
(1981) 03 BOM CK 0023

In the Bombay High Court

Case No : Appeal from Order No. 65 of 1980

Federation of Western India Cine Employees

APPELLANT

Vs

Filmalaya Pvt. Ltd.

RESPONDENT

Date of Decision : 20-03-1981

Acts Referred:

Trade Unions Act, 1926 — Section 18

Citation : (1981) 83 BOMLR 423 : (1981) 2 LLJ 393

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Judgement

1. This is an appeal filed by the original defendants against the order passed by the City Civil Court, Bombay granting injunction in terms of prayer cl. (a) of the Notice of Motion taken out by the plaintiffs-respondents.

2. The plaintiffs, the Filmalaya Pvt. Ltd. which is a private limited company, filed a suit against the defendants mainly for an injunction restraining defendants, their agents and members from acting upon the directions issued by the defendants, No. 1 the Federation and incorporated in the letter dated May 3, 1980. According to the plaintiffs the first defendants, which is a Federation and the second defendant which is a trade union are registered under the Indian Trade Unions Act, 1926. In the course of the plaintiffs' business the Filmalaya studio was hired to various producers of the films and the plaintiffs used to give facilities such as sound recording, cameras, setting and lighting and for that purpose the plaintiffs had employed several workmen. By a letter dated December 11, 1979 the union made various demands on behalf of 19 workers alleging that these workers were in the employment of the plaintiffs and by practising unfair labour practice they were being shown as temporary employees of other sister concerns. It was also alleged that the plaintiffs have wrongfully and illegally terminated the services of the third defendant and have also refused to consider various demands raised by the second defendant. The allegations made by the union were denied by the plaintiffs. It was the case of the plaintiffs

that these 19 workmen were not their employees at all. It was also their case that right from January 8, 1980 the department concerned was closed and as a consequence of this closure the services of the permanent employees including defendant No. 3 were terminated either by paying or by offering to them their legal dues. The defendant-Federation vide its letter dated May 3, 1980 addressed to the various bodies and associations of cine artists, technicians and workers required them to issue a direction directing their members not to report for shooting work at the studio of the plaintiffs. In pursuance of this letter of Federation, respective bodies or associations issued further directions in their respective members, as a result of which the business of the plaintiffs has come to a standstill. For the purpose of deciding this appeal it is not necessary to make a detailed reference to any other averments made in the plaintiff.

3. The plaintiffs then took a Notice of Motion seeking injunction against the defendants, their agents and members from acting according to the directives incorporated in the letter dated May 3, 1980.

4. The defendants contested the said Notice of Motion. A contention was raised by the defendants that the present suit is barred in view of the provisions of S. 18 of the Indian Trade Unions Act, 1926. It was further contended that on two earlier occasions in the proceedings filed at their instance the plaintiffs, failed to get necessary injunction either from the City Court or from the Industrial Court and now the plaintiffs are trying to get the same reliefs in an oblique manner by filing the present suit. It was also contended that in issuing the letter dated May 3, 1980 the defendant No. 1 Federation is acting in its own right as representative of the employees and while exercising its jurisdiction under O.XXXIX of the Code of Civil Procedure, the Court cannot restrain them from carrying on their legitimate trade union activities which is their legal right under the Trade Unions Act as well as under Art. 19 of the Constitution of India. Both the parties filed their detailed affidavits in support of their contentions. After considering the material placed before him the learned Additional Principal Judge of the City of Civil Court, Bombay came to the conclusion that there was no trade dispute pending between the parties and hence S. 18 of the Indian Trade Unions Act has no application to the facts and circumstances of the present case. The learned Judge further found that prima facie the plaintiffs have established that in view of the letter dated May 3, 1980, the cine artists, technicians and workers of the producers are refusing to report to work in the studio of the plaintiffs with the result that the plaintiffs are exposed to the risk of litigation or claim for damages and the same is also causing financial loss. Therefore, the learned Judge made the Notice of Motion absolute in terms of prayer cl. (a) which reads as under :

"(a) That pending the hearing and final disposal of the suit by an order and injunction of this Hon"ble Court, the defendants by themselves, by their association by various bodies or associations of cine artists, technicians and workers affiliated to the first defendants be restrained from in any manner

whatsoever directly or indirectly :

(i) acting upon, enforcing, implementing or taking or continuing any step, action or proceeding for enforcement or implementation of the directions contained in the first defendants' letter dated May 3, 1980 Ext. "D" to the plaint, and/or the ban imposed by the first and second defendants and various bodies or associations of cine artists, technicians and workers affiliated to the first defendants on their respective members reporting for any shooting and/or work at the plaintiffs studio known as "Filmalaya Studio" situate at Ceaser Road, Amboli, Andheri, Bombay-400 058.

(ii) preventing or obstructing the plaintiffs staff, and/or any of the producers of cinematograph films, cine artists, technicians and workers and or visitors from entering into or working at the said Filmalaya Studio.

(iii) entering into remaining or being upon and/or squatting in or around or near about the said Filmalaya Studio and the entrance and exists thereof :

(iv) damaging, destroying or causing any loss to and/or to any of the furniture, fixture, fittings, properties and assets in the said Filmalaya Studio or any part thereof : and

(v) holding any demonstration or shouting slogans in or around or near about, and/or using any abusive language towards the plaintiffs, the plaintiffs' staff, and visitors, to the said Filmalaya studio."

Being aggrieved by this order, the defendants have filed the present appeal, While admitting the appeal this Court was pleased to grant ad interim stay of the order passed by the City Civil Court, Bombay.

5. The learned counsel appearing for the appellants Miss Indira Jaysing has contended before me that the whole approach of the learned Judge of the City Civil Court is vitiated by errors apparent on the face of the record because the learned Judge has not taken into consideration the vital material produced before him. The learned counsel further contended that the learned Judge has obviously committed errors in coming to the conclusion that there was no existing trade dispute between the parties. The learned counsel then contended that if the various circumstances placed on record are read together, it is quite clear that an industrial dispute was raised by the union which was still subsisting, when the letter dated May 3, 1980 was issued by the Federation. The learned counsel then argued that since the legitimate demands made by the employees were not adhered to and/or considered by the employers, the employees were constrained to go on strike. Not only this the plaintiffs have terminated the services of all the permanent employees illegally including that of the defendant No. 3 and have acted in a high handed manner. In these circumstances as a part of legitimate trade union activities vide their letter dated May 3, 1980 the Federation requested its own members not to cooperate with the said employer. According to her the Federation was wholly within its rights to do so. By doing so they had

neither caused any legal injury to the plaintiffs nor the balance of convenience or equity was in favour of the plaintiffs. She further contended that whatever may be the result of the request incorporated in the said letter dated May 3, 1980, the said action of Federation is wholly protected by S. 18 of the Trade Unions Act. A contention was also raised by the learned counsel that in this case the plaintiffs have not approached the Court with clean hands.

6. According to the learned counsel, Shri Deb Mukherji International which is a part and parcel of the plaintiffs' company had filed a complaint before the Industrial Court which ultimately came to be dismissed by the Industrial Court vide its order dated July 7, 1980. The said Deb Mukherji also filed a suit No. 1391 of 1980 before the City Civil Court, Bombay and in that suit also an application for an interim injunction was filed which was similar to one which is the subject-matter of the present suit. Initially ex parte injunction was granted. However, on April 14, 1980 on the application made by the defendants the said injunction was modified and the Court made it clear that the defendants were at liberty to resort to the legitimate trade union activities even against the plaintiffs. Having lost at both these forums, by filing the present suit in the name of the plaintiffs indirectly, the plaintiffs are trying to overcome the orders passed by the Industrial Court as well as the City Civil Court, Bombay. Therefore, according to the learned counsel the plaintiffs have not approached the Court with clean hands, and, therefore, they are not entitled to any relief. In substance it is contended by the learned Judge of the City Civil Court, Bombay has not taken into consideration all these aspects of the matter and, therefore, the order passed by him is liable to be set aside.

7. On the other hand Shri Kapadia the learned counsel appearing for the respondents-plaintiffs contended before me that on the date when the letter dated May 3, 1980 was issued by the Federation, no trade dispute was in existence between the plaintiffs-employer and its employees. None of the 19 workers on whose behalf the defendants wanted to raise a dispute, were employees of the plaintiffs. As a matter of fact long before the letter date May 3, 1980 was issued by the Federation, the plaintiffs had closed its concern and had terminated the services of its employees in accordance with law. Thereafter the plaintiffs are only running the studios on hire basis, by hiring it to the other producers and the producers themselves are bringing their employees for shooting films in the studio. The plaintiffs' company has not retained any employee in its service and hence in no case there could be any existing trade dispute between the plaintiffs and its employees. Shri Kapadia further contended that the employer is entitled to carry on his business as per his own wishes and desire and this fundamental right is guaranteed by Art. 19 of the Constitution of India. In the very nature of the business carried on by the plaintiffs, the plaintiffs are entitled to enter into contact with other producers. According to Shri Kapadia as a result of the directives issued by the Federation, the employees of the various producers are not reporting for shooting in plaintiffs' studio which in terms amounts to actionable wrong on the part of the Federation. The result of

this directive is that the producers are not hiring the studio at all. Even otherwise the allegations made about the non-consideration of the just demands of the employees by the employer generally affect his reputation. He further contended that as a result of this directive the contracts are being reached which in its turn result in actionable wrong as well as substantial loss. According to Shri Kapadia after considering all the materials placed before him, the learned Judge of the City Civil Court, Bombay at the interlocutory stage has come to the conclusion that prima facie there was no trade dispute and hence action of the Federation was wholly wrong. According to Shri Kapadia the so-called dispute raised by the Federation is wholly mala fide and the party which is acting in mala fide exercise of the power, cannot seek protection of the Court or of S. 18 of the Indian Trade Unions Act. According to the learned counsel S. 18 of the Indian Trade Unions Act has no application to the facts and circumstances of the present case because there was no existing trade dispute. In support of his contention Shri Kapadia has placed strong reliance upon the decision in *J.T. Stratford & Son Ltd. v. Lindley and another*, [1964] 3 All, E.R. 102.

8. For deciding the rival contentions raised before me it will have to be seen as to whether there is an existing trade dispute between the parties. Initially it appears that there was some dispute between the parties about the payment of bonus but we are not concerned at this stage with the said dispute. On December 11, 1979 the defendant No. 2. Union served a charter of demands upon the employer raising several demands one of which was related to the workmen whose names were incorporated in the schedule annexed to the demands. A demand was also made qua these employees that they should be borne on the muster roll of the company itself. Apart from this demand about 7 other demands were also raised Then on December 27, 1979 a letter was written by the union reiterating the demands relating to 19 workmen and their status. Thereafter on January 10, 1980 the union raised a dispute about the wrongful termination of the service of defendant No. 3 Abdul and on the same day by another letter it raised a dispute about the intimidatory tactics played by the employer and in that letter also they reiterated their demand about the 19 employees. It further appears from this correspondence that a lightening strike took place on the December 28, 1979. It then appears that in the meantime sometime in March 1980 other departments of the plaintiffs were closed which resulted in termination of the services of 12 permanent employees. So far as the department in which the defendant No. 3 was working is concerned, it came to be closed on January 14, 1980 the plaintiffs denied the allegations made by the union. They also denied the allegation of the union that any worker was forced to sign any document. We have also on record the alleged undated letter at Ext. "B" purported to have been signed by the three employees. At least at this stage it is an admitted position that at least two of the employees had not signed the letter, Prima facie it also appears that also incident took place on December 27, 1979, as a result of which a lightening strike took place on December 28, 1979. It is contended by the defendants that in all 27 employees were forced to sign certain

documents. Affidavits have been filed by Shri S. K. Shetty on behalf of the union as well as by Shri Bhole B. Sharma, an alleged signatory the said letter explaining various circumstances relating to trade dispute between the parties.

9. Shri Ram Mukherji on behalf of the employer has filed a detailed affidavit denying the allegations. From the statement made in the affidavit as well as the material produced, it is clear that on January 8, 1980 services of the defendant No. 3 were terminated and it is the case of the plaintiffs that his services were terminated because of the closure of the department. However, according to the defendants the said closure was camouflage and the business of the plaintiffs" company is still continued. It is the case of the defendants that strike is going on in the Filmalaya studio. It was also alleged by the defendants that initially 31 employees were employed in the studio and out of them 12 were permanent and 19 were temporary. The services of all the permanent employees were terminated on the ground of the alleged closure whereas 19 employees were never treated as employees of the plaintiffs" company. It is their case that in view of the various disputes pending between the parties and as the just demands of the employees were not considered by the plaintiffs-employer, the Federation was constrained to issue the letter dated May 3, 1980. In substance it is the case of the defendants that the letter dated May 3, 1980 was issued by the Federation in view of the subsisting dispute between the parties and to lend support to the agitation launched by the employees of the Filmalaya Studio.

10. It is no doubt true that the plaintiffs-company has disputed the fact that these 19 workmen were the employees of the Filmalaya Studio. For deciding the question as to whether there was a subsisting trade dispute or not it will be better if we proceed on the admitted position at this stage. Shri Ram Mukherji the director of the plaintiffs has filed a detailed affidavit dated July 11, 1980. In para. 19 of his affidavit Shri Mukherji has stated as under :

"With reference to para. 11 of the said affidavit I deny that any of the alleged 19 workers was employed by and/or working with the plaintiffs. I say that the plaintiffs, the said M/s. Mukherji International the said S. Mukherji Film Syndicate Private limited the said M/s. Mukherji Brothers the said Family Film Club and the said M/s. Chitraganga are all having their office located in the premises of the said studio and in the circumstances the employees in the account department of either of the plaintiffs, the said M/s. Mukherji International, the said S. Mukherji Film Pvt. Ltd., the said M/s. Mukherji Bros. The said Family Film Club and the said M/s. Chitraganga might be assisting the employee in the account department of the other in maintenance of accounts or records and as such it is possible that the plaintiffs" accounts and/or records contain entries in the handwriting of the said S. V. Savan, the said S. C. Goswami and/or the said S. Mukherji Film Syndicate Pvt. Ltd. I say that in the premises of the plaintiffs" camera department in the said studio the plaintiffs allow the said S. Mukherji Film Syndicate Pvt. Ltd. to store their equipment and the said Kishan Singh, being employee of the said S, Mukherji Film Syndicate Pvt. Ltd. looks after such

equipment of the said S. Mukherji Film Syndicate Pvt. Ltd., and in the circumstances it is possible that the plaintiff's record in the camera department contain entries in the handwriting of the said Kishan Singh, who, however, has since resigned from his employment with the said S. Mukherji Film Syndicate Pvt. Ltd. and has been paid full amount of his dues by the said S. Mukherji Film Syndicate Pvt. Ltd. I say the said Mohan Singh, being an employee of the said S. Mukherji Film Syndicate Pvt. Ltd., also carried on his own business of hiring out lights and cables to producers of cinematograph film shooting pictures in the said studio and has been allowed by the plaintiffs at his request, free of charge, to store his goods and carry on his said business in the said studio and in the circumstances at times during his presence in the circumstances at times during his presence in the said studio assists the plaintiffs' employees in maintenance of the plaintiffs' record and for doing such work receives ex gratia payments from producers of cinematograph films and as such it is possible that the plaintiffs' records contain entries in his handwriting I say that the plaintiffs have, where as any of the said M/s. Mukherji International, the said S. Mukherji Film Syndicate Pvt. Ltd. the said M/s. Mukherji, Bros, the said Family Film Club and the said M/s. Chitraganga do not have, any code number under the Employees State Insurance scheme and that since in law it is necessary to insure workers engaged in the work of shooting in the said studio of cinematograph films of the said S Mukherji Film Syndicate Pvt. Ltd. the said M/s. Mukherji International, and the said M/s. Mukherji Bros. and the said Family film Club, at the request, the plaintiffs cover under ESIS such of their employees engaged in the shooting of their cinematograph films as they desire and in the circumstances it is possible that the plaintiffs had covered under ESIS the said Shaikh Jameel, Abdul Kayum and Balaram, being employees of the said M/s. Mukherji International, Utpal Roy and the said Kishan Singh, being employees of the said S. Mukherji Film Syndicate Pvt. Ltd. Burmanand Reddy, being an employee of the said Family Film Club, and filed the necessary ESIS Forms and even paid ESIS contributions the amounts whereof are then debited to the accounts of the said S. Mukherji Films Syndicate Pvt. Ltd. the said M/s. Mukherji International and the said Family Film Club in the books of account of the plaintiffs. I say that various employees of the plaintiffs and the said M/s. Mukherji International, the said S. Mukherji Film Syndicate Pvt. Ltd., the said M/s. Mukherji Bros, the said Family Film Club and the said M/s. Chitraganga receive communications and letters at the address of the said studio and as such it is likely that Mayan Kumar Das, being an employee of the said Family Film Club, has received communications and letters at the address of the said studio, I say and submit that it is significant that any of the said B. V. Savant, S. C. Goswami, B. B. Sharma, Kishan Singh, and Mohan Singh who are alleged to have been in the plaintiffs' employment respectively for the alleged periods of 7 years, 4 years, 2 1/2 years, 17 years and 16 years have made no claim of any nature whatsoever during all those years against the plaintiffs either for their names in the plaintiffs' registers and that the said B. V. Savant, S. C. Goswami, and B. B. Sharma have by their said letter, being part of Ext. B hereto, in categorical terms stated and submitted that they did not have

any claim of any nature against the plaintiff."

11. If a cumulative view of all the material is taken, then it can safely be said that a long standing trade dispute was pending between the parties regarding employment, non-employment and status of the 19 employees as well as the alleged illegal termination of the services of defendant No. 3 and other permanent workmen. The defendant No. 2 union did not stop by merely submitting the charter of demands, but the employees had gone on strike, in support of their demands. The industrial dispute raised by the union has not come to an end by any recognised method, i.e., negotiations, settlement or award. The said industrial dispute was existing when letter dated May 3, 1980 was issued by the Federation.

12. The expression "trade dispute" is defined in S. 2(g) of the Indian Trade Unions Act. 1925 which reads as under :

"Trade dispute" means any dispute between employers and workmen or between employers and workmen or between employers and employers which is connected with the employment or non-employment or the terms of employment or the conditions of labour of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises."

13. It is needless to say that expression "workmen" in this context must include, "ex-workmen". It is also clear that the conduct or the action taken by the employer was neither condoned nor it had become stale when the letter dated May 3, 1980 was issued by the Federation. Therefore, the learned Judge of the City Civil Court, Bombay was not right in coming to the conclusion that there was no existing trade dispute. Only because the affidavits were not filed by the employees concerned before the trial Court, the learned Judge could not have come to the conclusion that no trade dispute was raised by the union on their behalf. It appears that the attention of the learned Judge was not drawn to these various documents which clearly demonstrate that a trade dispute was raised by the defendant No. 2 union which was in existence when the letter dated May 3, 1980 was issued by the Federation.

14. If the various letters written by the defendants are read with the admission of Shri Mukherji in para. 19 of his affidavit, then it can safely be said that the dispute raised by the defendants was a bona fide one. In any case the defendant No. 3 had not accepted the amount offered to him and not accepted the amount offered to him and the defendants-union as well as Federation had raised a trade dispute on his behalf. In this view of the matter a finding could safely be recorded that a trade dispute was in existence when the letter dated May 3, 1980 was issued by the Federation.

15. Thus the only question which requires consideration in this appeal, is to find out as to whether an injunction could be issued restraining the defendants, its members or agents from acting upon the directions incorporated in the letter

dated May 3, 1980. The letter dated May 3, 1980 reads as under :

"F/173/80. 3rd May 1980 General Secretaries, All Affiliates, Bombay.

Dear Sirs,

Ref : Strike at Filmalaya Studios.

This is to bring to your notice that there is strike in the Filmalaya Studio since the last two months in support of certain demands of the workers belonging to the Indian Motion Picture Employees Union (our affiliates), whose services were terminated illegally and by way of victimisation. The management is consistently trying to break the strike. In the interest of solidarity and to support the just cause of the Filmalaya workers, you are advised to direct your members forthwith not to report for any shooting and or work at Filmalaya Studio till further advice from us. This directive is in respect of the shootings and/or any work at Filmalaya studios only and not against any particular films.

Thanking you

Yours faithfully, For F.W.I.C.E. Sd/- (Shanthi Deo) Hon. Gen. Secretary.

Members of the various affiliates of the the Federation are requested to take note of the above and comply with the above and comply with the above directive with the above directive with immediate effect".

16. From the bare reading of this letter, it is quite clear that the letter has been issued in the interest of solidarity of the workmen working in the industry and to lend support to the just demands of the Filmalaya workers. The letter is addressed to the affiliated union of the Federation. The letter, if at all is binding, is binding upon its members. It is open to the member either to obey the direction or not to obey it. It obviously depends upon the solidarity of the employees. The letter per se does not instigate workers to indulge in any unlawful or violent activities. In these circumstances it is difficult to say that the Federation was not within its right in issuing this letter. As observed by the Supreme Court in *Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another*, , in India a citizen had, even before the Constitution, a right to hold meetings, etc., obviously subject to the rules and regulations as well as consideration of public order. A right to peacefully assemble is cognate to those of free speech and free press which is equally fundamental. A demonstration by the employees is also protected under Art. 19 of the Constitution of India of course if it is peaceful and incapable of causing breach of public peace. A question about the right to make demonstration fell for consideration of the Supreme Court of India in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, and while considering the ambit of the said right the Supreme Court has observed as under :

"The first question that falls to be considered is whether the right considered is whether the right to make a "demonstration" is covered by either or both of the

two freedoms guaranteed by Art. 19(1)(a) and 19(1)(b). A "demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or society ..., as by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect, therefore, a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has, however, to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Art. 19(1)(a) or 19(1)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person of authority to whom the communication is intended the feelings of the group which assembles.

It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1)(a) & 19(1)(b). It is needless to add that from the very nature of things a demonstration may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19(1)(a) & 19(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievance."

17. Trade unionism is universally recognised phenomenon. The law has recognised phenomenon. The law has recognised the existence of trade unions as well as scope and ambit of their legitimate activities. The Supreme Court had also laid down in *Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI)*, , that the freedom of speech and expression includes freedom of propagation of ideas and this freedom is ensured by the freedom of circulation. Not only this in *Ram Bahadur Rai Vs. The State of Bihar and Others*, , the Supreme Court had an occasion to consider the meaning and scope of the term "agitation". This is what the Supreme Court had said in this context in para 22 of the said judgment which reads as under (at page 228);

"22. The District Magistrate says in his affidavit that the "Sanchalan Samiti was formed for conducting the students agitation and, therefore, the contention of the petitioner that this ground has, nothing to do with the breach or contravention itself implies violence and threat to public order, The High Court relied on the authority of Chamber's Twentieth Century Dictionary in support of its conclusion that to "agitate" is to stirviolently". It is, in our opinion wrong to treat every agitation as implying violence on a priori considerations. The glorious history of our freedom movement exemplifies that agitations may primarily be intended to be and can be peaceful. In this regard Gandhiji's lifework has

perhaps no parallel. Nor indeed, in the West, of Dr. Martin Luther King. But agitations can also be meant to be violent under an apparently lawful cloak and there is ample power to quell these. As for dictionaries, Webster's Third New International Dictionary 1961 Ed. 42 says that to "agitate" is "to stir up"; to arouse public feeling or influence public opinion (as by constant discussion)". "Agitation" is defined to mean "the persistent and sustained attempt to arouse public feeling or influence public opinion (as by appeals, discussion, or demonstrations)". The Random House Dictionary 1970 Ed. 28 says that to "agitate" is "to call attention to by speech or writing; discuss; debate; to arouse or attempt to arouse public interest, as in some political or social questions". "Agitation" accordingly means "persistent urging of a political or social question before the public". The Shorter Oxford English Dictionary 1964 1 Ed. . 36 says that to "agitate" means to perturb, excite or stir up by appeals : "To discuss or push forward". Dictionaries give various shades of meanings and the effort has to be to choose the meanings which is appropriate in the context. When "the wind agitates the sea" the meaning of the word violent, irregular action". When a crowd is agitated to a frenzy by impassioned "oratory", the meaning of the word is "to disturb or excite emotionally". But in regard to social or political questions, the normal meaning of the word is "to arouse or attempt to arouse public interest" (See the Random House Dictionary, 1970 Ed. P. 28. When "the ladies" sigh and agitate their fans the meaning of the word "agitate" is simply "to move to and fro." But when one is "agitating for the schools and the vote" the meaning is "to arouse public feeling or influence public opinion (as by constant discussion)" (See the Webster's Third New International Dictionary, 1961 Ed. 42".

18. Of course, no general rule can be laid down in this behalf; it must depend upon the facts and circumstances, of each case. In the present case by issuing directions to its own members not to cooperate with the respondent - employer, no intimidation or coercion is caused which will result in denying them freedom of choice by any unlawful and violent means. The letter is written by the Federation for propagating its ideas and for lending support to the just demand of the employees, working in the Filmalaya Studio. Therefore depending upon the facts and circumstances of each case such a conduct or an act will also be protected by S. 18 of the Indian Trade Unions Act. Further the Act in contemplation or in furtherance of trade dispute, which induces breach of contract of other employees or causes interference with the trade, business or employment of some other person, is also within the ambit and scope of S. 18 of the said Act. However, for seeking this protective umbrella the inducement or interference must be by lawful means. Obviously it should not be accompanied by illegal means such as violence, etc. Section 18 does not afford exemption to the trade union from the acts of violence (See *Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others*, . *Railway Board Representing The Union of India (UOI) Vs. Niranjana Singh*, , *M. P. Collieries Workers Federation v. United Collieries* (1972) Mad. Pr. L.J. 78 , *Rama Vilas Service Ltd. and Another Vs. Simpson and Group Companies Workers*" Union and Another, However, by

mere writing of such a letter it cannot be said that the Federation is indulging in any act of violence or is agitating with the aid of unlawful means.

19. The Federation has issued this letter in the interest of solidarity and to support the just cause of the Filmalaya Studio workers. The question as to whether the industry was closed or the services of the employees were terminated legally or not, are not germane for deciding the issue involved in this appeal because according to the employees closing of the Filmalaya Studio in itself is a camouflage act. The allegations made by the employees to some extent find support in the affidavit filed by Ram Mukherji. Therefore, at this stage it cannot be said that the demands raised were not bona fide or were frivolous. If in this background the Federation had issued a letter for giving directives to its own members and that too in the interest of solidarity and to lend support to the just cause of Filmalaya workers, then it is difficult to hold, without anything further, that they were not within their rights in issuing this letter. If as a part of collective bargaining in an attempt to induce the company to agree to the just demands of workmen or at least to open doors of negotiations, such a directive is issued by the Federation to its members, then prima facie such an action of the Federation can be considered justified. There is nothing on record to show that these demands were being put up frivolously or for any ulterior purpose.

20. It is no doubt true that Shri Kapadia had placed reliance upon the decision in *J.T. Stratford & Son Ltd. v. Lindley and another*, (supra) but in my opinion the said decision is of little assistance in the present case because in that case a particular view was taken by the Court having regard to the peculiar facts and circumstances of the case, because ultimately the Court found that the dispute raised was only for the prestige of the union and nothing further. Precedents on legal propositions are useful, but the variety of circumstances and peculiar features of each case cannot be identical with those in another, therefore, judgments of Court, based on facts, hardly serve any useful purpose. On the other hand, in my opinion, the learned counsel for the appellants has rightly placed reliance upon the subsequent decision of the House of Lords in *Duport Steels Ltd v. Sirs*, [1980] 1 All. E.R. 529 . The learned counsel was also right in contending that the law laid down by English Courts is of little assistance, while deciding such questions. In this context Miss Jaysing has rightly placed reliance upon the decision of Supreme Court in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, A reference can usefully be made to the following observations of the Supreme Court.

"What is this rule of common law ? Counsel for the appellants inevitably relied on the tort of "conspiracy" and referred us to *Moghul Steamship Co.*, [1892] A.C. 25; *Allen v. Flood*. [1898] A.C.1; *Cuinn v. Leathem*, [1901] A.C. 495 and *Sorrel v. Smith*, [1925] A.C. 700. These decisions of the English Courts are a response to the social requirements of the industrial civilisation of the 19th Century England. Trade and Industry on the looses faire doctrine flourished and the law of torts was shaped to serve the economic interest of the trading and industrial

community. Political philosophy and economic necessity of the dominant class animate legal theory. Naturally, the British law in this area protected business from the operations of a combination of men, including workers, in certain circumstances. Whatever the merits of the norms, violation of which constituted "conspiracy" in English Law, it is a problem for creative Indian jurisprudence to consider, detached from anglophonic inclination, how for a mere combination of men working for furthering certain objectives can be prohibited as a tort, according to the Indian value system. Our Constitution guarantees the right to form associations not for gregarious pleasure, but to fight effectively, for the redressal of grievances. Our Constitution is sensitive to workers' rights. Our story of freedom and social emancipation led by the Father of the Nation has employed, from the highest of motives, combined action to resist evil and to right wrong even if it means loss of business profits for the liquor vendor, the brothel-keeper and the foreign-cloth dealer. Without expatiating on these seminal factors, we may observe that English history, political theory and life-style being different from Indian conditions replete with organised boycotts and mass satyagrahas, we cannot incorporate English torts without any adaptation into Indian law. A tort transplant into a social organism, is as complex and careful an operation as a heart transplant into an individual organism, law being life's instrumentality and rejection of exotics being a natural tendency. Here, Judges are socio-logical surgeons."

21. This is not to say that the trade union is also protected from its violent activities. Activities which are normally termed as violent cannot be recognised as legitimate trade union activities of an union. Therefore, in my opinion Miss Indira Jaysing was quite justified in conceding that the learned Judge of the City Civil Court, Bombay was wholly justified in granting injunction so far as the prayer in sub-clauses (ii), (iii) and (iv) of prayer cl. (a) are concerned. She has also conceded that so far as the prayer clause (v) is concerned the injunction could also be granted so far as the activities inside the Filmalaya Studio are concerned.

22. So far as prayer clause (a)(v) is concerned, it is in two parts. First part of it relates to the activities referred to therein inside the Filmalaya Studio premises and other part of it relates to the activities outside the premises. Injunction sought is vague in nature and it is difficult to say as to what would constitute abusive language. This must ultimately depend on the facts of each case. Obviously such acts of the union are subject to other laws of the land. The union is entitled to carry out its legitimate trade union activities peacefully and, therefore, per se slogans or demonstrations cannot be termed as unlawful and hence a blanket injunction cannot be granted in that behalf. However, so far as the demonstrations, etc., inside the premises are concerned, the injunction was rightly granted by the trial Court and this part of the injunction is not challenged before me.

23. In my opinion so far as the letter dated May 3, 1980 is concerned, the

plaintiffs were not entitled to get any injunction in the present proceedings on one more ground. Similar application was made by the plaintiffs itself to get injunction on earlier occasion. Apart from the fact that Shri Deb Mukherji who was the plaintiffs in the earlier proceedings is closely related to the person incharge of the Filmalaya Studio, from the averments made by Shri Ram Mukherji in para. 19 of his affidavit itself it is quite clear that to some extent they were working hand in hand. If this is so then the fact that in Suit No. 1391 of 1980 such an injunction was refused by the City Civil Court, Bombay as well as the fact that such a relief is not granted by the Industrial Court is wholly relevant for deciding the question of granting temporary injunction in this case also. Apart from the fact that the plaintiffs must make out a strong prima facie case for getting injunction, the plaintiffs should also approach the Court with clean hands. The relief which has been denied already on two occasions qua the letter dated May 3, 1980, cannot be indirectly granted over again. It is well-settled principle of law that a thing which cannot be done directly cannot be permitted to be done indirectly and this is what the plaintiffs have secured in the present suit.

24. In this view of the matter, the order passed by the City Civil Court, Bombay so far as the prayer clause (a)(i) is concerned cannot be sustained and to that extent the said order is set aside. So far as the prayer clause (a)(v) is concerned the injunction is restricted to the activities referred to therein which are likely to be carried on inside the Filmalaya Studio.

25. Hence the appeal is partly allowed. In the result the injunction order issued by the trial Court so far as the prayer clauses (a)(ii), (a)(iii) and (a)(iv) are concerned, the same is confirmed qua prayer clause (a)(v) in a modified form that the injunction is restricted to the activities inside the premises of the Filmalaya Studio. However, injunction granted qua prayer clause (a)(i) is set aside.

26. However, in the circumstances of the case, there will be no order as to costs.