

(2010) 02 GAU CK 0090

In the Gauhati High Court

Case No : Writ Petition No's. 5086 of 2007 and 1069 of 2008

Hindustan Lever (PPF) Workers" Union

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Industrial Disputes Act, 1947 — Section 12, 12(3), 12(4), 18, 19
Penal Code, 1860 (IPC) — Section 120B, 147, 294, 34, 342

Citation : (2011) 3 GLR 560

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A. Dasgupta and S. Chakraborty, for the Appellant; B.J. Talukdar, P.K. Goswami, S.N. Sarma, S. Sarma, N. Dutta and L.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—These proceedings in succession between the same parties dredge up interrelated issues admitting of analogous adjudication and having been so heard, are hereby being disposed of by this common determination.

2. I have heard Mr. A. Dasgupta, advocate assisted by Mr. S. Chakraborty, advocate for the Petitioner, Mr. B.J. Talukdar, learned State counsel for the Respondent Nos. 1, 2 and 3, Mr. P.K Goswami, senior advocate assisted by Mr. S.N. Sarma, advocate and Mr. S. Sarma, advocate for the Respondent No. 4 and Mr. N. Dutta, senior advocate assisted by Mr. L.P. Sharma, advocate for the Respondent No. 5.

3. The Petitioner-union claims to be the representative body of the employees of the Hindustan Unilever Ltd., Respondent No. 4 as its members and registered under the Trade Union Act, 1926 ("the Act, 1926"). The Respondent-company is engaged in the activity of manufacturing of various types of consumer goods with its factory at Doom Doom. On 21.12.2003 the Petitioner-union submitted a

charter of demand for revision of wages, dearness allowance and other conditions of service of the workmen and following necessary deliberations an amicable settlement was arrived at on 24.04.2004 addressing most of the claims made. At the relevant point of time, the Petitioner-union was the only recognized body authorized for collective bargaining on behalf of its members/employees/workmen of the Respondent-company.

The agreement contained Clause 15, which stipulated that if the settlement was implemented, the workers of the factory, then, would be entitled to an allowance of Rs. 200 per month, nomenclatured as Settlement Implementation Allowance ("the SIA") w.e.f. 1.4.2007. According to the Petitioner-union though, the workers pursuant to the agreement rendered their full cooperation for the effective functioning of the factory and increase in its production, the management did neither release the due SIA from 1.4.2007, and also reneged from its commitment qua variable allowance contingent on the rise of the production of the consumer goods. As following its persistent requests a parley with it was held on 6.7.2007 and though, the deliberations were carried overnight nothing fruitful did result. On 7.7.2007, however, when the workers reported for duty, they were denied entry in the working premises, following which the Petitioner-union through its letter dated 9.7.2007 sought the intervention of the Labour Officer-cum-Conciliation Officer, who issued a notice fixing 15.7.2007 for conciliation. The management, however, on receipt of the notice declared a lockout of the factory w.e.f. 15.7.2007. The Assistant Labour Commissioner, Tinsukia, having been again approached by the Petitioner-union in this regard, he issued a notice on 16.7.2007, fixing 18.7.2007 for conciliation, which, however, was not attended to by the Management. It also did not do so on the subsequent dates so fixed.

4. The Petitioner-union has alleged that during the subsistence of the lockout, another union, namely, Unilever (PP) Factory Shramik Sangha, Respondent No. 5 was formed and registered with the active support and initiative of the management. This was followed by a tripartite settlement on 2.9.2007 between the management, the newly formed Union and the Assistant Labour Commissioner, Tinsukia, in terms whereof, the lockout was lifted.

The Petitioner-union has maintained that the settlement is violative of all norms and practice, and more particularly, opposed to the directions issued by the Labour Commissioner to the Assistant Labour Commissioner, Tinsukia, vide its letter dated 27.8.2007, requiring the latter to identify the majority union through a fair and transparent process and thereafter initiate the conciliation meeting. The Petitioner-union in these circumstances has viewed this omission on the part of the Assistant Labour Commissioner, Tinsukia, to be his failure to exercise his jurisdiction under the Industrial Disputes Act, 1947 ("the Act") to refer the industrial dispute there under for adjudging the legality or otherwise of the lockout and, thus, instituted WP(C) No. 5086/2007, seeking an appropriate writ and/or direction to this effect.

5. As pending adjudication of the above proceeding, according to the Petitioner-union, the management resorted to the unfair labour practice of threatening its members of termination of their services, unless they signed an undertaking to resign from it and also backed the Respondent No. 5 in its demand for subscription from their salary, the second writ petition being WP(C) No. 1069/2008 was filed praying for a writ of mandamus for directing the Respondents to initiate steps for ascertaining the majority union of the Respondent-company and to facilitate an amicable settlement of the subsisting industrial disputes arising out of the charter of demands submitted with due participation of both the Unions. The Petitioner-union has alleged extraction of such undertaking from its members by use of force and threat of dismissal by the management in league with the newly formed union contending that repeated representations by it before the management to forebear from such activities did not meet with any positive response. While, asserting that both the unions, meanwhile, had submitted their charters of demand, the Petitioners perceiving the Respondent No. 5 to be management sponsored body, by its letter dated 11.3.2008 requested the Labour Commissioner to initiate a process to identify the majority union to hold meetings with the management for the settlement of the employees' demands. As the statutory authority also remained inexplicably passive seemingly abdicating its power and discretion under the Act in this regard, thus, facilitating the management and the Respondent No. 5 to domineeringly interact on issues having a vital bearing on the conditions of service of the employees to its (Petitioner-union) exclusion and prejudice the reliefs as above have been sought for.

6. Whereas, the State Respondents have not offered their pleadings in the WP(C) No. 5086/2007, the Assistant Labour Commissioner, Tinsukia, in his counter in WP(C) No. 1069/2008, while admitting that before the lockout, the Petitioner was the only union of the employees of the Respondent-company, admitted the formation of the new union, Respondent No. 5 in the month of August 2007. The answering Respondent, however, charged the Petitioner-union to be instrumental for the illegal stoppage of works leading to industrial unrest on 6th and 7th July, 2007, during which its members confined several managerial staff of the company including a lady officer for hours in their bid to realize their demands, including Settlement Implementation Allowance w.e.f. 1.4.2007. The deponent also referred to his reports dated 11.7.2007 and 18.7.2007 to the Labour Commissioner, Assam, on the then prevailing state of affairs. While admitting the initiation of the conciliation proceeding on the request of the Petitioners, the answering Respondent has asserted that though, both the unions claimed majority, on a comparison of the list of workers furnished by the management and the list of members laid by the both Unions, it was apparent that the Respondent No. 5 had in its hold 350 workers. This was in the face of the disclosure that the factory had in its rolls 704 workers inclusive of 104 neutral workers. As the management was not inclined to meet with the Petitioner-union on the apprehension of insecurity and the new union was keen to discuss the

issue of lockout for a settlement, the conciliation officer permitted the move. This was also in response to a request made by the management dated 30.8.2007 to this effect.

According to the answering Respondent, the management and the Respondent No. 5-Union following a discussion, on 1.9.2007 arrived at a settlement on 2.9.2007, which was forwarded to the Government u/s 12(3) of the Act. Consequently, the management lifted the lockout w.e.f. 3.9.2007, and all workers returned for duty thereafter, thus, restoring normalcy in the factory. Though, non-participation of the management in the conciliation proceedings notified earlier, had been admitted, the assertion against the validity of the settlement dated 2.9.2007 has been denied. The answering Respondent has further stated that following such repeated failures of the management to attend the conciliation proceedings, though a report to that effect was contemplated, the Respondent No. 5 requested against the same in view of its inclination to take up the matter with the management for amicable resolution of the differences. As the initiative taken by the Respondent-union hinted at the prospects of a resolution of the impasse, it was considered expedient by the said authority to permit deliberations in the larger interest of the workers and the industry. This the answering Respondent has emphasized was within his power and authority u/s 12 of the Act.

7. The Respondent No. 4 besides questioning the maintainability of the writ proceedings for want of locus standi of the Petitioner-union as asserting the non-existence of any industrial dispute following the settlement dated 2.9.2007 with the Respondent-union settling all the demands of its workers, has also repudiated the reliefs sought for, as inconceivable under the Act. While admitting the settlement dated 24.4.2004, the answering Respondent has maintained that the Petitioner-union and its office bearers soon thereafter not only did start raising demands in contravention thereof, all efforts made by it (management) for a rational and amicable solution were rejected with disdain. It has been alleged that the Petitioner-union and its office bearers instead adopted a hostile attitude and indulged in subversive activities including strikes, labour indiscipline, gross misconduct and assault of its office bearers, etc., resulting, inter alia, in the loss of production. They also went on strike from 6.7.2007 and resorted to wrongful acts of vandalism and caused confinement of its managerial staff including a lady officer for several hours, preventing them to have access to food or water. All its efforts to restore industrial harmony and pacify the aggressive and volatile attitude of the Petitioner-union having failed, there was no alternative but to clamp lockout in the factory.

While asserting that on the basis of an FIR lodged by the company with the Doom Dooma Police Station, a police case was registered and that following the completion of the investigation a charge sheet has been submitted, it has been averred, as well, that meanwhile some of the office bearers of the Petitioner-union being totally disgusted with the activities of the Petitioner-union, which

continually threatened to jeopardise their interest, splintered away and melded to form a new union, named, Hindustan Unilever (PP) Factory Shramik Sangha, Respondent No. 5. This union claimed itself to be the majority union and also extended unconditional assurance of good conduct and cooperation with a request to lift the lockout in the general interest of the workmen concerned. The answering Respondent in this regard, has also hinted at the anxious interventions of the elders of the region, non-government organizations and Government representatives, who were growingly concerned about the future of the undertaking and the well being of the workmen and their families due to the on going imbroglio and resultant incongenial and surcharged environment precipitated by truculent disposition of the fractious attitude of the Petitioner-union and its office bearers. Situated, thus, the management and the Respondent No. 5 agreed to a discussion in presence of the Assistant Labour Commissioner-cum-Conciliation Officer, Tinsukia and after protracted deliberations a settlement was arrived at following which the lockout was lifted on 3.9.2007 after the execution of a tripartite settlement.

According to the Respondent-management, SIA was released to the workmen, who were parties to the tripartite settlement and had executed an assurance of good conduct. This was followed by the execution of a long-term settlement on 12.4.2008, which too was signed in presence of the Assistant Labour Commissioner, Tinsukia and was availed by 647 out of 648 workers in the factory. It has been asserted by the Respondent-management that with this long-term settlement all subsisting industrial dispute(s) have been resolved and that, therefore, the Petitioner's insistence for reference of such disputes for adjudication under the Act is wholly fallacious. The allegation that the Respondent No. 5 is an Union patronized by the management, has been categorically denied. The decision of the Assistant Labour Commissioner, Tinsukia to permit deliberations with the Respondent No. 5 as the majority union has been endorsed. While denying the charge of indulging in unfair labour practice as levelled by the Petitioner, the Respondent-company has pleaded, the same against it (Petitioner-union) for its deplorable and fissiparous activities. The forceful and intimidating collection of subscription for the Respondent-union has also been denied. While avowing that as on date, no complaint has been made by any individual workman in this regard alleging unfair labour practice, the answering Respondent has maintained that since after 2.9.2007, its factory is running smoothly to the satisfaction and benefit of the workmen and all concerned.

8. By its additional affidavit, the Respondent No. 4 has brought on record two letters of the same date, i.e., 4.9.2007 along with a list of 629 workers acknowledging their membership of the Respondent No. 5-union to contend that having regard to the total number of workers at the relevant point of time to be 701, it (Respondent No. 5) was apparently the majority union.

9. In its separate affidavit, the Respondent No. 5, has reiterated that its

formation has been the yield of the unbearable disgust and utter frustration engendered by the anti-workmen activities of the Petitioner-union jeopardizing the entire work environment and the industrial peace and harmony to the severe detriment of the workmen of the factory in general, leading to their loss of confidence in it. While claiming that it is duly registered under the Act, 1926 and have in its rolls 629 members, it has echoed the challenge to the locus standi of the Petitioner-union. In addition to the assertion that the proceedings in hand do not constitute legally comprehended mechanism for ascertaining a majority union, it is asserted that as following the settlement dated 12.4.2008, no industrial dispute subsists, the insistence for the initiation of a conciliation proceeding u/s 12 of the Act is wholly misconceived. The answering Respondent has laid the blame on the members of the Petitioner-union for the untoward situation of 6.7.2007 and has reiterated that the settlement dated 2.9.2007 and 12.4.2008 have been signed by almost all the workmen, which demonstrates, amongst others, that it (Respondent No. 5) is the majority union, having the unassailable representative status for collective bargaining on their behalf. The allegation of forceful extraction of the undertaking from the members of the Petitioner-union and the deduction from their salary as the subscription for the Respondent-union has been categorically denied. The return of industrial peace and discipline following the settlement dated 2.9.2007 and 12.4.2008 has been underlined.

10. In its affidavits-in-reply to the pleadings of the Respondent Nos. 3, 4 and 5, the Petitioner has, in general, reiterated and reaffirmed the averments made in the writ petition. It has accused the Respondents of unfairness in action in excluding it from the deliberations leading to the settlement dated 2.9.2007 and 12.4.2008, though at all relevant times its charter of demands was awaiting consideration by the management. According to it, therefore, the settlement dated 12.4.2008, in particular, is not binding on it and its members.

11. In the backdrop of this maze of contentious pleadings, Mr. Dasgupta, has urged that the validity of the lockout having been denounced by the Petitioner, a conciliation proceeding had been initiated on 11.7.2007 and, thus, the action of the Assistant Labour Commissioner, Tinsukia, in permitting deliberations between the management and the Respondent No. 5 without either identifying the majority union or completing such proceeding is per se, illegal being violative of the relevant provisions of the Act and, therefore, ought to be adjudged as such. The management having, admittedly, failed to participate in the conciliation proceeding, initiated on an industrial dispute raised by the Petitioner-union following the lockout, the Assistant Labour Commissioner, Tinsukia, as the Conciliation Officer ought to have submitted the failure report as contemplated u/s 12 of the Act, seeking a reference for adjudication there under, he urged. Mr. Dasgupta, has contended that the omission on the part of the Conciliation Officer to act in terms of Section 12 of the Act, is a failure to exercise his jurisdiction there under without any conceivable justification and, thus, an appropriate writ ought to be issued to the Respondents for an adjudication of the validity or

otherwise of the lockout by a reference.

The learned Counsel has argued that the recognition of the Respondent No. 5 as the majority union, pending such conciliation and execution of a purported settlement following deliberations therewith to the exclusion of the Petitioner amounts to unfair labour practice. This coupled with the forcible extraction of undertaking from the members of the Petitioner union to resign from its rolls and deductions from their salary as subscription fee for the Respondent No. 5-union have rendered the entire process null and void, he urged. According to Mr. Dasgupta, as the Conciliation Officer in spite of his power and authority had failed to identify the majority union to be entrusted with the role of collective bargaining for industrial peace, appropriate writ and/or direction ought to be issued in this regard. Profusely referring to the Act, the learned Counsel has maintained that though, the fundamental right to form an association or union is guaranteed by Article 19(1)(c) of the Constitution of India, that of collective bargaining is recognized and conferred by the Act.

12. Relying on the decision of the Apex Court in *General Secretary, Rourkela Sramik Sangh Vs. Rourkela Mazdoor Sabha and others*, the learned Counsel has argued that the code of discipline referred to therein though, is not possessed of any statutory force, incarnates a set of guidelines for uniform application permissible in the present contextual facts. According to him, the principles laid down by the Apex Court in *Food Corporation of India Staff Union Vs. Food Corporation of India and others*, stand squarely attracted to the instant facts and that, therefore, an appropriate direction in alignment therewith ought to be issued for setting at rest the lingering confrontation. The following decisions were also relied upon to reinforce his *North Eastern Railway Employees Union and Others Vs. IIIrd Additional District Judge, Farukhabad and Others*, , *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, , *Hindustan Hosiery Industries Vs. F.H. Lala and Another*, and *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*,

13. Per contra Mr. Goswami, has argued that in the conspectus of the facts in which the settlements dated 2.9.2007 and 12.4.2008 had been executed, the same are binding on all concerned and, therefore, the plea to the contrary is ex facie untenable. Contending that the agreement dated 2.9.2007 is a conciliation settlement, the learned senior counsel has urged that in the face of a statutory remedy available in the Act, which, admittedly, has not been availed of by the Petitioner, its prayer for a writ of mandamus is utterly misplaced. Referring to Section 2(p) defining "industrial dispute", as well as Sections 18 and 19 of the Act, Mr. Goswami, has pleaded that in absence of any notice by the Petitioner to the concerned authorities questioning the legality or validity of the settlements dated 2.9.2007 and 12.4.2008, no industrial dispute subsists and, therefore, the reliefs prayed for, are incomprehensible in law. While pointing out that no rule, as such, has been framed by the State of Assam prescribing the parameters or the procedure for identification of a majority union of industrial workers, the learned

senior counsel has endeavoured to distinguish the decisions of the Apex Court in General Secretary Rourkela Sramik Sangh (supra) and Food Corporation of India Staff Union (supra) in their application to the cases in hand.

14. According to Mr. Goswami, no industrial union in the absence of any statutory imperative to that effect has a right to insist for an exercise to determine the identity of the one commanding majority in any particular manner. The learned senior counsel has emphasised that following the settlements all workmen, except one, have meanwhile derived the benefits there from as a whole and, thus, on equitable considerations as well, no interference with the present state of affairs is warranted. Referring to the documents on record embodying the repeated requests of the management to the Petitioner-union to desist from its unruly activities and to restore normalcy as well as the approval of the Conciliation Officer endorsing the deliberations between the management and the Respondent No. 5-union, Mr. Goswami, has urged that the allegation of unfair labour practice qua the management is wholly unfounded. On the other hand, he argued that the reasons for the lockout, as set out in the notice, therefore, would amply demonstrate the indulgence of the members of the Petitioner-union in such practice. As the settlements, in fact, have heralded industrial peace to the satisfaction and relief of all concerned, no intervention at the instance of the Petitioner-union, at this juncture, is called for, he insisted. Mr. Goswami, has questioned the maintainability of the writ proceedings as well, contending that the reliefs sought for are not grantable in the exercise of this Court's powers under Article 226 of the Constitution of India. Following decisions have been relied upon, *Isha Beevi on behalf of Isha Beevi on behalf of the Minor Umaiben Beevi and Others Vs. The Tax Recovery Officer and Addl. P.A. to Collector, Quilon and Others*, , *Dhanyalakshmi Rice Mills and Others Vs. The Commissioner of Civil Supplies and Another*, , *Tata Engineering and Locomotive Company Limited Vs. Their Workmen*, , *Tata Engineering and Locomotive Company Limited Vs. Their Workmen*, , *Shri Ratan Komar Dey and Ors. v. Union of India and Ors.* 1990 (2) GLJ 391, *State of Uttranchal v. Jagpal Singh Tyagi* (2005) 8 SCC 49.

15. Mr. Dutta, while pointing out that the emergence of the Respondent-union had been impelled by the overwhelming demand of the then prevailing situation wearing a foreshadow of stalking woes of the workers in general and not for any act of patronage of the management has maintained that the imputation of unfair labour practice is not only unfounded, but lacks in bona fide as well. According to the learned senior counsel, the lockout having been lifted, WP(C) No. 5086/2007 has been rendered infructuous. The learned senior counsel, has urged further that as neither any legal right of the Petitioner-union or its members has been infringed nor any obligation cast by law on the Respondents has been disregarded, the prayer for writ of mandamus, as made, in the attendant facts is fallacious. While urging that identification of a majority union is necessarily not a condition precedent to raise an industrial dispute, Mr. Dutta, has argued that the Petitioner's endeavour being to sidetrack the legally prescribed remedies without taking the necessary steps as required to avail the

same, the present proceedings on that count alone are liable to be dismissed. As unlike, the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971, which mandates an exercise for identification of majority union, there is no such enactment in the State of Assam, the Petitioner's insistence for such an exercise is also wholly flawed, he urged. While emphasising that the Respondent No. 5 is the majority union and has, therefore, been rightly invited for the deliberations, which culminated in the settlements dated 2.9.2007 and 12.4.2008, Mr. Dutta has pleaded that presently peace prevails and that the objectives of such a consensus between the management and the workmen having, thus, been achieved, no interference at the behest of the Petitioner-union is called for. There being no embargo for the Petitioner to raise an industrial dispute as allowable in law, its endeavour to wrest reliefs in the present proceedings by disregarding the legally stipulated procedure is wholly speculative and unsustainable, he urged.

16. The competing pleadings and the assiduous arguments have met the thoughtful consideration of this Court. Challenge to the maintainability of the instant proceeding qua the reliefs sought for notwithstanding, certain essential facts with dual overtones, have to be indispensably addressed for the sake of the present adjudication.

Admittedly, till the lockout was declared on 15.7.2007, the Petitioner-union was only the representative body of the workmen on the rolls of the Respondent-company. The execution of the Long Term Settlement on 24.4.2004 between the Petitioner-union and the management in a bid to settle the subsisting demands of the workmen is also an admitted fact. That in connection with certain demands emanating there from which according to the Petitioner-union had remained unfulfilled the settlement notwithstanding, a situation developed culminating in the lockout is also borne out by the records. Whereas, the Petitioner-union asserts that the deliberations with the management on 6.7.2007 to this effect, did not yield anything fruitful but no untoward situation had developed in course thereof, the Respondent-company has attributed hostile, combative and rowdy conduct and activities to its office bearers and members giving rise to an extremely unmanageable and volatile state of affairs for which amongst others, intervention of the civil and law enforcing authorities had to be sought for to defuse the commotion.

17. The Respondent-company has imputed that at the instance of the Petitioner-union, the workmen struck work on 6th and 7th July, 2007 for which it, by its letter dated 8.7.2007 requested the Working President thereof (Petitioner-union) to restore normalcy by desisting from such illegal activities. It was, inter alia, indicated in the said letter (Annexure II to the affidavit-in-opposition of the Respondent No. 3) that it was agreeable to release the settlement implementation allowance for which the workmen were on the belligerent mode on the assurance from it that they would conduct themselves in a responsible manner and adhere to the terms and conditions embodied in the Long-term

Settlement dated 24.4.2004. The letter dated 9.7.2007 to the Respondent-company addressed to the Deputy Commissioner, Tinsukia reveals that the said authority was also kept posted with the above developments. The letter dated 8.7.2007 of the Working President of the Petitioner-union sets out the details of the events in a progressive sequence disclosing, inter alia, that on 6th and 7th July, 2007 not only several members of the managerial staff were illegally kept confined without food and water, but also were prohibited access to toilets. Instances of riotous and abusive demeanour of the office bearers and the members of the Petitioner-union and snapping of electricity by them as measures of torture and humiliation were referred to as well. The Respondent-company, however, in spite of the above, sought for cooperation of the Petitioner-union to restore an environment conducive for appropriate functioning of the industry.

18. The documents, available, reveal that the Petitioner-union as well on 9.7.2007 represented before the Labour Officer-cum-Conciliation Officer, Tinsukia seeking her intervention for a resolution of the stalemate. In response to it, she on 11.7.2007 informed the parties of the proposed joint discussion on 16.7.2007. The Respondent-company did not attend the discussion on 16.7.2007. Instead on 15.7.2007 it declared lock out of the factory vide the notice of the same date detailing the reasons justifying the said step. It amongst others recited the following reasons therefore:

- (a) persistent illegal and unjustified tool down strikes and abandonment of the place of working and disruption of the normal working of the factory without prior notice or intimation, soon after the long-term settlement dated 24.4.2004,
- (b) non-cooperation of the Petitioner-union and the workmen dislocating normal production operation,
- (c) constantly charged atmosphere in the factory with imminent threat of violence as demonstrated by series of incidents taking place on 6.7.2007,
- (d) visibly insolent and rebellious conduct, acts and gesture of the office bearers and other members of the Petitioner-union conveying minatory signals to the employer company and its executives,
- (e) deliberate obstruction of the willing workmen,
- f) creation of hostile and violent environment in the premises by the officer bearers and the members of the Petitioner-union by show of force rendering it impossible for the executive and staff of the management to enter or remain present in the factory premises,
- (g) no response to the repeated appeals made by the management to the Petitioner-union to refrain from such activities and resume duties,
- (h) loss of approximately Rs. 45.3 crore to the company thereby causing an irreparable damage in terms of its reputation for failure to live up to the commitments, and

(i) impossibility to run the establishment in a smooth and orderly manner so as to sustain its viability in the face of the intransigent attitude of the workmen and indulgence in vicious unfair labour practice.

19. On the FIR lodged by the Respondent-company on 10.7.2007 with the Officer-in-Charge, Doomdooma Police Station, Tinsukia, Assam detailing the above, Doomdooma PS Case No. 203/2007 u/s 120(B)/147/294/342/427/506 IPC and Doomdooma PS Case No. 209/ 2007 u/s 447/448/506/34 IPC were registered against some of the office bearers /members of the Petitioner-union and on completion of the investigation, charge-sheet had been laid in Doomdooma PS Case No. 203/2007 corresponding to GR Case No. 739/2007 against them. The records available, demonstrate that the criminal case is pending trial.

The letters dated 13.7.2007 and 14.7.2007 of the Superintendent of Police, Tinsukia, Assam in this regard also corroborate the series of events narrated in the lock out notice dated 15.7.2007 which amongst others divulge that the situation had become so uncontrollable on 6.7.2007 and 7.7.2007 that not only the senior police officers with the security personnel had to visit the site, but the Central Reserve Police Force had to rush to the aid of the management and rescue the managerial staff held confined by the agitating workmen at the behest of the Petitioner-union.

The letters dated 11.7.2007 and 13.7.2007 of the Assistant Labour Commissioner, Tinsukia (Annexures III and IV to his affidavit) also authenticate the factum of sudden strike and gherao of the managerial staff of the Respondent-company on 6.7.2007 and 7.7.2007 by the members of the Petitioner-union. As a matter of fact, the letter dated 13.7.2007 indicates that the Assistant Labour Commissioner, Tinsukia while present at the site along with the Labour Officer, Tinsukia also encountered such physical confinement. The letter also referred to the one dated 12.7.2007 of the management appealing to the Petitioner-union to forebear from the said subversive activities and to restore peace and harmony to facilitate a congenial atmosphere for necessary discussion. By his letter dated 16.7.2007 (Annexure V to his affidavit) the Assistant Labour Commissioner, Tinsukia also apprised the Labour Commissioner, Assam of the above intimating his continuous endeavour to hold a conciliation meeting of the parties to resolve the impasse. The Respondent-company by its letter dated 31.8.2007 addressed to the Assistant Labour Commissioner, Tinsukia also maintained its earlier stand expressing its willingness to explore ways and means to find a resolution of the issues leading to the lock out.

20. In between, the Labour Commissioner, Assam on 27.08.2007 vide his letter of the same date had required the Assistant Labour Commissioner, Tinsukia, to ascertain the majority union of the Respondent-company and to hold the conciliation meeting thereafter. This authority in his affidavit as noticed hereinabove, has asserted that out of 704 workers on the rolls of the Respondent-company inclusive of 104 with no alignment, the Respondent No. 5 as the available records revealed had garnered the support of 350. The Assistant Labour

Commissioner, Tinsukia in view of this determination and in view of the keenness displayed by it (Respondent No. 5) to hold deliberations on the raging issues, by his letter dated 31.8.2007 addressed to the Factory Manager of the company requested him to attend the meeting posted on 1.9.2007 with the new union in a quest for settlement. The letter reveals that on an analysis of the stands taken by both the unions, the Assistant Labour Commissioner, Tinsukia, and considered it appropriate for the management to interact with the Respondent No. 5 for a thaw.

21. This letter per se when considered in conjunction with the pleadings of the Assistant Labour Commissioner, Tinsukia evidences a determination made by him in favour of the Respondent No. 5 as the union representing the over all interest of the majority of the workers of the Respondent-company as its representative union. Though both the unions proclaim to command the majority support, the exercise made by the Assistant Labour Commissioner, Tinsukia limited though, cannot be per se denounced as flippant and vacuous in absence of any impeachment to that effect by the Petitioner-union. No better material has as well, been furnished in the present proceeding by it to construe such a finding as overwhelmingly unreliable or untrustworthy. In this context, the report dated 6.8.2007 u/s 12(4) of the Act submitted by the Assistant Labour Commissioner-cum-Conciliation Officer, Tinsukia (Annexure X to his affidavit) to the government referring to a letter dated 4.8.2007 of the Respondent No. 5 claiming its efforts to resurrect a congenial atmosphere for lifting the lockout to arrive at a bipartite or tripartite settlement with the management is of considerable significance. By the said letter, the Respondent No. 5 had urged upon the Assistant Labour Commissioner-cum-Conciliation Officer, Tinsukia not to submit a failure report in the conciliation proceeding as a prospect of such settlement was on the anvil. The said union also claimed that by then 200 workers had resigned from the Petitioner-union to join its fold. The Petitioner's plea of failure on the part of the Assistant Labour Commissioner, Tinsukia to identify the majority union before furthering the conciliation proceeding in the above premise therefore, cannot be sustained, more particularly, in absence of any legally ordained mode of peremptorily identifying a majority union of industrial workmen.

22. Admittedly, following necessary deliberations between the Respondent No. 5 and the management on 1.9.2007 in presence of the Assistant Labour Commissioner, Tinsukia a settlement was arrived at and to that effect, a memorandum was executed by and between the parties on 2.9.2007 which was duly endorsed by the aforementioned state authority. The Respondents claim this agreement to be a conciliation settlement following which the lockout was lifted on and from 3.9.2007 and the factory became normally functional since then.

23. Judged by the series of developments and the obvious restoration of normalcy in the industry premises, the conciliation proceeding initiated by the Assistant Labour Commissioner, Tinsukia can, thus, be construed to have yielded a mutually acceptable settlement. The Petitioner's contention to the contrary,

therefore, cannot be upheld.

24. The documents brought on record by the Respondent No. 4 through its additional affidavit including sample letters by the erstwhile members of the Petitioner-union resigning there from to join the Respondent No. 5 and the list of 629 workmen claiming allegiance to it (Respondent No. 5) also have a significant bearing on this issue. In the attendant facts and circumstances, the decision of the Assistant Labour Commissioner, Tinsukia, qua the Respondent No. 5 to be the majority union cannot be readily undermined to be unworthy of any credence, more so, in absence of any allegation of bias or mala fide.

25. The allegation with regard to the forceful extraction of undertakings from the workmen on the threat of termination of their services and the unauthorised deductions from their salary as subscription for the Respondent No. 5 as asserted in the letters dated 5.12.2007 and 10.12.2007 of the Petitioner-union signed by 490 workmen have been dismissed by the Respondent-company as wholly unreliable contending, inter alia, that many signatures of the said workmen either do not tally or are forged. In its letter dated 17.12.2007 to this effect addressed to the Assistant Labour Commissioner, Tinsukia, the Respondent No. 4 has jettisoned these letters to be a ploy of the Petitioner-union to derail the on going sincere endeavours to dissolve the ominous crisis portending catastrophe for the establishment and the subsistence of livelihood of its workmen in general. Noticeably, no challenge by the Petitioner in particular to the decision of the Assistant Labour Commissioner, Tinsukia preferring the Respondent No. 5 for the deliberations with the management to it is discernible in any forum. There is no serious remonstrance by it as well to the stand of the management to the letters dated 5.12.2007 and 16.12.2007. No further complaint or representation in this regard is also decipherable from the records available.

26. That following the settlement on 2.9.2007 normalcy has returned to the industry, has also not been questioned by the Petitioner-union, as such. Additionally, in spite of its letters dated 5.12.2007 and 10.12.2007 and submission of charter of demands by both the unions, a tripartite settlement has been entered into between the management and the Respondent No. 5 representing its workmen and the Assistant Labour Commissioner, Tinsukia on 12.4.2008 to be in force till 11.4.2012. This agreement signed by the above parties thereto makes it binding on them and declare that all disputes and other differences subsisting as on the date of its execution between the parties have been settled thereby finally and fully and that future decision on such matters would also be arrived at mutually. The association of the Assistant Labour Commissioner with this settlement and his ratification thereof is suggestive of the rejection of the Petitioner's pleas taken in its letters dated 5.12.2007 and 10.12.2007 those being earlier in point of time. His decision that the Respondent No. 5 is the majority union also finds support from the contemporaneous records more particularly the report dated 6.8.2007 and the letter dated 31.8.2007 of the Assistant Labour Commissioner, Tinsukia as well as his option to elect it to be

the representative body of the workmen to further the conciliation proceeding to its logical end. The reasons narrated in the lockout notice dated 15.7.2007 also prima facie do not warrant a conclusion that the extreme step taken by the management was wholly uncalled for and tantamounts to unfair labour practice as comprehended in Schedule V to the Act.

There being no unimpeachable evidence to unhesitatingly denounce the satisfaction of the Assistant Labour Commissioner, Tinsukia acknowledging Respondent No. 5 to be the majority union, in absence of any statutorily prescribed procedure therefore, no judicial intervention is, thus, called for. Significantly the Petitioners have also not specifically questioned the correctness or otherwise of this conclusion of the aforementioned authority, as contained in his letter dated 13.8.2007 electing the Respondent No. 5-union to participate in the deliberations leading to the settlement dated 2.9.2007.

27. Was it indispensably incumbent on the part of the Assistant Labour Commissioner, Tinsukia in view of the overwhelming concatenation of events to undertake a" further exhaustive exercise to identify the majority union in terms of the guidelines referred to in General Secretary, Rourkela Sramik Sangha (supra) and Food Corporation of India Staff Union (supra) in absence of any such imperative enjoined by the Legislature of this State?

28. None of the decisions of the Apex Court rendered in General Secretary Rourkela Sramik Sangh (supra) and Food Corporation of India Staff Union (supra), propounded the applicability of the Code of Discipline and the Secret Ballot System as the only and peremptory measures for assessing the representative character of a trade union contemplated under the Trade Union Act, 1926. Whereas, in the former, the Code of Discipline was ratified by the All Central Employment and Workers Organization at the related labour conference, in the latter the parties involved, had agreed to abide by the Secret Ballot System. The issues seeking adjudication in these two cases are also distinctly different from those that have surfaced herein. The Code of Discipline referred to by the learned Counsel for the Petitioner for his arguments stipulated the criteria for recognition of unions by the management on a voluntary basis. That the process of recognition of such unions is governed by statutes in certain circumstances, has also been acknowledged therein. There is, as noticed hereinabove, no wrangle at the bar on the nonexistence of any statutory code or norms for identifying a majority union in the State of Assam.

29. The decisions in Workmen of Dimakuchi Tea Estate (supra), M/s. Hindustan Hosiery Industries (supra) and Life Insurance Corporation of India: Chandrasekhar Bose (supra), relied upon on behalf of the Petitioner in this regard, also are of no avail to them to testify a binding enjoinder to abide by the Code of Discipline referred to General Secretary Rourkela Sramik Sangh (supra), in exclusive terms for ascertaining the extent of representation of industrial workmen by a union to confer on it the majority status. Apart from the fact that the issues involved therein, are dissimilar to those in hand, the

emphasis in general terms had been on the objective, inter alia, of the Act as an enactment amongst others for the investigation and settlement of industrial disputes in the social and developmental perspectives solemnly geared to the attainment of industrial peace. Admittedly, the Act does not obligate any procedure to be essentially adhered to for the purpose of determining the mutual potentials of representation of the competing trade unions in an industry. These decisions as well, cannot be construed to be authorities authenticating the Petitioner's plea in this regard.

30. That such a course of action would be mandatory in the face of prescripts of a statutory enactment only finds support amongst others from the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971. Any breach of the provisions thereof would irrefutably tantamount to violation of legal rights and disregard of the corresponding legal obligations warranting a writ of mandamus or an appropriate direction for conformance therewith. The decision in North Eastern Railway Employees Union (supra) as well, does not further the Petitioners cause as the legislation involved therein in clear terms provided the procedure for the elections. The contentions of the Petitioners" to the contrary are, therefore, rejected.

The Petitioners, however, are left at liberty, in the background of Section 18 of the Act and the decisions of the Apex Court in Tata Engineering & Locomotive Company Ltd. (supra) and Jagpal Singh Tyagi (supra) to seek their other remedies in the attendant facts and circumstances in accordance with law, if so advised.

30A. As alluded hereinabove, the Petitioners supposition that the parleys between the management and the Respondent No. 5-union were not preceded by any exercise whatsoever for ascertaining the majority union or that the conciliation had remained inconclusive or had failed, is not borne out by the records. They have not seriously disputed that almost all the workmen have, pursuant to the settlements dated 2.9.2007 and 12.4.2008, as on date, availed the benefits accruing there from and further, as claimed by the Respondents industrial peace reins with the normalcy in the functional fronts restored. The wholesome sacrosanct and eventual objective of the Act being to achieve industrial peace, in the factual scenario existing today, any step to reopen the issues settled, would ruffle the quietus as an evidently regressive measure, neither warranted in law nor desirable or expedient.

31. On a cumulative consideration of the determinations so recorded, the petitions are adjudged to be lacking in merit and are accordingly dismissed. In the facts and circumstances of the case, however, the parties are left to bear their own costs.