazdoor Congress v. S. A. Patil and Ors.* (supra). I have already held that Item 9 and scope and its effect was not directly in issue in case of *Mazdoor Congress* nor in the case of *Billion Plastics* and as such I am unable to accept the contention that the judgment of the Division Bench of this Court concludes the issue.

6. That does not answer the issue as the petitioners have come to this Court contending that even though the lock-out may be legal, they are still in law entitled to contend that the lock-out at the threshold itself was not justified or by subsequent passage of time it has become unjustified and as such they are entitled to wages from the said date, when the Court so holds and a complaint under Item 9 is maintainable. This, they point out, has not been concluded by any judgment of this Court including the judgment referred to by the Respondents.

7. On the contrary in the case of *Indian Hume Pipe Co. Ltd. v. M.A. Deshpande*, Member Industrial Court and Anr. (1984-I-LLJ-46), learned single Judge of this Court in para 8 observed as under:

"8. Following the aforesaid judgment, I will assume that an agreement in terms of the Standing Orders regulated the relationship of the petitioner and the second respondent's members. But it cannot be held that the petitioner had failed to implement the agreement because it does not provide for a lock-out. Nothing prevents the petitioner from declaring a lock-out if it is not illegal under the applicable statute. I do not agree with the Industrial Court that the petitioner was guilty of the unfair labour practice covered by Schedule IV, Item 9 of the Act."

Applicability of Item 9 was, therefore, not ruled out.

The issue whether lock-out is legal or illegal is one aspect; the issue whether it is justified or not is another aspect. The Apex Court has so noted in para 9 of the judgment in *Syndicate Bank v. Umesh Nayak* (supra). The said paragraph needs to be reproduced for considering the arguments of the respondent that the issue is concluded, which reads as under:

"The question whether a strike or lock-out is legal or illegal does not present much difficulty for resolution since all that is required to be examined to answer the question is whether, there has been a breach of the relevant provisions. However, whether the action is justified or unjustified has to be examined by taking into consideration various factors some of which are indicated earlier. In almost all such cases, the prominent question that arises is whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lock-out is not to be resorted to because the concerned party has a superior bargaining power or the requisite economic muscle to compel the other

party to accept its demand. Such indiscriminate use of power is nothing but assertion of the rule of "might is right". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the Society which can well await the resolution of the dispute by the machinery provided for the same. The strike or lock-out as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the Act places additional restrictions on strikes and lock-outs in public utility services."

The ratio of this judgment was explained in the case of New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, , the Apex Court has observed as under :

"23. A Constitution Bench of this Court in Syndicate Bank v. K. Umesh Nayak, has held that the workmen would be entitled to wages for the strike period if the strike was both legal and justified. In other words, if the strike was only legal and not justified or if the strike was illegal and justified, the workers are not entitled to wages for the strike period."

Therefore, in so far as both the issues of strike and lock-out are concerned, merely because the strike is legal or the lock-out is legal would not mean that the workers are entitled to wages or that the company is bound to refuse payment of wages.

8. In the case of The Statesman Ltd. Vs. Their Workmen, , the Apex Court in para 15 observed as under :

"But the management cannot behave unreasonably merely because the lock-out is born lawfully. If by subsequent conduct, imaginatively interpreted, the Unions have shown readiness to resume work peacefully, the refusal to re-start the industry is not right and the initial legitimacy of the lock-out loses its virtue by this blemished sequel. Nor can any management expect, as feelings run high, charge-sheets in criminal Courts are laid against workers and they are otherwise afflicted by the pinch of unemployment, to get proof of good behaviour beyond their written word".

In the case of Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, , the Apex Court has observed as under at p.278 :

" Lock-out can be described as the anti-thesis of a strike. Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lock-out is a weapon available to the employer to persuade by a coercive process the

employees to see his point of view and to accept his demands."

Lock-out must, therefore, be imposed by the employer as a part of his demand that the workers must consider.

The said observations were again referred to in the case of Priya Laxmi Mills Ltd. Vs. Mazdoor Mahajan Mandal, Baroda, . The Division Bench of this Court in Engineering Mazdoor Sabha, Bombay and Ors. v. S.Taki Belgrami and Anr. 1970 LiC 1373, observed in para 8 as under:

"Now it is true that in law what is illegal can never be held to be justified but it is not true that the consequence of a lock- out being declared illegal must be that for the period of that illegal lock-out, workmen must be entitled to payment of wages. It is true that, ordinarily, when workmen are, against their consent and desire, not allowed to enter factory premises, it should be held in their favour that, for the period during which, against their consent and desire they are not allowed to enter the factory they should be entitled to wages. It is at the same time permissible for an employer to prove that an illegal lock- out was the result of such misdemeanour and misconduct of the workmen that left no option to the employer but to declare a lock-out."

Therefore, merely giving a finding whether the strike or lock-out is legal or illegal, the illegality by itself will be no answer in denying the wages to the workmen if the Court comes to the conclusion that the strike or lock-out is not justified.

9. The question whether a complaint in respect of whether the strike is legal or illegal would be maintainable before the Industrial Court, apart from issuing the declaration u/s 25 is also no longer res Integra. A Division Bench of this Court in the case of Maharashtra General Kamgar Union and others Vs. Balkrishna Pen Pvt. Ltd. and another, , has held that a complaint of unfair labour practice would be maintainable apart from the declaration u/s 25. All that would happen is that while considering the complaint the requirements of Section 25 would mutatis mutandis apply to the enquiry.

In the case of The Premier Automobiles Employees' Union and Others v. The Premier Automobiles Ltd. and Ors. 1988 (57) FLR 649, a Single Judge of this Court BHARUCHA J., as His Lordship then was, while considering the judgment of the Industrial Court in para 18 observed as under :

"I should have thought that it is the most basic, though it may be implicit, term of an agreement between an employer and his employee that the employee shall make himself available to the employer to do his work and that the employer shall pay the employee wages for doing so. Failure to pay wages, when an employee has made himself available to do the employer's work, is a breach of the agreement between them. That the employer has no work for the employee to do does not cause a suspension of his obligation to pay wages to the employee."

10. With this background the contention must be met as to whether the Industrial Court under Item No. 9 can conduct an inquiry as to whether the workers are entitled for wages if the lock-out is otherwise not justified as legal and proper. In the case of S.G. Chemicals and Dyes Trading Employees' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, , one of the questions that came up for consideration was whether in a case a closure effected without complying with the requirement of Chapter V-B the Industrial Court under Item 9 of Schedule IV could direct the payment of wages. The Apex Court has answered the issue with clear " yes". Another single Judge of this Court in the case of Saroj Ramesh Shah Vs. Balakrishna Pen Pvt. Ltd. and Others, , was also considering a case under Item 9 of Schedule IV. In that case the question was whether the Industrial Court had jurisdiction to enquire whether contract workers were the direct workers of the employer. The learned single Judge held that the Industrial Court under Item 9 could go into the said issue. The said view has been reiterated by a Division Bench of this Court in the case of Maharashtra General Kamgar Union Vs. Cipla Limited and Others, . This has to be dealt with as it was contended that unless there was an agreement, settlement or award under which wages for the strike period were payable the Industrial Court would have no jurisdiction as it was a Court of limited jurisdiction and the reliefs had to be sought elsewhere by reference to industrial adjudication. Considering the ratio of the three judgments, I am of the considered view that the Industrial Court while considering Item 9 can go into that issue whether the lock-out is justified or not. As earlier pointed out Item 6 is restricted in operation to a lock-out, which is deemed to be illegal.

11. In Writ Petition No.517 of 1998 it was ought to be contended that the employees and the Union had no locus standi to maintain the complaint. For that purpose the reliance was sought to be placed on various judgments. I do not propose to go into the various judgments suffice it to say that as has been held by the learned single Judge of this Court in Premier Automobiles Employees Union (supra) there is an implied agreement by every employer that it would pay wages if the employees work, Therefore, under Item 9 an individual employee would have the right to maintain a complaint. Prima facie, therefore, I am rejecting the said contention on behalf of the employer in the said petition. ;

12. Considering the arguments, the law laid down by the Apex Court and this Court I am of the opinion that the petitioners in both the cases have made out a strong prima facie case and that the issue whether the Industrial Court in a complaint under Item No. 9 can go into the issue whether the lock-out was justified is not concluded by any judgment of this Court. Hence, Rule in both petitions.

**INTERIM RELIEF IN WRIT PETITIONS No. 475 and 517 OF 1998:**

13. The petitioners have also sought interim, relief in terms of prayer Clauses (b) and (c). My attention has been invited to the statement of reasons in support of the lock out. The facts are distressing. A charter of demand was served on the

respondent Company on February 1, 1989. Between the said date and August 1995, there has been no settlement or reference of the demands for adjudication. It is then alleged that the workers joined the present petitioners in August, 1995 and submitted their Charter of demands on August 25, 1995. There has been no settlement or reference to industrial adjudication of the demands. On December 25, 1996, the allegation is that the workers prevented the shifting of the surplus transformer to its other Division at Pune. The lorry driver had to flee along with his men due to the grave threats. No actual instance of any violence or assault on any officer or other employee has been set out. The next allegation is on December 28, 1996 the workers physically obstructed the movement of vehicles and only with police intervention vehicles were allowed to enter into the premises. On March 2, 1997 it is alleged that the workers were called to carry out annual statutory stock taking for which they did not report, except maintenance workmen. It is alleged that there was some damage to some material and chalk markings on pallets and bins were found to be removed and wiped out. On March 6, 1997 it is alleged that shift work was required to be stopped from 9.00 a.m. to 11.00 a.m. It is also alleged that threats of physical assault to some technical and professional consultant were given. No incident of any assault has been cited. It is set out that the company suffered tremendously. It is then alleged that on April 10, 1997 a violent morcha was organised wherein abusive and inflammatory anti management slogans were raised provoking the workmen and creating a tense atmosphere. There was no assault and no violence. The next date given is December 29, 1997. It is alleged that on this date at 5.30 p.m. the committee members insisted that they would not allow material to go out and caused physical obstruction. Though the management staff tried to persuade them, it had no effect and the material remained in the truck till next day when the trucks were allowed to depart. On December 31, 1997 it is alleged that the General Secretary called for an urgent meeting though the management was busy. The management was pressurised to hold the said meeting. The meeting started at 5.30 p.m. It is set out that the management explained to the Union about the critical business conditions and low productivity levels of the Unit which has resulted in the Unit becoming totally unviable. It is then alleged that, the committee members summoned all the 2nd shift workmen by stopping their work and incited them to assemble outside the Works Manager's cabin in order to pressurise the management by illegally confining all Senior Managers in order to obtain immediate answers to the queries raised by them. The workers had deserted their places of work on December 31, 1997 without prior permission from their superiors and assembled outside the cabin of Works Manager. Thereafter the workers were led to the ground floor at about 6.50 p.m. and once again assembled there. At that time the General Secretary of the Union addressed the workers. It is averred that the work- firs were instigated to get ready for confrontation with the management in full disregard and concern to discipline, safety and normal functioning of the Unit. On January 17, 1998 it is set out that customers requisitioned that tools be longing to them be returned for their alternative use and business requirement, the management arranged to

send the said tools on January 17, 1998 it is set out that customers requisitioned] that tools belonging to them be returned for their alternative use and business requirement, the management arranged to send the said tools on January 17, 1998 from the premises by loading them on lorries, but a section of the workmen led by the Union representatives physically obstructed this movement. It is alleged that this created a reign of terror and total demoralisation of the management staff. These are the reasons in support of the lock-out.

14. From a reading of the above, one can see that there has been in fact no physical assault by the workmen on any of the supervisory, "Administrative or Managerial Personnel. The workmen in their complaint have alleged that the lock-out is nothing but a sham for closure and this is borne out from the fact that the material was being shifted continuously from the plant. From the reasons given for lock-out it is pointed out that the management has taken the stand that the unit has become totally unviable. In Writ Petition No. 517 of 1998 document has been placed on record which shows that the management had sought to lay off 150 workers, which was refused by the Commissioner of Labour by order dated May 7, 1997. There are various other allegations. I need not refer to them at this stage. However, what is important to note is that the Union in this complaint have averred that right from August 1995 till date not a single incident of assault has taken place inside or outside the factory premises. In the same paragraph the Union has further averred that to avoid settlement with the complainant union on various burning issues the respondent company has adopted pressure tactics. It is then averred that being a law abiding Union the Complainant Union and their workmen are ready and willing to give required undertaking to the Court that the workmen are ready to resume work and they will maintain discipline and normal production during the working hours. This is reiterated in para 3. The management filed their reply on January 28, 1998 in answer to the averments by the Union that they were willing to give undertakings . All that is alleged is that the question of giving any undertaking either by the complainant Union or workmen at this stage does not arise as the company has neither sought for nor demanded such undertaking and that past history shows that the complainant Union as well as the workmen are not concerned or bothered about the legal process. It may be mentioned that the same Union represents the workmen of another division of the company i.e. S. and (sic) division which is functioning. It may also be mentioned that on January 28, 1998 the Union had informed the management that they undertake to maintain law and order. At the hearing of the arguments there was an oral reiteration of the said undertaking on behalf of the union and they are willing to give an undertaking before this Court on their behalf and/or sign any other undertaking on their behalf and on behalf of the workmen.

15. In the case of The Premier Automobiles Employees' Union and Ors., (supra) a learned single Judge of this Court Justice BHARUCHA (as His Lordship then was) in para 31 observed as under:

"It was submitted by Mr. Khambata that if this Court took the view that an unfair labour practice had been committed, it still could not declare that the 1st respondent was bound to pay wages to the employees concerned. In his submission, this was peculiarly within the competence of the Industrial Court. I cannot accept this submission. If in the exercise of powers under Article 226 this Court finds the Industrial Court to have been in error as it does, it may exercise all the powers that is vested in the Industrial Court."

In the case of *Mumbai Mazdoor Sabha and Bennet Coleman & Co. Limited and Ors.* 1980 I LLJ 112 a single Judge of this Court observed as under at p. 115:

"The Respondents Nos. 1 and 2 also claim that it is their inherent right to declare lockout and it is not bound to adopt proceedings to declare strike as illegal or compel the few striking employees to return to work. This attitude of the employer reflects unaware-ness of the modern principles governing the relations of master and servant. In the changing milieu, it cannot be overlooked that industry is run not only for the benefit of employer and employees but for an unseen and uncared for third force, represented by society at large. That requires that an employer must take reasonable steps to enable smooth running of industry and only after the failure to achieve that goal, the last fatal step of lock-out should be resorted. The employer in the present case has not taken any action whatsoever against the few striking employees before giving notice of lock-out and in these circumstances, the allegation of collusion cannot be said to be without foundation."

Interim relief was granted in that case with the further direction for disposal of the complaint itself. In the case of *Vaman Maruty Gharat and others Vs. M.P. Apte and others*, the issue before the single Judge of this Court was whether the refusal of the respondent to give work to its employees on the ground that the latter are not signing the undertaking is an illegal lock-out. It was held that there was nothing on record to show that there were acts of violence and acts of indiscipline which made the respondent to insist upon the undertaking sought for. In that case the learned single Judge observed that refusal of respondents to give work to its employees on the ground that latter did not give undertaking of the type insisted upon, the respondent indulged in lock-out which lock-out was not in accordance with the law and, therefore, was illegal. In the case of *Bank of India Vs. T.S. Kelawala and Others*, the Apex Court observed as under:

"It is, however, necessary to reiterate that even in cases such as the present one where action is resorted to on a mass scale, some employees may not be a party to the action and may have genuinely desired to discharge their duties but could not do so for failure of the management to give the necessary assistance or protection or on account of other circumstances. The management will not be justified in deducting wages of such employees without holding an inquiry."

The judgment in *Bank of India v. T.S. Kelawala and Ors.* (supra), came up for consideration in case of *Syndicate Bank and another* (supra) on some other

aspect.

In the case of Industrial Tubes Manufacturing Co. Ltd. Vs. S.R. Samant, Judge, Industrial Court and others, , the Division Bench of this Court was considering the insistence by the employer of the workmen executing a bond. On the Industrial Court declaring the strike illegal, the strike was withdrawn. However, the employer insisted on the workmen giving bond in spite of the fact that the strike had been withdrawn. The Division Bench in the said case held that no such insistence could be insisted by the management.

16. The Industrial Court proceeded only on the issue of justification of lock-out. The work was suspended from January 19, 1998. The lock-out is effective from February 5, 1998. As set out by the Apex Court lock-out is a weapon in the hands of an employer to make the Union and the workers understand its point of view. It is not an instrument to shut down an industry or close it without following the procedure under law. The Charter of demand was first served on the management in the year 1989. The present petitioners thereafter served a second Charter of demand in the year 1995. Even upto December 31, 1997 there seems to have been no settlement between the parties. I do not propose to go into the issue as to whether based on the reasons given there was justification to declare a lockout. However, since January 18, 1998 two months have already elapsed. In the instant case there has been no incident of violence whatsoever. The incidents alleged are spread over from the year 1995 to December 31, 1997. The Union has reiterated in their reply to the notice of lock-out and before the Industrial Court that they are willing to assure peace and harmony in the factory. The said offer is reiterated before this Court. Their Charter of demands is pending since 1995. The Respondents have entered into settlement with the petitioner Union in Writ Petition No.475 of 1998 in respect of the other division. In these circumstances, I see no reason at this stage for justification of the lock-out and why as of this date the workers should be denied the benefit of wages.

17. The reliefs sought for by the petitioners inter alia were staying the order of the Industrial Court and declaration that the lock-out is illegal. By the amendment the petitioner has sought the following prayer:

"(cc) pending the hearing and final disposal of the Writ Petition, this Hon"ble Court be pleased to direct the Respondent No. 1 to pay the monthly wages of the workers from February 5, 1998 and thereafter from month to month until disposal of the complaint (ULP) No. 75 of 1998".

I do not propose to grant the prayer as prayed for. However, there shall be an interim relief directing the Respondent No. 1 to pay to the workers wages from March 18, 1998 and to continue to pay so till the hearing and final disposal of the complaint. The petitioner in Writ Petition No.475 of 1998 to file usual undertaking in this Court within 7 days from today.

18. The facts in this case are more glaring. The petitioners herein are not the members of the petitioners Union, which has filed Writ Petition No.475 of 1998.

No acts are alleged against them. The only reason stated in the affidavit in reply is that it is not possible to give work to these workers and/or to single them out when the lock-out is in respect of the entire establishment. Considering the ratio of the judgment of the Apex Court that not only the lock-out must be legal but it must be justified, prima facie the lock-out against the petitioner was not justified. The petitioners herein would have been entitled to wages from February 5, 1998 itself. However, as Writ Petition No.475 of 1998 has been filed by the recognised union it would not be proper to grant to these employees even if they are not members of the petitioner Union in Writ Petition No.475 of 1998 relief from the back date in this petition. As such the petitioners in Writ Petition No.517 of 1998 would be entitled to the same interim relief as the workmen represented by the petitioner Union in Writ Petition No.475 of 1998. The petitioners in this petition No. 517 of 1998 to file usual individual undertaking within 7 days from today.

19. At this stage the learned counsel for the respondents seeks stay of the above order. It is opposed by the Counsel for the petitioners. Considering the issues involved the order is stayed for a period of 3 weeks from today.

20. Respondents waive service. Hearing of both petitions expedited.