

(2018) 07 BOM CK 0080
In the Bombay High Court
Case No : Writ Petition Oo. 5221 Of 2017

Engineering Workers Association

APPELLANT

Vs

Radium Creation Ltd. & Ors.

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Maharashtra Recognition of Trade
Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 24, 24(2)(a),
24(2)(b), 24(2)(c), 24(2)(d), 24(2)(e), 24(2)(f), 24(2)(g), 25, 25(2), 25(5) 28
Industrial Disputes Act, 1947 — Section 10

Citation : (2018) 07 BOM CK 0080

Hon'ble Judges : S.C. GUPTA, J

Bench : Single Bench

Advocate : Nayana Buch, S.D. Rawool, .Shailesh K. More, Sudhir Talsania,
P.N. Anaokar, Rahul D. Oak, Siddhesh S. Shetye

Final Decision : Dismissed

Judgement

1 This petition challenges an order passed by the Industrial Court at Thane on a complaint of unfair labour practice. The complaint was in respect of Item 6 of Schedule II of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, i.e. against a lockout proposed and continued by the management, deemed to be illegal under that Act.

2 The Respondent company issued the lockout notice on 5 July 2014 and declared the lockout effective from 20 July 2014. Immediately after the notice was issued, the Petitioner union filed the present complaint, alleging an illegal lockout and claiming a perpetual injunction. The union applied for an interim order, which was declined by the Industrial Court. That order was confirmed by this court in a writ petition filed by the union. The union

thereafter carried the matter to the Supreme Court. The Supreme Court, by an interim order, directed the Respondent employer to deposit in court wages of workmen corresponding to the period of lockout and till the date of its interim order. In pursuance of this order, a sum of Rs.1.40 crores was deposited by the Respondent employer in court. The lockout was thereafter lifted by the employer on 22 July 2015. The complaint thereafter came for final disposal before the Industrial Court. The court held the lockout to be legal and directed the amount deposited by the Respondent employer to be refunded. This order has been challenged by the union in the present petition.

3 Learned Counsel for the Petitioner union submits that what the Industrial Court had to decide in this case was not merely the legality of the lockout

but also its justifiability. Learned Counsel submits that though this lockout may have been legal at the inception, its continuance for an indefinite

period, by way of a subsequent act on the part of the employer, amounts to an unjustified lockout. Learned Counsel relies on a judgment of the

Supreme Court in the case of *Statesman Limited vs. Their Workmen* 1976 AIR SC 758 as well as the case of *Maharashtra General Kamgar Union vs.*

Balkrishna Pen Pvt.Ltd. 1987-II-CLR-374(Bom) decided by a Division Bench of our court in support of her submission. Learned Counsel also

relies on the observations made by the Supreme Court whilst disposing of the special leave petition after ordering deposit of wages during the lockout

out period. Learned Counsel submits that the Supreme Court accepted the submission advanced before it that the entitlement of workmen to these

benefits would depend upon whether the lockout was legally valid and justified. The court noted that this finding was yet to be recorded by the

Industrial Court. The court directed the amount deposited before the Industrial Court to be utilized for disbursement in favour of the workmen subject

to the condition that each one of them filed before the Industrial Court an undertaking to the effect that in case the court records a finding that the

lockout was legal or justified and that finding is finally upheld by the appellate/ revisional authorities the amount so received shall be refunded back to

the company. Learned Counsel submits that in the present case, despite these specific directions of the Supreme Court, the Industrial Court desisted

from framing any issue of justifiability. Learned Counsel submits that in fact the Industrial Court expressly declined to consider the question of

justifiability as part of its judicial exercise whilst disposing of the complaint.

4 As for the law on the point, it is important to note that Item 6 of Schedule II of the MRTU and PULP Act refers to a lock out “deemed to be

illegal under this Act”. The concept of “deemed illegality” is to be found in Section 25 of that Act. Section 24 of the Act defines 'illegal strike' as

also 'illegal lockout'. Subsection (2) defines an 'illegal lockout' to be a lockout which is commenced or continued in the manner provided in

clauses (a) to (g) thereof. Section 25 then provides for a reference to a Labour Court for a declaration that the strike or lockout is illegal. Where the

employer of any undertaking proposes or commences a lockout, the State Government or the recognised union or, where there is no recognised

union, any other union of the employees in the undertaking, may make a reference to the Labour Court for a declaration that such lockout is

illegal. Under Subsection (5) of Section 25, where any lockout declared to be illegal under this section is withdrawn within forty-eight hours of such

declaration, such lockout is not deemed to be illegal under the Act. If not so withdrawn, it would be deemed to be illegal and a complaint of unfair

labour practice can be entertained in respect of it. In other words, the provisions of MRTU and PULP Act require the Industrial Court to entertain a

complaint only when the court declares a lockout to be illegal under that Act and within forty-eight hours of such declaration, such lockout is not

withdrawn by the employer.

5 In this scheme of things, the court under the MRTU and PULP Act merely considers the aspect of legality of a lockout with reference to clauses

(a) to (g) of Subsection (2) of Section 24 thereof. It does not consider the other and wider aspect of justifiability of the lockout. That wider

question may fall for consideration before a labour court or an industrial tribunal in a reference made to it under the Industrial Disputes Act. It may

declare the lockout to be illegal, if it is for any reason unjustified. The leading authority on the jurisdiction of the Court under the MRTU and PULP

Act to consider justifiability of a lockout is the case of *Modistone Limited vs. Modistone Employees Union* 2001-I-CLR-1009 . The Division Bench of

our court in that case clearly held that the question of justifiability of reasons can be gone into only in an industrial adjudication by seeking a reference

under Section 10 of the Industrial Disputes Act, and not in a complaint under the

MRTU and PULP Act. The employees have an option to either seek a reference under Section 10 of the Industrial Disputes Act or to go under the MRTU and PULP Act. If, however, they choose to go under the latter Act, the Court deciding their complaint of unfair labour practice can only decide whether the lockout is legal or illegal, i.e. whether it is in accordance with the provisions of MRTU and PULP Act. As part of this exercise, the court may even decide whether the reasons stated in the notice of lockout are non-existent or sham or irrelevant, i.e. non-germane to the employer-employee relationship. However, it cannot go into the question of sufficiency or adequacy of the reasons and in that sense decide generally the question of justifiability.

6 The judgment of Statesman Limited (supra) cited by learned Counsel for the Petitioner does consider justifiability of a lockout. It does hold that a lockout may be justified at its commencement, but its continuance beyond a certain period may be unreasonable and therefore, unjustifiable. It is, however, important to note that that case was decided under the provisions of the Industrial Disputes Act and, as this court has explained in Modistone case (supra), that question, it cannot be gainsaid, can always be considered by an Industrial adjudicator on a reference under Section 10 of the Industrial Disputes Act.

7 What the case of Balkrishna Pen Pvt.Ltd. (supra) decides is that there is no need for a Labour Court to declare illegality of a lockout on a reference under Section 25(2) of the MRTU and PULP Act for the lockout to be treated as 'deemed to be illegal' upon it not being withdrawn within forty-eight hours of such declaration; the Court whilst entertaining a complaint of unfair labour practice itself, while deciding the case of deemed illegality, may first decide illegality of such lockout and thereafter give forty-eight hours' time to the employer to withdraw the lockout and if it is not so withdrawn within forty-eight hours, declare the lock out to be 'deemed illegal' and give relief on the workmen's complaint. The case is no authority for the proposition canvassed by the Petitioner union, namely, that in a complaint of unfair labour practice under Item 6 of Schedule II of the MRTU and PULP Act, the court can go into the aspect of justifiability of the lockout.

8 It is true that the Supreme Court, whilst disposing of the special leave petition,

expected the Industrial Court to decide whether the lockout was

legally valid or justified. It is, however, clear, to my mind, that the word 'justified' used by the court, in the present context, would imply a

legal justification, as may be permissible for the court to consider in a complaint of unfair labour practice filed under Section 28 read with Item 6 of

Schedule II of the MRTU and PULP Act and not any and every justification, which may be gone into in a reference of an industrial dispute.

9 Accordingly, there is no merit in the petition. The petition is dismissed.

10 At the request of learned Counsel for the Petitioner, learned Counsel for the first Respondent states that the first Respondent shall not apply for

refund of the amount deposited by it before the Industrial Court for a period of six weeks from today. The statement is accepted.