

(2002) 05 BOM CK 0010
In the Bombay High Court
Case No : C.A.J. W.P. No. 3846 of 1993

Blue Star Workers Union

APPELLANT

Vs

Blue Star Ltd. and Another

RESPONDENT

Date of Decision : 03-05-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(1), 24(2)

Citation : (2002) 3 LLJ 477

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

Bench : Single Bench

Advocate : S.J. Deshmukh and N.M. Ganguli, for the Appellant; P.K. Rele, R.P. Rele and S.S. Pakale, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner union is aggrieved by the judgment and order dated January 8, 1993 passed by the Industrial Court, Thane in Complaint ULP No. 213 of 1984. The complaint was filed by the petitioner union against the respondents alleging unfair labour practice under Item 6 of Schedule II and also Items 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. The nub of the complaint filed by the petitioner can be very briefly stated. The petitioner had sought relief against the action of the company resorting to suspension of work w.e.f. June 1, 1984 and subsequently effecting lock-out w.e.f. June 18, 1984. According to the petitioner union, the aforesaid notice of suspension of work and lock-out which commenced on June 18, 1984 was an unfair labour practice as contemplated under Item 6 of Schedule II of the MRTU and PULP Act, 1971 (hereinafter referred to as the Act). It also amounted to an unfair labour practice under Items 9 and 10 of Schedule IV of the Act. The petitioner union sought declaration from the Industrial Court to that effect and also sought consequential reliefs of full wages for the entire period of suspension of work and lock-out w.e.f. June 1, 1984 to February 18, 1985. It is an admitted position that the lock-out was lifted on and from February 18, 1985.

2. The respondents appeared before the Industrial Court and filed their written

statement to contest the complaint of unfair labour practice. According to the respondents, there was no case made out against them in respect of the alleged unfair labour practice. The respondents contended that they had lawfully resorted to the action of suspension of work and lock-out w.e.f. June 18, 1984. According to the respondents, the lock-out was strictly in accordance with law as provided u/s 24(2) and Section 25(2) of the Act. The respondents had further stated that the lock-out was under the aforesaid provisions strictly in accordance with law and there is no question of lock-out being illegal or being unfair labour practice. The respondents have pointed out in their notice the reasons for such extreme step of lock-out. According to the respondent company, there was no illegality indulged in by it in resorting to the lock-out w.e.f. June 18, 1984 by notice dated June 1, 1984. It is clarified that on June 1, 1984, the respondent company had displayed the notice. Once notice was for suspension of work of production with immediate effect while the other notice was proposing and continuing the lock-out w. e.f. June 18, 1984. The respondents have stoutly defended their action of lock-out being in accordance with law in respect of compliance with all the rules and regulations and prescribed format of a lock-out notice.

3. During the pendency of the complaint there were certain interlocutory proceedings which were initiated by the parties. There were certain orders passed by this Court also. As I am disposing of the writ petition against the final judgment and order of the Industrial Court, I am avoiding to mention in detail the contents of the aforesaid interlocutory proceedings.

4. On the basis of the pleadings, the Industrial Court framed six points for determination. The petitioner union adduced oral evidence. The respondent company did not adduce any oral evidence. Both the parties, however, adduced and relied upon documentary evidence in support of their contentions. The Industrial Court answered all the issues against the petitioner union and held that the petitioner union had not proved that the respondents had effected a lock-out which could have been termed as illegal. It further held that the union had failed to prove that the respondents had committed breach of the service conditions by not paying wages on the stipulated dates. It also held against the union that it had not proved that the respondents had committed breach of the settlement dated August 14, 1991. Consequently, the Industrial Court held that the workers were not entitled to full wages during the period from June 1, 1984 to February 17, 1985. The Industrial Court refused to give any declaration as sought for by the petitioner. The petitioner union is aggrieved by the aforesaid judgment and order of the Industrial Court and has approached this Court under Article 226 of the Constitution of India to challenge the legality and validity of the aforesaid judgment and order of the Industrial Court.

5. I have heard both the learned counsel for their respective parties at length. I have been taken closely through the entire proceedings including the oral evidence on record.

6. Shri Deshmukh, the learned counsel for the Petitioner-Union has strenuously and vehemently submitted that the Notice dated June 1, 1984 for suspension of work forthwith and to propose and continue lock-out w.e.f. June 18, 1984 amounted to an unfair labour practice under Item 6 of Schedule II of the Act. He further submitted that the said act on the part of the Respondent-company also amounted to an unfair labour practice within the meaning of Items 9, 10 of Schedule IV of the Act. According to the learned counsel, assuming the legality of lock-out to be held against his clients the lock-out which was proposed and continued till February 18, 1985 had no justification of any nature. The employees were ready and willing to work in accordance with the contract of service or the agreement but they were prevented from working by the Respondent Company, and therefore, it amounted to an unfair labour practice within the meaning of Item 9 of Schedule IV of the Act. He also made a passing submission that the aforesaid act of the Respondent-company amounted to an act of force or violence under Item 10 of Schedule IV of the Act as the employees were perforce kept out of employment.

7. The main thrust of the submissions of Shri Deshmukh was on the point that the notice of lock-out issued by the Respondent- company as contemplated u/s 24(2) of the Act was not strictly in accordance with the law. Shri Deshmukh pointed out that though the Respondent company had purportedly issued the notice of lock-out it was not in the prescribed form. According to the learned counsel, what he contemplated by the prescribed form was not the exact format of the notice but that it did not comply with the crucial requirement in the annexure to the notice of lock-out which is mandatory for the employer to comply with. In the annexure of the lock-out notice the Respondent company did not give true and genuine reasons for the lock-out. He stressed the point that the notice did not disclose the true reasons at all and the reasons mentioned in the notice did not exist at all and further they had no relation with the consequences of lock-out as suggested in the notice. Shri Deshmukh very vehemently argued that the notice of lock-out mandatorily required the employer to state true and genuine reasons which actually and factually existed and had consequent and close effect and relation with the proposal of lock-out. According to the learned counsel, the law never required giving of untrue, false and nonexistent reasons to be given in the notice of lock-out. He further stressed that every reason which is given in the notice of lock-out must invariably and unmistakably be a pointer to the consequence of lock-out. In the submission of Shri Deshmukh if the reasons given in the notice of lock-out did not exist or were irrelevant and irrational in that case the proposed and continued lock-out doubtlessly amounted to an unfair labour practice within the meaning of Item 6 of Schedule II read with Sections 24(2) and 25(2) of the Act. Shri Deshmukh further attacked the action of the respondent company to vindicate his submission that the Respondent company did not adduce any oral evidence in support of its notice of lock-out to prove the factual existence and genuineness of the reasons mentioned in the notice of lock-out. The learned counsel submitted that when the notice of lock-

out was under challenge the whole burden was on the Respondent company to have adduced oral evidence to prove the reasons recorded in the notice of lock-out. The Respondent company having failed to examine any witness to prove its notice of lock-out and the reasons stated therein has miserably failed to prove the reasons mentioned in the notice of lock-out. Shri Deshmukh in fact drew my attention to an affidavit in reply to the application for interim relief filed by the Union wherein it is clearly stated that the company would lead oral evidence in support of the reasons mentioned in the notice of lock-out. It was therefore well known to the Company that it had to prove the reasons in the notice by adducing oral evidence, it has not done so. He therefore concluded that there was not an iota of evidence in support of the reasons in the lock-out notice. Shri Deshmukh tried to draw support from the observations made in the judgment of the Supreme Court reported in *Crompton Greaves Ltd. Vs. Its Workmen*, that when serious allegations are made they must be proved by the maker of such allegations.

8. The learned counsel pointed out that the notice of lock-out contained several allegations such as acts of violence, loss of production, go-slow etc. All these allegations required oral evidence. These allegations being of very serious nature entailing serious consequences, the company ought to have examined witnesses to swear on oath to prove the truthfulness of the said allegations. Shri Deshmukh therefore submitted that the notice of lock-out suffers from serious illegality and infirmity for want of true, genuine, relevant and rational reasons to be stated in the lock-out notice. There was no compliance with the mandatory provision of Section 24(2)(a) of the Act.

9. Shri Deshmukh further submitted that assuming the legality of the lock-out notice it was for the Industrial Court to have seriously considered the justifiability of the lock-out to be continued under Item 9 of Schedule IV of the Act. According to the learned counsel, the employees were ready and willing to work under the service contract but the Respondent Company prevented them from working, and therefore, Item 9 of Schedule IV of the Act had clear application to the facts of the present case. Shri Deshmukh has pointed out that the employees were ready and willing to give an undertaking of peaceful and normal work in accordance with the rules and regulations, and therefore, thereafter the continuance of lock-out was not at all justified and it was for the Respondent company to have implemented the service contract or the agreement to allow the employees to work. Shri Deshmukh further submitted that though the question of justifiability of the lock-out could not be decided under Item 6 of Schedule II of the Act, that crucial element can be decided under Item 9 of Schedule IV of the Act as the action of the Respondent Company in not allowing the employees to work amounted to breach of the service contract or the agreement and there was absolutely no reason or justification for the Respondent Company to have prevented the employees from joining their normal duties. Shri Deshmukh further pointed out that the respondent company had not even paid wages for the period of notice of lock-out and had abruptly suspended

the work with effect from June 1, 1984. Shri Deshmukh submitted that since the employees were entitled to wages for the entire period from June 1, 1984 to June 17, 1984 which have not been paid by the Respondent company, the lock-out was deemed to be illegal. Finally Shri Deshmukh concluded that the Industrial Court has not applied its mind to the facts and the law in the complaint before him. The learned member of the Industrial Court has erroneously decided the issues and committed a gross error of law warranting interference of this Court under Article 226 of the Constitution of India. Shri Deshmukh therefore prayed that the impugned judgment and order of the Industrial Court be quashed and set aside and the Respondent Company be directed to pay full wages from June 1, 1984 to February 17, 1985. The lock-out was lifted from February 18, 1985.

10. Shri P.K. Rele, the learned senior advocate for the Respondent Company countered all the submissions made by Shri Deshmukh. The learned counsel at the outset submitted that not only under Item 6 of Schedule II of the Act but even under Item 9 of Schedule IV of the Act the justifiability of the lock-out cannot be gone into by the Industrial Court and never by this Court under the extraordinary jurisdiction under Article 226 of the Constitution of India. Shri Rele also strenuously submitted that the learned Member of the Industrial Court has consequently decided the complaint on the basis of the material on record and has given cogent reasons for his conclusions and this Court therefore should refrain from exercising its Writ Jurisdiction to interfere with the impugned judgment and order of the Industrial Court which did not suffer from any illegality or infirmity. According to Shri Rele there was no miscarriage of justice in the situation. As far as the question of justifiability under Item 9 of Schedule IV of the Act is concerned Shri Rele submitted that there is no application of the said item in the present case. The said item contemplates any breach of or failure on the part of the employer to implement the award, settlement or agreement. There is no question of deciding justifiability of the failure or breach on the part of the employer. If once it is established that the employer had failed to implement the award, settlement or agreement the element of mens rea did not enter and therefore, there was no question of probing into the justifiability of the act of the employer. Shri Rele pointed out that if under Item 6 justifiability of the lock-out cannot be gone into, it certainly cannot be gone into under any other item. Shri Rele further submitted that the lock-out notice was strictly in compliance with the provisions of the law and if the lock-out is held to be legal there is no failure on the part of the Respondent-Company to implement the award, settlement or agreement. If the lock-out notice is legal the employees are not entitled to get any wages for the period of legal lock-out, by invoking the back door entry of Item 9 of Schedule IV of the Act as is contended by the Union.

11. Shri Rele further submitted that we must confine ourselves to the pleadings of the Union in the complaint. There was no dispute about the existence of the lock-out notice which was not only displayed on the notice board but even a copy was forwarded to the Union and the other authorities. Shri Rele submitted that

the situation in the factory was explosive and there was no other alternative left with the company but to suspend the operations till normalcy was restored by the employees. According to the learned counsel, it was not at all necessary for the company to have examined any witness to prove the notice of lock-out, as it was an admitted fact. He further pointed out that the company had stated exhaustively the reasons for which it was compelled to suspend the operations abruptly and to declare lock-out. The learned counsel submitted that sufficiency or otherwise of the reasons cannot be gone into by the Industrial Court or by this Court. If in the discretion of the employer real and genuine reasons existed to take a decision of lock-out no further enquiry is permissible. From the pleadings in the complaint Shri Rele pointed out that the Union did not plead or aver that the reasons stated in the notice of lock-out were either false or non-existent. There was no such case made out in the complaint by the Union. In fact the Union did not specifically deny the existence or other-wise of the reasons given in the notice of lock-out. Shri Rele pointed out that the Union on the contrary contended that for the reasons stated in the lock-out notice there were other remedies available to the Respondent Company and that it ought not to have resorted to the extreme step of lock-out. In respect to the arguments of the availability of the other alternative remedies, Shri Rele pointed out that the Respondent Company did avail of the statutory remedy of filing a complaint of unfair labour practices against the Union and employees to direct them to cease their unfair labour practices. The Industrial Court in Complaint ULP No. 146 of 1984 had passed appropriate ad interim orders in favour of the company on May 1, 1984 and also in another Complaint ULP No. 198 of 1983 on July 21, 1983 filed earlier. In spite of the Orders passed by the Industrial Court in the aforesaid complaints the Union and the employees were not deterred from continuing their unfair labour practices, says the learned counsel. It was therefore left with no other alternative but to declare suspension of work to be followed by lock-out.

12. Shri Rele further pointed out that in the lock-out notice specific names were mentioned specifically and their illegal and unfair labour practices were alleged against them. The notice of lock-out gave particulars of allegations against the named persons. Shri Rele pointed out that the notice of lock-out referred to Shri Amin, an Office Bearer of the Union. He was examined before the Industrial Court as a witness of the Union but he did not say that the reasons mentioned in the notice of lock-out did not exist. Neither he nor other witnesses who were named in the notice of lock-out denied the allegations made against them. The instances alleged against them were as good as charges levelled against them, but they did not say a word in respect of those incidents. According to Shri Rele, therefore the existence or otherwise of the reasons stated in the notice of lock-out was not denied by the Union in the complaint and even in the oral evidence adduced by the Union before the Court. In such circumstances, says Shri Rele, that it was not necessary for the Respondent company to have examined any witness to prove the notice of lock-out and the reasons stated therein. Neither the union nor any of its witnesses have said on oath that the reasons stated in

the notice of lock-out were false or were non-existent.

13. In respect of the submissions of Shri Deshmukh that the Respondent Company wanted to humiliate the employees by requiring them to give an undertaking before lifting of the lock-out, Shri Rele countered the allegation of Shri Deshmukh by saying that in fact it was the Union that had offered an undertaking and the company never asked for such undertaking from the employees or the Union. The Respondent Company only waited for the Union and the employees to restore normalcy to be assured that after lifting of the lock-out " real and genuine normalcy and peace would be restored. Shri Rele pointed out that in fact the Respondent Company had settled all the disputes at all its centres in the country. The settlement arrived at with the Union on October 18, 1985 significantly assures the company that the Union and the employees would make good loss of production without any compensation, Shri Rele points out that this itself is an enough and clear indication that the Union and the employees had accepted the fault which resulted into the lock-out.

14. Shri Rele has pointedly and specifically drawn my attention to the reasoned judgment of the Division Bench of our High Court [P.S. pATANKAR & S.A. bOBDE, JJ] in the case of Modistone Limited Vs. Modistone Employeers" Union and Another, of the Judgment crystallized the jurisdiction of the Industrial Court in respect of the dispute of lock-out under Item 6 of Schedule II of the Act. Shri Rele finally concluded that there is no illegality or infirmity in the impugned judgment and order of the Industrial Court to warrant any interference by this Court under its extra ordinary writ jurisdiction.

15. I have considered the case of the Union as reflected in the pleadings and the other material on record. It is not possible for me to accept the submissions of Shri Deshmukh, the learned counsel for the Petitioner-union that the lock-out notice was not in compliance with Section 24(2) of the Act for want of real, genuine and truthful reasons in existence. While Shri Deshmukh is right theoretically when he makes a proposition of law that the lock-out notice must contain reasons which are genuine, true and which are actually in existence and which have direct relation or nexus with the step of lock-out resorted to by the employer. There must exist the causal connection between the events alleged in the notice and the consequence of lock-out. In the present case Shri Deshmukh is riot right that no such reasons ever existed before the lock-out notice was issued. Shri Deshmukh is further right in theory that if reasons are not in existence or are irrelevant and irrational the proposed and continued lock-out would be hit by Item 6 of Schedule II of the Act. In the present case however, it cannot be said that no reasons ever existed and it cannot be said that the reasons which are stated in the notice of lock-out were non-existent, irrelevant, irrational or were false. I have carefully gone through the lock-out notice and the statement of reasons annexed thereto. By no stretch of imagination it can be said that the reasons stated in the said notice can be said to be either non-existent, irrelevant, irrational or false or concocted or fabricated. The notice has

specifically given all the particulars in respect of time, place and the persons named. The notice contains 29 reasons as instances of go-slow, periodical work stoppage and refusal to obey lawful orders of superiors, and frequent and repeated indulgence in such activities to throw the working out of gear and to cause abrupt interruption in the smooth working of the factory. The notice specifies that from April 3, 1984 almost everyday, the workmen were resorting to periodic concerted cessation of work during working hours. The notice also mentions that there was constant disturbance and obstructions of work and that the workmen had created an industrial unrest and disturbance by resorting to beating drums, hooting, booing or singing songs in groups in the loudest possible tones and that the managers were threatened with dire consequences on the telephone etc. I am refraining from reproducing all the instances set out by the Respondent Company in the aforesaid notice of lock-out. The notice runs into 18 pages giving not less than 29 reasons for its action of lock-out. It has not left any vagueness in the notice and the allegations. It has given all the particulars as stated by me earlier. It has named the office bearers of the union and the names of the employees with specific allegations against them. In the last paragraph of the notice the management expressed that the manufacturing activities would be resumed only after it was reasonably and satisfactorily assured that the workmen would not indulge in acts of violence, coercion, indiscipline and work peacefully and discharge their duties diligently in accordance with the current settlements and rules and regulations of the Company. I am not able to hold and conclude that no reasons mentioned in the notice of lock-out ever existed before the notice was issued.

16. The Petitioner Union approached the Industrial Court under Item 6 of Schedule II of the Act to challenge the said notice of lock-out as an unfair labour practice. It is very significant to note that in the complaint the Petitioner Union did not even whisper that such reasons never existed before the lock-out notice was issued. The Union did not even say that the reasons stated in the notice were false, irrelevant, irrational or not genuine. The Union did not deny the fact of notice and also the contents thereof. A mere stray sentence in the complaint could not take the Union's case to hold that the reasons stated therein were non-existent and were false. It is further pertinent to note that in the notice of lock-out the company has named not only the incidents specifically but has also given the details and has connected the persons with the incidents. It was for the Union to have not only pleaded that the incidents and the reasons were non-existent and were false, it was further for the Union to have proved that the reasons stated in the notice were non-existent and were false. The witnesses who were examined on behalf of the Union were also named in the notice of lock-out but they did not even merely deny the allegations made against them and the allegations made in the whole notice of lock-out. Since the Union had challenged the notice of lock-out as an unfair labour practice it was the primary burden of the Union to have atleast prima facie proved through their witnesses that the reasons stated in the notice were non-existent and were false. The

Union has neither pleaded nor proved the allegations that the reasons given in the notice of lock-out were non-existent, irrelevant, irrational or false as submitted by Shri Deshmukh. In the absence of such specific pleadings in my opinion it was not necessary and required by the company to examine any witnesses to prove the contents of the notice of lock-out as they were not specifically denied warranting any rebuttal on behalf of the Respondent Company. The Union has not discharged its primary burden to challenge the legality and validity of the notice of lock-out. It, therefore, cannot be said that the reasons stated by the Respondent Company in the notice of lock-out were wholly non-existent and were absolutely false or untrue. We must always remember that the trial or adjudication under the labour laws is not a criminal trial or a session trial where the charges must be proved to the hilt. Under the labour laws there must be preponderance of probability as is the case in the civil litigation. We have to take broad common sense view of the situation objectively on the basis of material placed by the parties. From the notice we cannot say that the situation narrated by the company was totally false. It was for the company to have taken stock of overall situation and to take appropriate decision. We cannot sit in appeal over the subjective discretion of the company supported by the objective material on record. From the entire material on record one cannot escape to draw an inference that the overall situation in the company had become explosive. There was industrial unrest and disturbance in the company. There appears to be several anti-production activities resorted to by the workmen at different points of time and at different stages of working. There appears to be the absolute loss of normalcy and industrial peace in the factory. To be precise, the situation in the establishment had become abnormal and had lost the healthy normalcy required in the smooth working of any establishment. There is no necessity to find out arithmetical or mathematical accuracy in the statements made by the company in the lock-out notice. Want of vagueness certainly assures me of the fact that the contents in the notice were generally and broadly in existence and there is nothing to doubt the factual averments made in the notice of lock-out. Even the Union has not undertaken the exercise to prove that the contents of the notice were substantially untrue and were largely non-existent. I am therefore, not able to agree with the submissions of Shri Deshmukh that the notice of lock-out was in contravention of Section 24(2) of the Act for want of true, genuine, relevant and rational reasons in existence. Having held that the Respondent Company has stated reasons exhaustively in the notice of lock-out and having found that there is nothing to show that such reasons were non-existent it cannot be said that the lock-out notice dated June 1, 1984 to effect lock-out from June 18, 1984 was illegal under the provisions of the Act. I have reached the limit of my jurisdiction to confirm the order of the Industrial Court that the lock-out notice, was legal. Neither the Industrial Court nor this Court can step in the region of justifiability of the lock-out resorted to by the Respondent Company as it is a forbidden area under the law.

17. It is not possible for me to agree with the submission of Shri Deshmukh that the Respondent Company had taken the extreme step of declaring a lock-out for the reasons stated therein. It is pertinent to note that before resorting to the lock-out the Respondent Company has approached the Industrial Court for restraining orders against the Union to desist from indulging into the acts of unfair labour practices, some of which are stated in the notice of lock-out. The Respondent Company had first filed a complaint of unfair labour practice against the Union (Complaint ULP No. 198 of 1983) and had obtained an order of restraint against the Union on July 21, 1983. According to the Company it was in vain as there was no obedience of the said orders. It further appears that the respondent again approached the Industrial Court by filing another Complaint (Complaint ULP No. 146 of 1984) to prevent the employees from indulging into the acts of unfair labour practices alleged in the said complaint and which are also reflected in the notice of lock-out. The Industrial Court was pleased to pass ad interim order on May 1, 1984 against the Union and the employees but that also proved to be futile. There was no obedience of the said orders. There appears to be third order passed by the Industrial Court in review on January 19, 1985. Having failed in its legal alternative remedies the Respondent Company was finally compelled to issue the notice for suspension of work with immediate effect and lock-out to be commenced and continued from and after June 18, 1984. It therefore cannot be said that the Respondent Company had resorted to the extreme step of lock-out abruptly without availing of the alternative remedies under the law to desist the union and the employees from creating industrial disturbance in the forms and the nature complained of in the complaints in accordance with the provisions of the law. It is therefore clear that before issuing the lock-out notice the company approached the Industrial Court to see that the union/employees were restrained from engaging in the unfair labour practices and thereafter helplessly declaring lock-out as it was not possible for the company to run the industry. Its decision was legitimate and legal and also fully justified in a way. Whether the reasons recorded in the notice of lock-out were sufficient or not also cannot be gone into in a complaint of unfair labour practice either under Item 6 of Schedule II of the Act or even under Items 9 and 10 of Schedule IV of the Act.

18. As far as the submissions of Shri Deshmukh that the question of justifiability of the lock-out can be gone into under Item 9 of Schedule IV of the Act is concerned, it is not possible for me to agree with the said proposition of law. The Item 9 reads as under:

"9. Failure to implement award, settlement or agreement."

It clearly indicates an act of straight and simple failure on the part of the employer to implement the award, settlement or agreement. The complainant, employee or the union has to plead and prove that the employer had failed to implement the award, settlement or agreement. Whatever may be the reasons, if the employer has engaged in the said unfair labour practice a declaration to that

effect will have to follow.

There is hardly any scope to probe into the justifiability of the act of such unfair labour practice. If the lock-out is legal and in accordance with the provisions of the law the employer in a complaint of unfair labour practice under the MRTU & PULP Act cannot be called upon to pay wages for the period of the legal lock-out. The doctrine of apportionment of blame and justifiability or otherwise of a lockout or a strike can be gone into in adjudication under the Industrial Disputes Act, 1947 and not in a complaint of unfair labour practices under the MRTU & PULP Act, 1971. There is, therefore, no scope left for the Industrial Court in a complaint of unfair labour practice to record its finding in respect of justifiability of the lock-out under Item 9 of Schedule IV of the Act and decide whether the employer had committed that unfair labour practice and whether the employees were entitled to any wages for the legal lock-out period on the ground that though it was legal, it was not justified. I am fortified in my view by the decision of the Division Bench of our High Court in the case of Modistone Ltd. (supra). The Division Bench has succinctly dealt with the point which is a complete answer to the submissions of Shri Deshmukh in the context of lock-out. Para 21 of the said Judgment reads as under Modistone Limited Vs. Modistone Employees' Union and Another, :

"21. The M.R.T.U. and P.U.L.P. Act is essentially meant for prevention of unfair labour practice. The statement of objects shows that it is for declaring certain strikes and lock-outs as illegal, to define and provide for prevention of certain unfair labour practices. If a lock-out is imposed not complying with the provisions of Section 24(2), then it can be called as illegal in nature. If it is shown by the union that it is illegal in nature, under Rule 23 of the M.R.T.U. and P.U.L.P. Rules, 1975 notice of lock-out is required to be given in Form "J". The notice is required to be accompanied by an annexure containing the statement of reasons. Thus, it is the non-compliance with the requirement of the above Clause (a) that makes the lock-out illegal. Under the above Clause (a), lock-out will be illegal if it is:

- (i) Commenced or continued without giving notice in the prescribed form; and
- (ii) or within 14 days of the giving of such notice.

The statement of reasons is required to be annexed to the Notice so as to bring to the notice of the employees their actions to change their stand. The reasons are, thus, integral part of the notice. It is therefore clear that the requirement of giving reasons is a requirement of Rule 23 which prescribes that a notice of lock-out should be in Form "J". It is settled law that Rules form part of the statute vide G. O. C. in General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, . It must therefore follow that a lock-out, in order that it is legal, must be based on reasons which are relevant. Therefore, it is necessary that the reasons should not be irrelevant i.e. not relating to the industrial relationship or germane to the employer-employee relationship or non-existent or sham reasons. If the employees are able to prove this, then the

company can be said to be guilty of unfair labour practice as it is acting illegally. Even if this is prima facie shown, the employees are entitled to get interim relief of a direction to the company to withdraw such unfair labour practice. However, sufficiency or insufficiency or adequacy or inadequacy of reasons cannot be gone into for consideration of unfair labour practice. The learned counsel for the company is right in submitting that Item 9 of Schedule IV cannot be interpreted in a wide manner, as sought to be done by the learned single Judge. This would result into anomalous situation. While justifiability and underlying reasons could be examined in a lock-out, no such examination would be possible in a strike as Schedule IV applies only to unfair labour practice on the part of the employer, though the weapons of strike-lock-out are said to be antithesis of each other. Therefore, while considering Item 9 of Schedule IV i.e. failure to implement award, settlement or agreement, the Industrial Court has no jurisdiction to go into the justifiability of the lock-out. The word "Agreement" is already interpreted by the Apex Court to include the violation of any legal provision and hence, implied them in the service contract. Thus, if it is shown that the employer wanted to close down without following necessary legal requirements, then mere is violation of the implied term of the contract and Item 9 of Schedule IV is attracted. But the said Item 9 is not wide to include every refusal to give work by the employer to amount to a breach of law. It cannot also be considered as a residuary item or to interpret it in such a manner to make it omnibus to cover every refusal or denial on the part of the employer to give work. It is not possible to accept the contention on behalf of the Union that it is sufficient to point out that the employees are ready to work and the employer is not prepared to give work and wages for attracting Item 9 of Schedule IV. It is also not possible to accept the submission that the lock-out must be both legal and justified as otherwise Item 9 of Schedule IV is attracted or that the company must establish legality and justifiability for denying the work for getting out of the clutches of Item 9, It is not possible for us to accept the said broad interpretation suggested by the Union and accepted by the learned single Judge. It is to be seen that Schedule IV only deals with unfair labour practice by the employer and not by the employees or their Union. If the employees go on illegal strike, it is not possible for the employer to force them to work. If the strike is illegal or unjustifiable, he can refuse wages. There is a parallel between Item 6 of Schedule II and Item III of Schedule III in that respect. The cases cited above would show that whenever the Court found that the Company has acted illegally or violated any provisions of law or given reason which is not existent or not germane or irrelevant to employer-employee relationship, it was held that Item 9 of Schedule IV was attracted."

The Division Bench has crystallized the jurisdiction of the Industrial Court in respect of the lock-out in paragraph 29 of the said judgment which reads as under at p. 1612:

"29. In the result, we hold that while deciding a complaint under the, provisions of the MRTU & PULP Act, the Industrial Court:

- (a) Can decide whether the lock-out is legal -or illegal i.e. whether it is in accordance with the provisions of the MRTU & PULP Act, 1971;
- (b) can decide whether the reasons stated in the notice of lock- out are non-existent or sham or irrelevant i. e. not germane to the employer-employee relationship or not relating to the industrial relationship;
- (c) However, it cannot go into the question of sufficiency or adequacy of the reasons;
- (d) the Industrial Court cannot go into the question whether the lock-out is justified. This question can only be agitated before the appropriate Court under the provisions of the Industrial Disputes Act, 1947."

19. There were complaints of unfair labour practices filed by the Petitioner Union and the Respondent Company against each other. Both the sides have withdrawn the complaints unconditionally. I do not see any unusual or abnormal elements in the withdrawal of the complaints by both the sides against each other even unconditionally when both the sides have buried the hatchet of dispute by arriving at a settlement on October 18, 1985. It is not necessary for me to consider the point of undertaking given by the employees before lifting of the lock-out. Similarly not much significance can be attached to the statement in the settlement that the employees would make good the loss of production without any compensation. There is no escape from a conclusion that the lockout step was caused by the Union and the employees on account of their agitations. Every trade union agitation and activity must be kept within control and limits so as not to cause irreparable damage or loss to the industry and the employment finally. The greater sufferer in this process of trade union agitation has always been the labour. In a situation which is an aftermath of agitation I do not find anything wrong or unusual or abnormal on the part of the employer to seek a renewal of assurances from the employees that they would restore the normalcy. It is a kind of affirmation or reaffirmation. I do not subscribe to a view that every undertaking taken or given amounts to humiliation or insult to the working class. If the employees and the trade unions have resorted to illegal and unjustified activities and unfair labour tactics to disrupt the industrial peace which finally results in damage to the industry and harm to the employees, the give and take of the undertaking acts as formation of basis to restore normalcy to build renewed mutual confidence. On the basis of such undertaking both the sides come together to shake hand. It is a ground of goodwill on which the spirit of mutual industrial relations are again setup to foster. At the same time if the employees have mentioned in the settlement assuring the employer that they would make good the loss of production that does not necessarily mean that they have accepted the entire blame and that they had surrendered to the employer. Such interpretation of the term undertaking causes more harm to the industrial relations and the mutual confidence. The industrial laws are to be interpreted not from the angle of class struggle but from the spirit of class harmony. In the unjustified and unreasonable struggle between the capital and the labour both

suffer but the final and great sufferer is the society. There is neither complete victory nor complete defeat for either, "undertaking" or assurance by the employees or the union to restore normalcy is an agreement for peace and not a treaty of surrender. Neither can survive without the other. And the society wants both of them equally dearly.

20. Even the Supreme Court has accepted the statement made on behalf of the Respondent Company to lift the lock-out on receipt of an undertaking from the employees. The Supreme Court has recorded the settlement in its order dated February 12, 1985 in Petition for Special Leave to Appeal (Civil) No. 2383 of 1985. The Supreme Court has approved the form of undertaking required to be given by the employees as a condition to lift the lock-out. The undertaking reads as under:

"Upon resumption of work I undertake to perform my duties sincerely and diligently, and to give and continue to give agreed output and productivity as per current Settlement, observe normal discipline and comply with the rules and regulations of the Company.

I also undertake not to violate the ad-interim Orders dated July 21, 1983 and May 1, 1984 passed by the Industrial Court, Thane, in Complaint Nos. ULP/198 of 1983 and ULP/146 of 1984 respectively."

From the aforesaid undertaking I do not find that the Respondent Company has in anyway treated the employees to humiliate them or in the sense of their surrender. It is only an assurance to rebuild the gap created on account of the agitations. Even the Supreme Court has not found any form of humiliation in the said undertaking. Neither such undertaking nor any statements made in the settlement need be considered as either admission or confession of any wrong or guilt on the part of the employees. It is only a plank to renew the broken relationship. It is only a new bridge of mutual relationship. It is needless to emphasize that the undertaking acts as a bridge to reach each other.

21. Last but the least is the point of wages to be paid to the employees by the Respondent Company for the period from June 1, 1984 to June 17, 1984. The Respondent company has suspended the operation of the establishment with immediate effect from June 1, 1984. In another notice of the same date the Respondent Company has proposed lockout to be commenced and continued from June 18, 1984. This lock-out with effect from June 18, 1984 has been held to be legal and not an unfair labour practice as alleged by the Petitioner Union. The employees however have been factually locked out with effect from June 1, 1984 on the basis of the notice for suspension of work with immediate effect. The employees were ready and willing to work but they were prevented from joining their duties on and from June 1, 1984. The notice for suspension of work is nothing but a lock-out as defined under the Industrial Disputes Act, 1947. Section 2(1) of the Industrial Disputes Act defines lock-out as under:

"Lock-out" means the temporary closing of a place of employment or the

suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him."

The notice of suspension of work dated June 1, 1984 therefore amounts to a lock-out. This lock-out commenced and continued from June 1, 1984 till the lock-out notice gave effect to the proposed lock-out from June 18, 1984 is illegal. The law requires that the employer must give notice of 14 days before effecting the lock-out. In the present case the Respondent Company has effected lock-out by calling it suspension of work without such notice as the suspension of work began with immediate effect from June 1, 1984. The lock-out from June 18, 1984 was preceded by a notice dated June 1, 1984 which was called by the Respondent Company as suspension of work. In this notice period the Respondent Company is liable to pay full wages to the employees. If the lock-out period had commenced from June 18, 1984 without preceding the suspension of work from June 1, 1984 in that case the Respondent employer would not have become liable to pay wages for the notice period of 14 days as the employees would have worked and earned their wages during this lock-out notice period. In the present case the notice period is merged in the period of suspension of work from June 1, 1984. In these circumstances the Respondent company is certainly liable to pay full wages to the employees from June 1, 1984 to June 17, 1984 both the days inclusive. In fact the Respondent Company ought to have paid to the employees the wages for the aforesaid period on the next pay day in the month of July 1984. In my opinion the Respondent Company has illegally withheld the lawful wages of the employees for such a long period and without any justification. It is an admitted position that till this date the respondent company has not paid to the employees the wages for the aforesaid period, and this is totally illegal, improper and unjustified act on the part of the Respondent Company. I, therefore, direct the Respondent Company to pay to the employees the unpaid wages for the period from June 1, 1984 to June 17, 1984 inclusive of both the days within a period of four weeks from today with interest at the rate of 24% p. a. The Respondent Company will be liable to pay interest at the rate of 24% p.a. till such payment is made.

22. In the aforesaid circumstances I do not find any illegality, impropriety or infirmity in the impugned Judgment and order of the Industrial Court. There is neither perversity in the order nor does it cause miscarriage of justice. The Writ Petition is disposed of as above. No order as to costs.