
(1990) 09 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 894 of 1984

Bombay Labour Union	Vs	APPELLANT
Haulage Corporation and Another		RESPONDENT

Date of Decision : 05-09-1990

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 24(1), 25(5)

Citation : (1991) 1 BomCR 403 : (1991) 63 FLR 144 : (1990) MhLj 1193

Hon'ble Judges : S.M. Dadu, J

Bench : Single Bench

Advocate : Flavia Agnes, Vandana Herur and Anand Grover, for the Appellant;
H.L. Gokhale, for the Respondent

Final Decision : Allowed

Judgement

S.M. Dadu, J.—This petition under Article 226 of the Constitution takes exception to a declaration holding the workers owing allegiance to the petitioner guilty of having commenced and continued an illegal strike from 13-7-1982 till 13-9-1982 (both days inclusive), constituting an unfair labour practice within the meaning of section 24(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (PULP Act.).

2. The first respondent was in the transport business and had a work force consisting of amongst others Drivers and Cleaners. Some or possibly the majority of employees, working with respondent 1 joined the petitioner Union and that is how the said Union became a force to reckon with in the affairs of respondent No. 1 Prior to the supremacy attained by the petitioner the workers of respondent No. 1 were affiliated to another Trade Union known as All India Transport Kamgar Union. This Union had raised a charter of demands and the same constituted the subject of a reference made u/s 10 of the Industrial Disputes Act, 1947 (ID Act). The award in that reference was pronounced on 15-7-1982 and attained efficacy by virtue of publication in the gazette on

17-8-1982. The petitioner Unions submitted a charter of demands on April 5, 1982. In this charter, there were near about 17 demands. In the months of May, June and July a certain number of workmen were suspended by the first respondent on various accusations. The General Secretary of the petitioner Union addressed communications calling upon first respondent to set aside the suspension and direct re-instatement that unless the suspended employees were restored to their original position, the work force in the establishment would be going on an indefinite strike. As from July 13, 1982 the threat was implemented and respondent 1 had to do without a work force to do its bidding. On August 13, 1982 a notice of strike as required by section 24(1) of the PULP Act was given and served the same day upon the first respondent. The notice was accompanied by a statement of reasons. Shortly stated, the letter was a reiteration of the allegation that services of certain persons had been wrongfully terminated and that they be re-instated forthwith and paid their wages with retrospective effect i.e. from the date of their wrongful termination. The first respondent went to the Court presided over by the second respondent vide an application the copy whereof is at Ex.K. The material recital from this application is to be found in para 9 and the relief claimed was a declaration that the strike resorted to by the workers was illegal and violative of the provisions of the PULP Act. In its reply, the petitioner Union took various defence, one of them being that the strike had nothing to do with charter of demands dated 5-4-1982. Some witness were examined and the second respondent held in favour of the first respondent. Within 48 hours of the pronouncement of the impugned order on 3-12-1983 the petitioner intimated the first respondent of the readiness of its workers to resume work, though this was to be without prejudice to its contention that the strike declared to be illegal, was, in fact not so vitiated.

3. Petitioner contends that the second respondent was in error in holding that the strike was illegal. At the most, the illegality would taint the strike as from 13-7-1982 to 27-8-1982. For the remaining period the requirements of the law in respect of notice had been complied with and in support of this contention learned Counsel representing petitioner relies upon the corollary flowing from *The Premier Automobiles Ltd. and others v. G.R. Sapre and others* 1981 L.I.C. 221. What figured in that case was the legality or otherwise of a lock-out. That there is an identical formulation in respect of the provisions dealing with an illegal lock-out and illegal strike, is clear from sub-section (1)(a) and (2)(a) of section 24 of the PULP Act. For a ready reference the two are set out below :---

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

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

(2) "illegal lock-out" means a lock-out which is commenced or continued-

(a) without giving to the employees, a notice of lock-out in the prescribed form or within fourteen days of the giving of such notice."

In the Premier Automobiles (supra) a Division Bench of this Court held that a slight deficit in the number of days prescribed by the statute would not vitiate the notice and make the lock out illegal. To quote from the judgment :---

"In other words, resorting to "lock-out" by the employer by itself is not illegal. It is the non-compliance with the requirements of the above clause (a) that makes it illegal. Under the above clause (a) a lock-out will be illegal, if it is (1) commenced without giving a notice, or (2) commenced within 14 days of the notice, even if notice is given, or (3) continued from day-to-day if commenced without notice, or (4) so continued from day-to-day during the period of 14 days, even if notice is so given. Not mere commencement of lock-out without notice, but even continuance thereof without compliance with section 24(2)(a) appears to have been deliberately rendered illegal, in an anxiety to extend intended relief to the employees and expose the employer to legal consequence for the entire period of illegality.

But such an illegality can be brought to an end by discontinuing the lock-out, so commenced illegally and resuming the operations. The same result would follow after the expiry of 14 days of the notice, if notice is given, in compliance with section 24(2)(a), either at the commencement of such illegal lock-out, or during the pendency thereof with a view to get rid of such illegality. There is nothing in section 24 or any other provisions militating against this." (underlinings mine)

Having regard to the identity in the words employed in the two sections it would follow that the same interpretation would apply to sub-section (1)(a) of section 24 of the PULP Act. Mr. Gokhale representing the employer canvass the contrary view saying that the Division Bench has explained the reasons for accepting the doctrine of co donation in the case of lock-out and those reasons do not apply in so far as strikes are concerned. The passage relied upon by learned Counsel reads thus :---

"The main object of notice of 14 days before lock-out or strike is to avoid possible dislocation to the employers and their workmen and give some breathing time to adjust. It is not that the law does not permit the employers to resort to lock-out in the same manner as the workmen are entitled to use the weapon of strike for achieving their objects. Payment of wages in lieu of notice can serve that purpose and is expressly made permissible u/s 25-F or section 25FFF of the Industrial Disputes Act."

It is not possible to agree with Mr. Gokhale when he says that while the workmen can be compensated in the case of an illegal lock-out, there is no means to compensate the employer whose working has been disturbed consequent to the taking place of an illegal strike. If the employer resorting to an illegal lock-out has to pay wages for the period he illegally keeps out the workers, the employer also can proceed against the striking workers who have launched upon an illegal strike. That this may not yield any result, at least immediate result, is neither here nor there, for the possibility of the employer not having anything to

reimburse the workers losing consequent to an illegal lock-out is also there. We need not speculate as to the possible ways in which the employer can get compensation from workers commencing or continuing an illegal strike. Seeing no reason to not apply the construction adopted by the Division Bench to the case of an illegal strike, I hold that the strike was illegal only upto the 14th day of the service of the notice dated 13-8-1982. Another reason which supports this conclusion is sub-section (5) of section 25 of the PULP Act. That sub-section to the extent relevant for the purposes of this case reads as follows :---

"Where any strike declared to be illegal under this section is withdrawn within forty eight hours of such declaration, such strike shall not, for the purposes of this Act, be deemed to be illegal under this Act."

This means that workers who have proceeded on an illegal strike can make amends by withdrawing the said strike, though they are obligated to do so within 48 hours of the declaration made by the Labour Court. If that be the position it is unthinkable that during the course of an illegally commenced strike the workmen do not have the alternative of purging themselves of the illegality by the giving of the prescribed notice.

4. The second respondent has taken into consideration the pendency of a reference made at the instance of the All India Transport Kamgar Union as a reason for holding that the impugned strike was illegal. It is the petitioner's case that the said reference had nothing to do with the reasons for which the impugned strike was commenced and/or continued. This submission is correct. It is so contended by the petitioner in its petition and no exception is taken thereto by the first respondent. In the face of this being the correct position it was an error on the part of the second respondent to assume that the pending reference inhibited the commencing and continuing of the impugned strike.

5. The result of the foregoing discussion is that the petition has to be allowed and hence the order.

ORDER

Rule made partially absolute with parties being left to bear their own costs.

Rule made partially absolute.