

(1987) 09 BOM CK 0089
In the Bombay High Court
Case No : Appeal No. 1255/82

Maharashtra General Kamgar Union and others	APPELLANT
Vs	
Balkrishna Pen Pvt. Ltd. and another	RESPONDENT

Date of Decision : 10-09-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 11, 25, 30, 32, 5
Trade Unions Act, 1926 — Section 24, 25, 25(1), 25(2), 25(3)

Citation : (1987) 3 BomCR 425 : (1989) 1 LLJ 319 : (1988) MhLj 832

Hon'ble Judges : V.V. Vaze, J;P.B. Sawant, J

Bench : Division Bench

Judgement

Sawant, J.—This petition is directed against the order of the Industrial Court passed under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). By the impugned decision, the Court has allowed the complaint filed by the employer and has declared that the strike which was commenced from 9th January, 1981 was illegal and that the respondents to the complaint (who included the President of the Union and some of the employees and one non-employee) had committed unfair labour practices referred to in items 1, 2, 5 and 6 of Schedule III of the Act. By the same order the Industrial Court has also granted permanent injunctions in several terms against the respondents.

2. Mr. Damania, learned Counsel appearing for the employer, stated that without prejudice to the employer's contention that the respondents were guilty of the unfair labour practices as held by the Industrial Court, and that the injunctions granted against them were also proper, the employer does not want to press the findings, declarations and injunctions given by the Court so far as the unfair labour practices mentioned in items 2, 5 and 6 of the Schedule are concerned, in view of the fact that there has since been a change in the representation of the workmen, and a new union, which is not a party to these proceedings, had come on the scene. In view of this, we set aside the findings, declarations and injunctions given by the Labour Court pertaining to items 2, 5 and 6 of the

Schedule, against all the respondents. The only question, therefore, that survives for our consideration is whether there was an illegal strike, as was complained of by the employer, within the meaning of item 1 of the said Schedule. Even with regard to this item, Mr. Damania states that it is not necessary to record a finding against any of the respondents as such. It will be enough if this Court pronounces its finding on the factum of the illegal strike within the meaning of the said item, since the question of the interpretation of the item has assumed considerable importance and is at present vexing the Courts below. Hence we do not propose to go into the finding of fact recorded by the Court against the respondents or any one of them. In fact that stage will arrive only if we first come to the conclusion that there was a strike deemed to be illegal under the Act.

3. The question whether the strike was illegal as contemplated by the said items raises in its turn three questions, namely :

(1) Was the strike "deemed to be illegal under the Act" as required by the said item :

(2) Had the strike commenced before the expiry of 14 days from the date of the receipt of the strike notice, and

(3) Was the strike in respect of demands covered by the subsisting settlement ?

The first is a question of law and the other two are questions of fact. The first question revolves round the meaning of the expression "deemed to be illegal under the Act" used in the said item, and the question whether the industrial Court, while exercising its jurisdiction u/s 30 can decide the question of the deemed illegality of the strike under the Act before there is such a declaration by the Labour Court u/s 25 of the Act. Since as stated earlier this question has been agitating the industrial world particularly because of the conflicting decisions of this Court, it has become necessary for us to go into it a little exhaustively and to scrutinise the various provisions of the Act which is undoubtedly a badly drafted piece of legislation. The authorities cited before us also show that the learned Judges have tried to reconcile the conflicting provisions of the Act to find a way out in the cases which fell for decision before them.

4. As is evident from its preamble, the Act has been placed on the statute book -

(i) to provide for the recognition of Trade Unions for facilitating collective bargaining and to state their rights and obligations; (ii) to confer certain powers on unrecognised unions, (iii) to provide for declaring certain strikes and lock-outs as illegal; (iv) to define and provide for the prevention of certain unfair labour practices; (v) to constitute Courts as independent machinery for carrying out the purposes of according recognition to Trade Unions and to enforce the provisions relating to unfair practices; and (vi) to provide for matters connected with the aforesaid purposes.

It is thus evident that for the aforesaid purposes the Act is intended to be a Code by itself. The other provisions of the Act so far as they are relevant for our

purpose have to be scrutinised in the light of these objects of the Statute.

Section 3 of the Act contains definitions and among others it defines "recognised union" and "unfair labour practices." Section 4 makes provision for constituting Industrial Court and Section 5 states its duties. Among the duties entrusted to the Industrial Court are the following :

(a) to decide an application by union for grant of recognition to it; (b) to decide an application by a union for grant of recognition in place of a union which has already been recognised under the Act; (c) to decide an application from another union or an employer for withdrawal or cancellation of the recognised union; (d) to decide complaints relating to unfair labour practices, except unfair labour practices falling in item I of Schedule IV : (e) to decide reference made to it on any point of law either by any Civil or Criminal Court : and (f) to decide appeals u/s 42 from the orders of the Labour Court.

5. "Labour Court" is defined u/s 6 and Section 7 states that the duty of the Labour Court is to decide complaints relating to unfair labour practice described in item 1 of Schedule IV and to try offences punishable under the Act. Chapter V consists of Sections 24 and 25 which deal with illegal strikes and lock-outs. Section 24(1) defines "illegal strike" whereas Section 24(2) defines "illegal lock-out". Section 25(1) empowers either the State Government or the employer to make a reference to the Labour Court for declaration that the strike is illegal; whereas Section 25(2) gives power to the State Government or to the recognised union to make a similar reference to the Labour Court for declaration, whether the lock-out is illegal. Under this sub-section the reference can be made either when the employees propose to go on strike or commence it. Section 25(3) enjoins on the Labour Court to make the declaration of legality or illegality of the strike or lock-out in open Court with a purpose. The declaration made under this section shall further be recognised as binding and has to be followed in all proceedings under the Act as is specifically ordained by sub-section (4) thereof, Sub-section (5) of the Section which is very material for our purpose states that where any strike or lock-out declared to be illegal under the said Section is withdrawn within forty-eight hours of such declaration, such strike or lock-out "shall not for the purposes of this Act be deemed to be illegal under this Act."

6. Chapter VI which contains Sections 26 to 29 deals with unfair labour practices. Section 26 defines "unfair labour practices" as those which are listed in Schedules II, III and IV of the Act and Section 27 states that no employer or union and no employee shall engage in any unfair labour practice. Section 28 lays down the procedure for dealing with complaints relating to unfair labour practices to be followed by the Industrial Court or the Labour Court, as the case may be. The normal period for entertaining the complaints of unfair labour practice is 90 days from the occurrence of the unfair labour practice which period can be extended for good and sufficient reasons. Section 29 states that the order of the Industrial Court or Labour Court, that unfair labour practice has or has not been committed, shall be binding on all parties to the complaint as well as on all

the parties who were summoned to appear as parties to the complaint, whether they appear or not. In the case of an employer, the order is binding also on his heirs, successors and assigns, while in the case of employees, it is binding on all persons who on the date of the complaint are employed in the undertaking and also on all persons who may be subsequently employed in the said undertaking.

7. Chapter VII which consists of Sections 30 to 37 deals with the powers of the Industrial and Labour Courts, among others, while deciding the complaint of unfair labour practice. u/s 30(1) the Court has power to declare that an unfair labour practice has been engaged in or is being engaged in by any person named in the complaint and also to specify any other person who has engaged or is engaging in the same. It has also the power to direct all such persons to cease or desist from the unfair labour practice, and to take such affirmative action as may in the opinion of the Court be necessary to effectuate the policy of the Act. It has also the power to direct that recognition of the recognised union which has engaged in or is engaging in any unfair labour practice be cancelled or that all or any of its rights be suspended. What is more, sub-section (2) thereof, gives power to the Court to pass such interim orders including any temporary relief or restraining order, as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in the proceeding), pending final decision. Section 31 gives power to the Court to proceed ex parte when the party summoned does not appear. Section 32 which assumes importance in the present case, then reads as follows :

"Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act."

It is not necessary for our purpose to refer to the other provisions of the said Chapter.

8. Chapter IX provides for penalties. Chapter VIII deals with powers of Labour and Industrial Courts to try offences under the Act. Chapter X is the usual Miscellaneous Chapter and all that is necessary for our purpose to note from the said Chapter are the provisions of Section 53 which empowers the State Government to make any addition or alteration in any of the Schedules II, III or IV or to delete any item therefrom, after obtaining the opinion of the Industrial Court and after considering the objections and suggestions to the same received from any person.

9. Schedule II of the Act lists, as its heading shows, Unfair Labour Practices on the part of employers; whereas Schedule III lists Unfair Labour Practices on the part of Trade Unions, Schedule IV lists General Unfair Labour Practices on the part of employers.

10. Against the background of these provisions of the Act, we have to answer the two questions, viz., whether the Industrial Court can by itself decide whether the strike is deemed to be illegal under the Act as it has done in the present case,

and whether in fact the strike in the present case, was deemed to be illegal under the Act. We have pointed out that sub-section (1) of Section 25 gives power to the Labour Court to declare that the strike or lock-out is illegal. That declaration is to be made in open Court as required by sub-section (2) of that section. By virtue of sub-section (5) of the section, a strike (or lock-out) is not deemed to be illegal under the Act if it is withdrawn within 48 hours of such declaration. In the present case, the employer had filed a complaint before the Industrial Court u/s 30 of the Act for declaration that the respondents had committed unfair labour practice, among others, under item 1 of Schedule III which is couched in the following language :

"To advise or actively support or instigate any strike deemed to be illegal under this Act."

The Industrial Court also granted such a declaration, after recording a finding, firstly, that the strike was illegal and, secondly, that the respondents (which included the Union, its President, some of the employees and one nonemployee) had committed unfair labour practice. With the second declaration, as stated earlier, we are not now concerned in this petition. The contention advanced on behalf of the petitioners is that the Industrial Court while acting u/s 30 does not have powers to entertain a reference for a declaration that the strike is illegal. That power is vested u/s 25 exclusively in the Labour Court. Secondly, it is urged that the strike would be deemed to be illegal under the Act only if it is first declared to be illegal by the Labour Court u/s 25(3) and is not withdrawn within 48 hours in such declaration. Since, admittedly, in the present case there was no declaration by the Labour Court that the strike was illegal, the strike could not have deemed to be illegal under the Act as held by the Industrial Court. In support of this contention, Mr. Deshmukh, learned Counsel appearing for the petitioners, took us through the provisions of the Act to which we have already made a reference and tried to impress upon us that the legislature had a definite scheme in its mind; that the functions of the Labour Court and of the Industrial Court were placed in water-tight compartments and the functions of one were not be usurped by the other. He also relied on two decisions of learned Single Judges of this Court, one directly and the other indirectly, in his favour. The first decision, which is directly in his favour, is reported in *Ajabrao Sambhaji Bhagat Vs. Y.A. Khatke, Chairman, P and T Staff Co-op. Society, Nagpur and others*, . In this case the question which arose for consideration was whether the interim relief granted by the Labour Court pending decision on a petition challenging validity of the lock-out was proper or not. The learned Judge held that no such relief can be given unless first there is a declaration by the Labour Court u/s 25(3) of the Act that the lock-out is illegal and it is not withdrawn within 48 hours of such declaration. It is only then that it will fall in the category of item 6 of Schedule II of the Act as an unfair labour practice. The learned Judge also held that even in that case a complaint will have to be presented before the Industrial Court by virtue of Section 5(d) of the Act which vests the power to decide such complaints in that Court. Thus, according to the learned Judge, in any event, the

Labour Court, during the pendency of the Reference u/s 25(2) of the Act, could not grant interim or ad interim relief. The second decision relied upon by Mr. Deshmukh and from which he sought to derive an indirect support to his contention is reported in (1985) 2 Clr 378, Engineering and Metal Workers Union v. M/s. Sah and Sanghi and anr. This was a case where the legality of an interim order passed by the Industrial Court restraining employees from participating in an "apparently illegal strike" prior to the stage of making a declaration about the alleged illegality of the strike u/s 25 was challenged. While dealing with the said question, the learned Single Judge has observed in paragraph 20 of the judgment that the provisions contained in sub-section (5) of Section 25 of the Act providing for 48 hours locus penitentiae is a fiction specifically enacted by the Legislature and hence even in a case of a clear apparently illegal strike, granting of ad interim injunction or limited interim injunction without providing the said locus penitentiae would not be proper. Relying on these observations, Mr. Deshmukh contended that even in this case the learned Judge should be deemed to have come to the conclusion that declaration that a strike is illegal cannot be given by the Industrial Court unless first there is a declaration by the Labour Court u/s 25 and a period of 48 hours has elapsed from such declaration. As against these decisions, Mr. Damania, learned Counsel appearing for the employer, relied upon two decisions of learned Single Judges and one decision of a Division Bench of this Court. The first decision of a learned Single Judge is reported in (1983) L. I.C. 777 Mafatlal Engineering Industries Ltd. v. Association of Engineering Workers and anr. This was a case where the employees had approached the Industrial Court u/s 30 of the Act for a declaration that the employer had declared an illegal lock-out and had thus committed an unfair labour practice as described in item 6 of Schedule II. The same argument which is advanced on behalf of the employees before us was advanced on behalf of the employer there, viz., that unless there was a declaration by the Labour Court u/s 25(3) that the lock-out was illegal, and the lock-out was not withdrawn within 48 hours u/s 25(5) of the Act, the Industrial Court would not be competent to hold that the lock-out was deemed to be illegal under the Act which the Court in that case had done. Negating this contention, the learned Judge held that such an interpretation will not advance the intention of the legislature because in many cases it would not be possible for the employees to complain about the unfair labour practice since the declaration by the Labour Court u/s 25 takes a considerable time and would bar the remedy of filing the complaint within the stipulated period from the date of the occurrence which is 90 days. In 1983 Mh.L.J. 572 Billion Plastics Pvt. Ltd. v. O. & C Wor. Union another learned Single Judge of this Court grappled with the true intention of the legislature in using the phrase "deemed to be illegal" in items 6 of Schedule II and item 1 of Schedule III with which we are concerned. According to the learned Judge the word "deemed" is advisedly used in the said items so that for entertaining an application u/s 30 or granting the necessary relief, the Court need not wait for a declaration u/s 25. The Court can deal with the matter if it is shown that the strike resorted to is "treated" or regarded as being" or "shall be taken to be" an

illegal lock-out (strike) u/s 24 of the Act. We have then more or less a direct unreported decision of a Division Bench of this Court in Special Civil Application No. 1503 of 1978 decided on 14th August 1978.

In this case, an application for recognition was made by the Union which was resisted by the employer on grounds, among others, that the union had indulged in an illegal strike within six months immediately preceding the said application. While dealing with this allegation, the Division Bench had an occasion to consider whether the Labour Court had an exclusive jurisdiction to decide that the strike was illegal or not or whether the Industrial Court, even while dealing with the application for recognition, could try the said issue and answer it itself. The Court after considering the provisions of sub-section (5) of Section 25, held that the Industrial Court while trying the application for recognition had jurisdiction to decide the issue of illegality as well, and that the Labour Court had no exclusive jurisdiction to answer the said issue. Though the decision is under another provision of the Act, namely Section 11, we are of the view that the view taken there will equally apply to the case such as the present one, where the Industrial Court while trying an application u/s 30 has to decide whether an unfair labour practice has been committed by a party. Mr. Deshmukh did contend that the Division Bench had given no reasons for coming to the said conclusion and that the conclusion arrived at there is a mere ipse dixit and, therefore, this Court can take a different view of the matter on the basis of the contentions advanced by him.

11. There is no other precedent cited before us. We are of the view that to answer the issue whether the Industrial Court while trying an application u/s 30 of the Act has jurisdiction to record its findings on whether the strike (and for that matter lock-out) is deemed to be illegal under the Act, it is not necessary either to resort to semantics or rhetorics. The provisions of the Act are clear on the point. Section 5, as pointed out earlier, deals with the duties of the Industrial Court. Sub-clause (d) thereof enumerates one such duty in the following language :

"(d) to decide complaints relating to unfair labour practices except unfair practices falling in item 1 of Schedule IV";

Item 1 of Schedule IV relates to unfair labour practices on the part of employers in discharging or dismissing employees, and the Labour Court is given the power u/s 7 of the Act to decide complaints relating to the said practice and hence it is excluded from the purview of the Industrial Court. The Act thus casts a duty on the Industrial Court to decide complaints with regard to all other unfair labour practices including the one described in item 1 of Schedule III which reads as follows :

"To advise or actively support or instigate any strike deemed to be illegal under this Act".

To discharge its duty to deal with such complaint, the Industrial Court will have

necessarily to decide whether the strike is deemed to be illegal under the Act. In order to come to that decision, the Court must first come to the conclusion whether the strike is legal or illegal, and if it holds that it is illegal, it has thereafter to decide whether it is deemed to be illegal under the Act. Unless the Court assumes jurisdiction to decide the said question, the provisions of Section 5 and 30 read with the said item would be rendered nugatory; a consequence which is not warranted by any rules of interpretation of statutes. Hence, it will have to be held that notwithstanding the provisions of Section 25, the Industrial Court also has the jurisdiction to decide whether the strike is deemed to be illegal under the Act. Since the Industrial Court cannot decide it unless it follows the procedure laid down under sub-sections (2), (3) and (5) of Section 25, it will have to be held that the said procedure will apply *mutatis mutandis* to the Industrial Court while dealing with such complaints u/s 30 of the Act. The Industrial Court will, therefore, have first to decide whether the strike is legal or illegal and if it comes to the conclusion that it is illegal, make a declaration of the said fact in the open Court. The Court will have then to give 48 hours for withdrawal of the strike. In case it is not withdrawn during that period, it will have to proceed to decide whether it is deemed to be illegal under the Act. What applies to strikes will equally apply to lock-outs. The Industrial Court assumes this power as incidental to its power to investigate the complaint u/s 30 of the Act. The said power is implicit in it and should be read and deemed to have been vested in the Court u/s 30 read with Section 5(d) and item 1 of Schedule III and item 6 of Schedule II.

12. That this is the avowed intention of the legislature is further evidenced by the provisions of Section 32 of the Act, which have been reproduced above. The language of this section is crystal clear, and no further and other argument is necessary to vest the Industrial Court with the said incidental power. What is latent is made explicit by the aforesaid provision. The section begins with the *non obstante* clause and thus first negates the argument of the so-called exclusive jurisdiction of the Courts and proceeds to vest in them the power to decide all matters arising out of any application or complaints referred to it for decision under any of the provisions of the Act.

13. Although Mr. Deshmukh fails in his submission on the aforesaid point, he has a right to succeed on the facts of the present case by virtue of the very conclusion to which we have arrived. Admittedly, the Industrial Court had not made a declaration that the strike was illegal as required by the provisions of Section 25(3) and given 48 hours' time thereafter for withdrawal of the strike as ordained by Section 25(5). In other words, there was no opportunity afforded to the strikers to withdraw the strike after the declaration. Hence there could not have been a finding that the strike was "deemed to be illegal under the Act" which is necessary before any one could be held guilty of the unfair labour practice under item 1 of Schedule III. The Industrial Court in its impugned order has merely stated that "the strike commenced and continued from 9th January, 1981 is declared to be illegal". This being the position, the fining will have to be

set aside. It is also for this reason that it would not have become necessary to go into the question whether the Union or any of the respondents and advised or actively supported or instigated the strike.

14. Since we are informed that in view of the conflicting judgments of this Court, the Courts below are experiencing difficulties in dealing with such complaints u/s 30 of the Act, we feel it is necessary to outline broadly the procedure the Courts should follow in such cases. If there is an application for interim relief the Court will have to dispose it of on the basis of its prima facie view of the matter. The second stage will be the stage when the Court records its finding whether the strike or the lock-out is legal or illegal. If it comes to the conclusion that it is legal, it will proceed to dispose of the complaints forthwith accordingly. However where the conclusion is that it is illegal, it should make the declaration in the open Court as required by sub-section (3) of Section 25 and give 48 hours' time to the party concerned to withdraw it as required by sub-section (5) of the said section. It is only if the strike or the lock-out is not withdrawn during the said period, that it should proceed to decide whether it is "deemed to be illegal under the Act" as required by item 1 of Schedule III and item 6 of Schedule II, as the case may be. The last stage is the stage where the Court proceeds to find out whether, in the case of strike, there was advice, active support or instigation and by whom, and in the case of lock-out, whether it was proposed or continued. If this procedure is followed, there should ordinarily be no difficulty in trying the complaints.

15. With this finding it is not necessary to go into the other two questions. However the question whether the strike was illegal because it had commenced 11 hours before the expiration of the strike notice is of general importance and is likely to crop up in other proceedings as well. At the request of both the parties, we have decided to record our findings on the same. The facts reveal that the strike notice was received by the employer on December 26, 1980 and the strike commenced at 1.0 p.m. on 9th January, 1981. Mr. Deshmukh, no doubt, contended that if it is held that the employer had received the notice before 1.0 p.m. on 26th December, 1980, then 14 days had expired before 1.0 p.m. on 9th January, 1981. This argument has two flaws in it. The first difficulty is that there is nothing on record to show that the employer had received the notice before 1.0 p.m. on December 26, 1980. The second and obvious difficulty is that according to the General Clauses Act, the day is computed from "o" hour to 12.00 p.m. and what is more, the day on which the notice is received is to be excluded for the purpose of the computation of the requisite period. This being the case, 14 days in the present case could not have expired according to law, prior to 12.00 p.m. on January 9, 1981. Admittedly, therefore, the strike which had commenced at 1.00 p.m. on 9th January, 1981 was 11 hours prior to the expiry of 14 days. The question, however, still remains as to whether it is only that period of strike, viz. 11 hours which should be held to be illegal or whether the strike should be held illegal for its entire duration. Mr. Deshmukh relied and according to us rightly, on a decision of a Division Bench of this Court reported in

(1981) 14 L. I.C. 221. The Premier Automobiles Ltd. v. G. R. Sapre and ors., in support of his contention that the strike would be illegal only for the first 11 hours and not for its entire duration. It was a case where a lock-out was declared without giving the prescribed notice. The issue before the Court was whether the lock-out should be declared to be illegal for its entire duration or whether the illegality could be cured by giving a notice subsequently which was done. The Court held that it is never too late to be wise and to make amends. No one can claim vested interest in compelling a man to continue the illegality even when he is keen to remove it by complying with the law. The Court further held that any lock-out commenced illegally without notice would cease to be illegal from the day on which 14 days' period expires after the notice which can be given even during the continuance of the lock-out. Illegality committed till that day may have its full effect and subsequent legality thereof may not relieve the employer of financial liabilities to which the illegality of that period exposes him such as paying compensation to workers etc. It was, therefore, held in that case that the lock-out was illegal only till the date of the expiry of 14 days' of the lock-out notice which was given subsequent to the commencement of the lock-out. According to us, there is no reason why this reasoning should not apply in a case where the notice is given prior to the commencement of strike or lock-out and the strike or the lock-out commences before the expiry of the period of notice. The object of giving the notice is to enable the other party to make amends or to come to terms or redress the grievance or to approach the authorities concerned to intervene and to stop, if it is possible, the threatened action. Commencement of the action, whether strike or lock-out, earlier to the expiry of the period of notice does not prevent the other party from responding to the requisitions in the notice during the remaining period of notice. Hence the illegality should attach only to that period which remained to expire before the commencement of the action. Since admittedly in the present case the strike had commenced 11 hours before the expiry of the strike notice, the strike was illegal only for the said period of 11 hours. The strike would be legal for the rest of its duration.

16. Since in the present case we have come to the conclusion that there was no declaration that the strike was deemed to be illegal under the Act, the petition succeeds. Rule is made absolute with no order as to costs.