
(1987) 12 DEL CK 0030

In the Delhi High Court

Case No : Interim Application No's. 8869, 8945 and 8952 of 1987 and Suit No. 2589 of 1987

Indian Express Newspapers (Bombay) Pvt. Ltd.

APPELLANT

Vs

T.M. Nagarajan and Others

RESPONDENT

Date of Decision : 04-12-1987

Acts Referred:

Citation : (1987) 15 DRJ 212 : (1988) LabIC 1067 : (1988) RLR 194

Hon'ble Judges : S.N. Sapra, J

Bench : Single Bench

Advocate : F.S. Nariman, Mukul Rohatagi, Arun Jaitley, S. Pappu and K.K. Rai, for the Appellant;

Judgement

S.N. Sapra, J.

(1) Indian Express Newspapers (Bombay) Pvt. Ltd., the present plaintiff, has filed a suit for permanent and mandatory injunction whereby claiming a decree to restrain the defendants, their agents and supporters from picketing, demonstrating and gheraoing employees of the plaintiff company and from demonstrating within a distance of 200 meters from the entrance of the Express Building at Delhi and to further restrain the defendants, their agents and associates from preventing the ingress and egress of any employee of the plaintiff company, who wishes to enter the office of the plaintiff company. Along with the suit, the plaintiff filed an application being I.A. 8869/87 under Order 39 Rules I and 2 read with Section 151 of the CPC for grant of ad interim temporary injunction thereby restraining the defendants from picketing, demonstrating within a distance of 200 meters from the gate of the Express Building, and also from assaulting or gheraoing any employee of the plaintiff company as also directing the Commissioner of Police and the S.H.O., Darya Ganj Police Station, to enforce the order passed in terms of the above prayer and further directing him to remove the tent of the defendants pitched at the entrance of the Express Building. Vide order dated 27th November, 1987, I granted ex parte ad interim

injunction thereby restraining "defendants themselves or their agents or supporters are hereby restrained from preventing the ingress and egress of any employee of the plaintiff company who wishes to enter the office of the plaintiff company. Defendants, are further restrained from picketing within 50 metres of the Express Building situated at Bahadur Shah Zafar Marg, New Delhi." After service of the stay order, the defendants have moved an application being I.A. 8945/87 under Order 39 Rule 4 read with Section 151 of the CPC for vacation of the ex parte stay order dated 27th November, 1987.

(2) Facts giving rise to the institution of the suit have been mentioned in detail in the plaint. In brief the facts are that the Delhi Establishment of the plaintiff company publishes Indian Express, Jansatta and Financial Express dailies from its premises situated at Bahadurshah Zafar Marg, New Delhi where the printing units as well as the editorial and administrative offices are situated. Since 14th October, 1987. it is alleged by the plaintiff, a small number of employees led by an outsider Mr.T.M Nagarajan have staged a strike and have from day-to-day physically prevented an overwhelming majority of employees from entering the premises and attending to their duties. The methods adopted to prevent the entry of employees included making it physically impossible for the employees to get into the building by forming human walls, by abuses, by physical assaults, by stone-throwing etc. It is further alleged in the plaint that the defendants along with their supporters have positioned themselves by pitching a tent right at the entrance of the building and have spread themselves on the steps leading to the building and on the platform or chabutra inside the building. This is despite the fact that by an order of permanent injunction dated 20th January, 1987 the Court of the Sub Judge, New Delhi has restrained the defendants from demonstrating, picketing and gheraoing any person within 50 yards from the entrance of the Express Building. In the plaint it is further alleged that the defendants and their supports have indulged in various acts of violence and intimidation against individual employees of the plaintiff company. Many of them have been beaten and some of whom have been hospitalised with head injuries. Despite such intimidation and physical threat, over 350 employees of the plaintiff company entered the building on 28-10-1987 and made efforts to bring out the edition. However, the defendants along with their supporters successfully thwarted food supplies to these 350 employees inside with the result that the plaintiff" company was forced to call off the operation of bringing out the publication and pull out the employees under police escort. It is alleged that a majority of the executive members of the Indian Express Employees Union (hereinafter referred to as "the Union") requisitioned a General Body Meeting of the members of the Union on 18-11-1987. The meeting was attended by 410 members and it was unanimously resolved to remove Mr. Nagarajan from the Presidentship, appointed a Negotiating Committee to carry on discussions with the management on their demands and called off the strike. It is alleged that after the strike had been called off, a small minority of 20 to 25 persons with the help of outsiders are successfully preventing the overwhelming majority of the

employees of the plaintiff company from resuming their work. The defendants by their various acts of violence have successfully thwarted publication of Indian Express, Jansatta and Financial Express from October 14, 1987 and despite the fact that defendant No. 1 has been removed from the President of the Union he is organising criminal assaults on the workers of the plaintiff company and is with the help of outside elements and other defendants physically preventing the workers from attending their offices. In the plaint, it is also alleged that on November, 23, 1987 a comprehensive settlement was reached between the management and the Union represented by Mr. R.K. Dogra, working President and Mr. C.M. Papnai, General Secretary and five other members of the Negotiating Committee appointed by the General Body at its Meeting held on 18th November, 1987 whereby extensive benefits were conferred on the employees. The grievance of the plaintiff is that despite the fact that all grievances have been settled and the overwhelming majority of the employees have sacked the first defendant as the President of the Union and want to resume work. the defendants, by picketing at the entrance of the Express Building are preventing ingress and egress of the employees who want to go into the building and come out and, thus, prevent the publications from coming out in Delhi.

(3) Defendants filed an application under Order 39 Rule 4 read with Section 151 of the CPC being 1.A. 8945/87 for vacation of the stay. In this application the defendants have alleged that with a view to obtain an ex parte injunction order against the defendants, the plaintiff has made gross mis-representation of facts, suppression of material circumstances and abuse of process of law. It is alleged that defendant No. 1 is the President and defendant No. 6 is the acting General Secretary of the Union. 18 out of 23 executive members are backing up the strike called by the Union for settlement of the grievances, namely, "parity in the payment of bonus between the Delhi Office and the Bombay Office ; the payment of medical allowance, leave travel allowance, educational allowance, canteen allowance and other facilities". It is alleged that the Union was compelled to resort to indefinite strike because the Management kept on refusing to negotiate on the demands. All the executive members and the office bearers are deputed by the General Body in its election held on 20-1-1987. It is further alleged that instead of negotiating with the Union, the Management resorted to unfair labour practice of breaking away the Executive members of the Union. The executive committee expelled four of its members, namely. Shri Bharat Bhushan Bawa, Shri R.K. Malhotra, Shri Devi Prasad and Shri B.K. Bhatia for their anti-union and pro-management activities. The defendants denied the allegations made by the plaintiff and have alleged that Shri R.K. Dogra and Shri C.M. Papnai are not the working President and the General Secretary respectively of the Union and more so they stood expelled from the union by the decision dated 15-11-1987. It is further alleged that it is false on the part of the plaintiff to allege that defendant No. 1 was expelled from the Presidentship of the Union. It is alleged that the plaintiff suppressed the fact that the defendants have filed a suit seeking

declaration that the union represented by defendant No. 1 is the real union and further seeking injunction against expelled members from acting/representing on behalf of the Union. This suit is pending in the Court of Shri Akshay Kumar Sub Judge, Delhi. Notice has been issued for 1-12-1987. It is further alleged that the plaintiff has also suppressed the fact that it has moved before the learned Sub Judge Shri Pawan Kumar for police protection in preventing the Union members from picketing the force from the Express building and the same was refused. It is alleged that the restriction of 50 metres as imposed by the order of this court dated 27-11-1987 is unreasonable because the distance of 50 metres from the Express building would fall either on the main road or elsewhere on the side of the other buildings where various offices are being run. This will virtually amount to preventing the Union from resorting to a strike which is a recognised mode of seeking settlement under the Industrial Disputes Act, 1947. The defendants also filed a written statement in suit and reply to the interim application, 1.A. 8869/87. In the written statement it is alleged that Section 9 of the CPC bars the jurisdiction of the civil court to entertain the present suit. Issues involved in the suit pertain to the strike which can be adjudicated only under the Industrial Disputes Act, 1947. The defendants denied the allegations made by the plaintiff. It has been alleged in the written statement by the defendants that the employees are law abiding citizens and they have always believed in a peaceful mode of agitation. On 2-12-1987, at the time of starting arguments, the plaintiff has filed an affidavit of Shri P.C. Jain on behalf of the plaintiff. In this affidavit it has been deposed that over 500 employees of Indian Express, Jansatta and Financial Express peacefully entered their office at 9.00 A.M. in the morning on 1-12-1987. This was made possible only because of the interim injunction granted by this Hon'ble Court which enabled the police officials to remove the picketeers away from the entrance although the picketeers were not removed to a distance of 50 metres from the building. The work was going on smoothly. However, at about 1.30 A.M. a group of 15 persons from the tent pitched at the foot of the building pounced upon on eight journalists of Jansatta. They threw acid bulbs on two of them and another was attacked with sticks and iron rods. Three journalists, Shri Pradeep Kumar Singh, Shri Sanjay Singh and Shri Mahadeo Chauhan, were seriously injured. The police swung into action immediately and arrested Shri G.K. Tyagi, defendant No. 12, Shri Radhey Shyam, defendant No. 23. However, Shri Virender Prakash, defendant No. 20, is absconding. Several photographs have also been enclosed with this affidavit.

(4) A reply affidavit has also been filed by defendant No. 7 on 3-12-1987. In this affidavit, defendants have denied that members of the Union have indulged in any act of violence. It is deposed that they are peacefully demonstrating, picketing and persuading strike breakers not to indulge in anti-Union activities. The defendants state that they solemnly undertake before this Hon'ble Court that no incidents of violence will be allowed from any member of the Union. They have further strongly condemned all acts of violence which can never be condoned in any civilized society. It is further alleged in this affidavit that the

strike commenced on 14-10-1987 and the alleged incidents of extreme violence are said to have occurred only on 2-12-1987 when defendants' application for vacation of stay had already been filed and mentioned before the court for hearing.

(5) Mrs. S. Pappu, learned counsel appearing for the defendants, in the first place, contends that the present suit is not maintainable and the same is barred under the provisions as contained in the Trade Unions Act, 1926. She submits that it is the legitimate right of employees to go on strike. In the present case, the employees went on strike after serving a legal notice as required u/s 22 of the Industrial Disputes Act, 1947 as the demands of the employees were not accepted. The strike is a remedy under the Labour Laws including the Industrial Disputes Act and the Trade Unions Act for getting the genuine demands of the workers fulfilled or redressed. She submits that the Union is a duly registered and recognised Union and defendant No. 1 is the duly elected President of the same. The Union has a right to prevent a willing worker by persuasion with a view to maintain unity and parity of the workers' union. In the present case there is an industrial dispute. Defendants and other members of the Union have resorted to a peaceful strike which "is legal. If there is a stay then how Union can maintain its unity and properly pursue its legitimate trade union activities and redress its grievance. The very object of the peaceful strike will be defeated. Strike is a right under industrial law and the plaintiff is seeking indirectly an injunction against such legal right of strike. This is restrictions are placed then even the peaceful strike will be ineffective. not the intention of either the legislature or the public policy. She submits that u/s 18 of the Trade Unions Act, 1926 no suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment. She submits that the present disputes are fully covered by this section and the suit as such is barred and this court has no jurisdiction to entertain the suit. Reliance has been placed upon the judgment in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, . Relying on the said judgment, Mrs. Pappu urges that in the present case there has arisen an industrial dispute because the Union has certain demands and after serving notice, when such demands were not met, went on strike under the Industrial Law. According to her, *The Premier Automobiles Ltd.*'s case (supra) is applicable to the facts of the present case.

(6) In the second place, learned counsel for the defendants, urges that Article 19(c) of the Constitution of India gives a fundamental right to the workers to form union and association. This right includes right to go on peaceful strike. Reasonable restrictions can be placed on such right only by the legislature and not by either courts or executive authority. She has filed a rough plan/sketch thereby showing the Express Building situate at Bahadur Shah Zafar Marg, New

Delhi and the surrounding roads and buildings. She submits that if this court imposes a restriction of 50 metres, the very right which has been given to the workers to go on peaceful strike shall be taken away. It will mean, according to her, that the workers will be on a strike or shouting peaceful slogans not in front of the premises of the employer but in front of another building. This restriction will, she submits, render the strike in question ineffective. Reliance has been placed on All India Bank Employees' Association Vs. National Industrial Tribunal and Others, , Rama Vilas Service Ltd. and Another Vs. Simpson and Group Companies Workers' Union and Another, and S.D. Sharma \.TradeFairAuthorityofIndiaandothers 1985 I Slr 670

(7) The next contention made by Mrs. Pappu is that the plaintiff has made suppression of material facts when it is alleged in the plaint that defendant No. I has been removed from the Presidentship of the Union. This is because the matter is already subjudice in the Court of the Sub Judge, Delhi. However, in reply arguments, Mrs. Pappu, on behalf of the defendants (Defendant No. I also present) has given the following undertaking to the court on December 3, 1987: "That defendants shall not physically prevent the ingress or egress of any willing worker to and from the Express Building situate at Bahadur Shah Zafar Marg Defendants shall not go in the service lane, i.e., the lane between the side of the Express building and the premises of Milap and also not go or move towards the other side and the back of the Express Building and also not go towards the side gates of the Express Building. Defendants will hold peaceful picketing or stage dharna in the middle of the railing and beyond the railing towards road, i.e., between the footstep of the staircase (leading to main entrance) and the corner of the Express Building towards service lane and may fix tent there. The entire railing is about 30.5 metres. Defendants have undertaken not to hold any picketing demonstration or stage dharna .within 15 metres from the foot-step of the staircase (leading to main entrance)."

(8) Mr. F.S. Nariman, Senior Advocate, appearing for the plaintiff, contends that certain dates are very relevant for appreciating the contentions now being raised by the plaintiff. Strike started on October 14 1987. Settlement with 600 workers was effected on November 23, 1987 and suit was filed on November 27, 1987. Mr, Nariman urges that the present suit is maintainable as cause of action for filing the present suit is not against the peaceful strike. He further submits that Section 18 of the Trade Unions Act 1926 is not applicable to the facts and circumstances of the present case. He has invited my attention to the allegations made in the plaint, more particularly in paragraphs 3, 5 and 11. In paragraph 3 of the plaint, he submits, specific allegations of acts of violence on the part of the defendants and their supporters have been made. It is alleged that a small number of employees led by defendant No. 1 have physically prevented an overwhelming majority of employees from entering the premises and attending to their duties. It is alleged that there are incidents of physical assaults, abuse, stone-throwing, smashing of soda water bottles and acid bulbs. He submits that in the plaint, plaintiff has also alleged that defendants and their supporters have

indulged in various acts of violence and intimidation and many of the employees have been beaten and some of them have been hospitalised with head injuries. The defendants are terrorising the individual employees from joining duty. He further contends in the affidavit filed on December 2, 1987 Mr. Jain has deposed that three journalists have been seriously injured and defendants No. 12, 20 and 23 are involved. Two of them, namely, defendants 12 and 23, have already been arrested for the offence of attempt to murder. He has emphasised on the photographs submitted with this affidavit and the contents of F.I.R. So, according to him, the cause of action has arisen when defendants with the help of their supporters started preventing willing employees by violence and threat of assault and in fact assaulted various employees. He has contended that these are not only the allegations made in the plaint but sufficient documents have been placed on record to prima facie show that acts of violence, assault, intimidation etc. on the part of the defendants and other employees. He has invited my attention to various documents which have been placed by the plaintiff on record. These documents are from pages 41 to 71 of the documents file. He has taken me through these documents which are various complaints having been made by plaintiff to various authorities including S.H.O., Darya Ganj, Commissioner of Police, Home Minister, Lt. Governor etc. In these communications, plaintiff has alleged various acts of violence, intimidation, physical assault etc. on the part of a section of the Indian Express employees. He urges that at this stage the court is to see whether prima facie plaintiff has been able to show that the strike is peaceful or there are acts of serious violence on the part of defendants and their supporters. Reliance has been placed on the judgments in *M.P. Colliery Workers Federation, Chirimiri Vs. United Collieries Ltd., Calcutta*, *Reserve Bank of India v. Ashis Kusum Sen and others*, 73 Cal. W.N. 388 and *Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others*,). He, Therefore, argues that not only there are threats of violence but there is sufficient documentary evidence on record in support of such allegations. So, the suit is maintainable and the Civil Courts have the jurisdiction to interfere in the matter and protect the interest of the plaintiff.

(9) In the second place, Mr. Nariman contends that the defendants have continuously disobeyed the orders of this court. After the service of stay order issued by this court, defendants have physically assaulted the three journalists seriously and they have been hospitalised. Cases against three defendants have been registered for the offence of attempt to murder and two defendants have been arrested and the third one is absconding. As there is disobedience of the order issued by this court on the part of defendants, so defendants cannot be heard. He further submits that even on the rough plan/sketch the tent is pitched at the corner of the Express building towards the service lane. Under the orders there cannot be any demonstration or dharna within 50 metres from the Express building. Unless contempt is pinged, defendants should not be heard.

(10) The next contention of Mr. Nariman is that unless a reasonable distance from the Express building is directed by this court, defendants shall indulge in

violence. He submits that a distance of 100 metres from the Express building is reasonable. On December 3, 1987 Mr. Arun Jaitley, appearing for the plaintiff, also argued in continuation of arguments of Mr. Nariman. Mr. Jaitley submitted that 50 metres distance from the Express building should be maintained. He contends that the present case is not a case of ingress or egress or a case of intimidation. This is a case where gross acts of violence have been committed by the defendants and their supporters. Soda water bottles, acid bulbs etc have been used by the defendants. He has filed a photostat copy of the chart containing the details of various interim applications and suits filed in the High Court of Delhi where the High Court of Delhi has granted injunction in respect of the strike and the distance. Mr. Jaitley submits, varies from 50 metres to 200 metres. Reliance has also been placed on the judgment dated 25-5-1984 in the case of M/s. Metal Forgings (P) Ltd. v. West Delhi Engineering Mazdoor Union & others, (S. No. 1366/83). In this case the distance was maintained at 20 yards from the factory and the place of residence.

(11) The next contention of Mr. Jaitley is that though police/Government is not a party to the present suit but this court is empowered u/s 151 of the CPC to issue directions to the police/ Government for complying the order of injunction issued by the court. Reliance has been placed on the judgments in Rayapati Audemma Vs. Pothineni Narasimham, , Sunil Kumar Halder and Others Vs. Nishikanta Bhandari and Others, and Satyanarayana Tiwari Vs. S.H.O.P.S. Santhoshanagar, Hyderabad and Others, .

(12) In reply arguments, Mrs. Pappu has invited my attention to- various paragraphs of the plaint and submits that the allegations of violence are very vague and no detail has been given. Many of the employees has been mentioned but who has been physically assaulted and physically prevented. She has invited my attention to paragraph 6 where it is alleged that on October 28, 1987, 350 employees entered the building in an effort to bring out the edition but defendants and their supports successfully thwarted food supplies to these employees She submits that if there was violence, how these 350 employees could enter the Express building. Again, she submits that in paragraph 8 of the plaint, it is alleged that 410 members of the Union attended the meeting on November 18, 1987. If defendants were indulging in acts of violence how this alleged meeting was not disturbed.

(13) First question which arises for consideration is whether the jurisdiction of Civil Courts is barred under the provisions as contained in Section 18 of the Trade Unions Act, 1926. Section 18 of the Trade Unions Act. 1926 reads as under : "18. Immunity from civil suit in certain cases-(1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment or that it is in interference with the trade,

business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills. (2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the Trade Union." In Jay Engineering Works Ltd's. case (supra) which was heard by a Special Bench of five judges of Calcutta High Court, their Lordships were interpreting the provisions as contained in Sections 17 and 18 of the Trade Unions Act, 1926 which grants certain exemption to members of the Trade Union. Their Lordships have held that there are no express provisions in the Trade Unions Act regulating strikes or picketing. But these are recognised weapons in armoury of labour. The word "strike" in its broad significance has reference to a dispute between employer and his workers in the course of which there is concerted suspension of employment. It is further held : "It is clear, Therefore, that no protection is available to the members of a trade union for any agreement to commit an offence. The charge against the employee in the writ petitions now before us is that they committed various offences under the Indian Penal Code mentioned above. The question is whether there was such an agreement among the workers as to exclude them from the immunity afforded by Section 17. When a group of workers, large or small, combined to do an act for the purpose of one common aim or object it must be held that there is an agreement among the workers to do the act and if the act committed is an offence, it must be similarly held that there is an agreement to commit an offence. The materials before us in this writ petition make it abundantly clear that the workers acted in a combination to achieve a common aim or object and it must, Therefore, be held that there was an implied agreement among them for the purpose of achieving the common aim. It must also be held that in achieving that common aim they committed offences under the Indian Penal Code and in that view of the matter the immunity created by Section 17 of the Act is not available to the workers, assuming that all of them are members of a registered trade union."

(14) In The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , it was held as under :- "The principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus : (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court. (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy. (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act. (4) If the right which is sought to be enforced is a

right created under the Act such as Chapter Va then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be".

(15) There is no dispute that the employees can go on a peaceful strike and there can be no interference, except on sufficient grounds. Industrial Disputes Act does not provide remedies in the nature of permanent or temporary injunctions. It appears that the Union resorted to strike after serving statutory notice as provided in Section 22 of the Industrial Disputes Act. It is a legitimate right of the workers to make legitimate demands and, if not met, go on peaceful but legal strike. This right is so recognised under the Labour Laws. Trade Union has a right to pursue its trade union activities by peaceful methods. In *M/s. Metal Forgings (P) Ltd.*, (supra), S.B. Wad, J. has dealt with the similar submissions to the effect that Section 18 of the Trade Unions Act bars the jurisdiction of Civil Courts either to entertain the suit in regard to the trade's dispute or pass an interim injunction order. Wad, J. referred in detail the case law on the subject and has held that the submissions made by the learned counsel appearing for workmen in that case were fully dealt with in the leading judgment of Calcutta High Court in *Jay Engineering Works Ltd. and others*, (supra). In the judgment it has been held that there is no ouster of jurisdiction of Civil Courts. Industrial Disputes Act does not provide for the remedies in the nature of permanent or temporary injunction.

(16) After applying the law laid down in the aforesaid judgments, I am of the view that plaintiff had made various allegations with regard to act of violence, physical assault, intimidation, threat of physical assault, throwing of soda water bottles and acid bulbs. plaintiff has also placed on record sufficient documents in support of such allegations. No doubt defendants have denied all these allegations and in the affidavit defendants have stated that there has been no act of violence on the part of the defendants and other members of the Union and that there had been peaceful strike. In any case, when there are allegations of violence made by plaintiff in the plaint and in support of these allegations certain documents have been placed, then I am of the view that this is question which requires investigation. I am of the view that prima facie the suit is maintainable and this court has the jurisdiction to entertain the present suit. However, the fact whether any act of violence has been committed by the defendants and other members of the Union or not shall be decided in the suit. Section 18 of the Trade Unions Act, 1926 is not applicable to the facts and circumstances of the present case.

(17) Coming to the next submission of defendants, that no restrictions can be placed by the court on the right of defendants to have demonstration etc. at a particular distance. In reply, learned counsel for plaintiff has cited various cases where the courts have directed the keeping of distance from 20 yards to 200 metres. I am of the view that how much distance should be there it depends upon the facts and circumstances of each case. The object is to prevent any act

of violence, assault, gherao, threat of bodily injury, intimidation and prevention of ingress and egress of a willing worker. In the present case, the situation and surroundings of the premises in question have to be taken into consideration while fixing the distance and placing other restrictions on defendants. Restriction should not be such as to render ineffective and useless a peaceful strike or to deprive the workers of their legitimate rights. Restrictions in a given case should be reasonable keeping in view the totality of circumstances. Mrs. Pappu on behalf of the defendants has given the following undertaking : That defendants shall not physically prevent the ingress or egress of any willing worker to and from the Express building situate at Bahadur Shah Zafar Marg. Defendants shall not go in the service lane, i.e., the lane between the side of the Express building and the premises of Milap and also not go or move towards the other side and the back of the Express building and also not go towards the side gates of the Express building. Defendants will hold peaceful picketing or stage dharna in the middle of the railing and beyond the railing towards road, i.e., between the foot-step of the staircase (leading to main entrance) and the corner of the Express building towards service lane and may fix tent there. The Defendants will not hold any picketing demonstration or stage dharna within 15 metres from the foot-step of the staircase (leading to main entrance).

(18) Defendant No. 7 has also filed an affidavit whereby giving solemn undertaking on behalf of defendants to the court that no act of violence would be allowed on the part of any member of the Union.

(19) One factor is very important in the present case for considering the distance. This is that there is a sufficient vacant traingular space between the iron railing and the building where offices of plaintiff are situated.

(20) I have carefully considered the surroundings of the building. There is a road in front of the Express building which is a very busy road leading towards Harding Bridge. On this road mostly the offices and the printing presses of the leading newspapers are located. Then there is main Bahadur Shah Zafar Marg which is over-crowded. If distance is from the end of the building then it will mean the picketing will be in front of other building, namely, Milap building or the place where offices of Daily Tej are situated. This will create more trouble. I am of the view that some directions by means of an order coupled with the undertaking given by the defendants through counsel Mrs. S. Pappu and the undertaking given in the affidavit of defendant No. 7 with which I am satisfied, I accept undertaking and same shall meet the ends of justice. I hope that defendants shall abide by their undertaking. This will help in creating the harmony. Accordingly, defendants shall be bound by their undertaking to the following effect : Defendants shall not physically prevent the ingress or egress of any willing worker to and from the Express building situate at Bahadur Shah Zafer Marg. Defendants shall not go in the service lane, i.e., the lane between the side of the Express building and the premises of Milap and also not go or move towards the other side and the back of the Express building and also not

go towards the side gates of the Express building. Defendants will hold peaceful picketing or stage dharna in the middle of the railing and beyond the railing towards road, i.e., between the foot-step of the staircase (leading to main entrance) and the corner of the Express building towards service lane and may fix tent there. Defendants will not hold any picketing demonstration or stage dharna within 15 metres from the foot-step of the staircase (leading to main entrance). The undertaking given by defendants shall continue till the disposal of the suit.

(21) I also by this order hereby restrain defendants from doing any act of violence and also from assaulting or gheraoing or giving any threat of assault or gherao to any employee of plaintiff till the disposal of the suit.

(22) Mrs. Pappu submits that the police/Government is not a party, so no directions can be issued to the Delhi Police. Mr. Jaitley, learned counsel for plaintiffs submits that u/s 151 of the CPC the Civil Courts have power to issue directions to the police to comply with the orders. Though police is not a party, still courts are empowered to issue directions u/s 151 of the Code of Civil Procedure. I am of the view that it depends on facts of each case as to what directions should be issued. While granting ex-parte injunction order dated November 27, 1987 I directed that a copy of the order be given to the S.H.O. Darya Ganj, New Delhi concerned for compliance. In continuation of the order dated November 27, 1987 a copy of this order be also sent to the S.H.O., Darya Ganj, New Delhi.

(23) Any expression used and observations made in this order shall not have any bearing upon the ultimate decision of the suit.

(24) EX-PARTE injunction granted vide order dated November 27, 1987 stands varied and modified by this order to the extent mentioned above.

(25) I.A.S. 8869 & 8945/87 stand disposed of.

(26) I.A. 8952/87 is an application filed by defendants u/s 151 of the Code of Civil Procedure. In this application it has been alleged that plaintiff is recruiting musclemen in the garb of fresh employees so that they may disrupt the strike and threaten the striking workmen to abstain from trade union activities. This application was filed on November 30, 1987. After the filing of this application an affidavit of Mr. N.D. Aggarwal defendant No. 7 has been filed on December 2, 1987 in which it is alleged that the plaintiff is re-employing in place of the striking workmen. Mrs. Pappu submits that recruitment in place of defendants during the period of strike is prohibited. Mr. Jaitley fairly contends that the plaintiff shall not recruit any person except with due process of law. In view of this I.A. 8952/87 stands disposed of.