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In the Bombay High Court

Case No : O.O.C.J.W.P. No. 930 of 1995 and W.P. No. 1138 of 1995

Metal Box India Limited — APPELLANT

Vs

Association of Engineering Workers Union and Others — RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:
Industrial Disputes Act, 1947 — Section 23, 23(C), 24(1), 24(3)

Citation : (2002) 1 BomCR 545 : (2001) 91 FLR 469 : (2002) 4 LLJ 946

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Judgement

D.Y. Chandrachud, J.—In these writ proceedings, the correctness of an order dated April 5, 1995, passed by the Industrial Court at Bombay has been called into question, both by the employer and by one of the Unions representing the workmen. The order of the Industrial Court arose out of a complaint filed under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, by the Association of Engineering Workers which is the First Respondent in Writ Petition No. 930 of 1995 and the Petitioner in companion Writ Petition No. 1138 of 1995. The complaint which was filed was on the basis that the employer, Metal Box India Limited had committed an unfair labour practice under Items 2, 3 and 6 of Schedule II and Items 5, 9 and 10 of Schedule IV of the Act. The Industrial Court by its impugned order has come to the conclusion that there was an unfair labour practice committed by the employer under. Items 9 and 10 of Schedule IV viz., by failure to implement an award, settlement or; agreement and by indulging in an act of force within the meaning of those entries to the Schedule.

2. Briefly stated, the claim of the Union is that it had filed an application (MRTU 31 of 1992) before the Industrial Court for the cancellation of the recognition of the Metal Box Workers'' Union u/s 13 of the Act. That application had been allowed by the Industrial Court on April 21, 1993, though proceedings against the order of the Industrial Court were pending before this Court when the

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complaint was filed. According to the complainant Union, an agreement had been entered into between the employer and the erstwhile recognized Union on November 1, 1991 which was in force until October 31, 1994. A meeting was surreptitiously alleged to have been held between the employer and the Metal Box Workers'' Union, minutes of which were displayed on the Notice Board on February 3, 1994. The details of the settlement would have to be considered later but, it would suffice to state at the present stage that the settlement inter alia provided that mere would be a reduction in the wages payable to the workmen of the Deonar Unit of the employer to the extent of 20%, over a period of 3 years. According to the complainant-Union, the employer started levelling an allegation to the effect that the workers had resorted to a strike. The case of the complainant was that on February 8, 1994, when the workmen reported for work, the Employer effected a lock-out, as a result of which the workmen had been kept out of work. Besides the declaratory relief in respect of the unfair labour practices allegedly committed by the employer, the Union sought directions to the effect that the workmen be allowed to join duties unconditionally with immediate effect and that the workmen be paid their wages on and from February 8, 1994.

3. The employer filed its Written statement in the proceedings before the Industrial Court controverting these allegations. According to the employer, the workmen had resorted to an illegal strike from 10.30 a.m. on February 4, 1994 and the strike was neither lawful nor justified. According to the employer, the workmen had resorted to unlawful activities as a result of which on February 8, 1994, operations in the factory came to be suspended. Evidence came to be adduced by the parties. The Industrial Court by its order dated April 5, 1995 has inter alia come to the conclusion that the workmen had in fact, proceeded on strike on February 8, 1994, which was found to be illegal since it was in breach of the mandatory provisions of law. Since the lock-out which was declared by the Employer was in response to the illegal strike to which the workmen had taken recourse, the Industrial Court was of the view that the lock-out itself could not be regarded as illegal. However, the Industrial Court took notice of the fact that the Employer had in the present case, after the declaration of lock-out, required the employees to furnish an undertaking before they would be allowed to report for work. Upon scrutinizing the terms and the nature of the undertaking that was called for, the Court was of the view that it was wholly improper for the employer to demand such an undertaking having regard to various decisions on the point. The demand for an undertaking was in the circumstances, held to be an unfair labour practice under Item 10 of Schedule IV of the Act. Having said this, the Industrial Court came to the conclusion that since the workmen were not working with effect from February 8, 1994, the principle of "no work, no wages" would be applicable and that the workmen would not be entitled to any wages as claimed. In the circumstances, while declaring that the employer has committed an unfair labour practice under Items 9 and 10 of Schedule IV of the Act, the Court directed the employer to allow the workers to join duties unconditionally and to

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provide them work as before.

4. The findings of the Industrial Court have been impugned in these two Writ Petitions on behalf of the employer and by the workmen. In the Petition which has been filed by the employer, the finding of the Court to the effect that there has been a breach of Items 9 and 10 of Schedule IV of the Act, has been sought to be impugned. In the Petition which has been filed on behalf of the Union, it is sought to be submitted that on the basis of the findings of the Industrial Court as they stand, there was no justification for the Industrial Court to deny to the workmen the payment of wages with effect from February 8, 1994 once the Court came to the conclusion that the employer was not justified in demanding an undertaking which was sought from the workmen. The submission was that once the undertaking was held to be in the teeth of well settled principles of law, the necessary consequence is that the workmen had been prevented from seeking work as a result of an unlawful undertaking and must be entitled to consequential relief in regard to the payment of wages.

5. Before dealing with the submissions which have been urged and the issues which arise in these proceedings, it may be necessary to advert briefly to the salient facts in so far as they are relevant in these proceedings. The employer is a multi unit Public Limited Company incorporated in 1933 and has been engaged in the business of manufacture and sale of metal containers, paper packages, plastic molded cases and packing machinery. The employer has 9 factories two of which are at Calcutta and one each at Madras, Mangalore, Cochin and Faridabad. Three factories are stated to be in the State of Maharashtra and they are at Worli, Deonar and Mahul at Mumbai. Now it is common ground that sometime in December, 1987, the Board of Directors of the Company resolved that a reference be made to the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 on the ground that the Company had become sick, its net worth having been eroded. The operations of the Company at Worli, Mahul and Deonar in Mumbai came to be suspended and at a hearing held on May 27, 1988 the Company was declared as a sick industrial Company under the provisions of Section 3(1)(o) of the Act of 1985. Consequential directions were issued by the BIFR. Thereafter, in July 1988, the unit of the Company at Mahul commenced operations again whereas the unit at Deonar commenced working in October 1988. The unit at Worli was opened phase wise in 1992. The present dispute relates to the unit at Deonar in which about 500 workmen are stated to have been engaged at the material time.

6. In the Deonar establishment of the employer, the Metal Box Workers'' Union. ("MBWU") which was an internal Union was recognised under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. According to the Respondent Union, the workmen had shifted their allegiance from the MBWU to the Kamgar Utkarsha Sabha and thereafter, in or about 1990 joined the Association of Engineering Workers which is the First Respondent Union before the Court in the Petition filed by the

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employer. The recognition which had been granted to the MBWU was sought to be cancelled in proceedings which were instituted before the Industrial Court u/s 13(1) of the MRTU & PULP Act, 1971. On November 2, 1991, an interim injunction was granted by the Industrial Court restraining the employer from entering into a settlement or agreement with the MWBU. By an order dated April 25, 1993, the recognition of the MBWU was cancelled. The order of cancellation was stayed by this Court at the interim stage of a Writ Petition filed for challenging the order of the Industrial Court. By an order dated July 5, 1997, the Writ, Petition filed to challenge the order of the Industrial Court cancelling the recognition of the MBWU came to be dismissed but, liberty was granted to the MBWU to institute fresh proceedings for obtaining recognition before the Industrial Court. In the meantime, it was directed by the Court that the recognition which had been granted to the MBWU would continue to operate. The Court has been informed that the application filed by the MBWU for recognition came to be rejected on April 21, 2000. Similarly an application filed by the Association of Engineering Workers has also been rejected. The net result, therefore, is that there is no recognized Union in relation to the establishment of the employer. These facts relating to the cancellation of the recognition of MBWU have been placed before the Court by the learned counsel appearing for the contesting parties and there is no dispute about what has been set out earlier.

7. On May 13, 1988, a settlement was entered into by the employer with the MBWU. By and under the terms of the settlement, it was provided that with effect from January 1, 1988 for a period of 39 months upto March 31, 1991 all workmen shall be paid their salaries and wages calculated at the rate of 80% of their entitlement for December 1987. The Company agreed to lift the lock-out, it had then imposed, in view of the settlement and subject to the workers agreeing to carry out lawful orders to maintain production and to do such work as they are assigned. On November 1, 1991 a further settlement u/s 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 was again entered into with the MBWU. In so far as it is material to the present proceedings, the settlement provided for the continuance of the wage reduction of 20% for a further period of 3 years.

8. The Company was in a situation where the salaries of the workmen were not being paid. On April 10, 1993, the Company put up a notice assuring the employees that sincere efforts were being made to pay the salaries on April 13, 1993 and requesting the workmen to work on that assurance. A similar situation arose in the month of June 1993 and in November 1993 when similar notices were put up referring to the difficult market condition which the Company was facing as a result of which, according to the management, the dues of the workers had not been paid.

9. The genesis of the dispute in the present case arises out of a communication dated January 27, 1994, addressed by the Company to the General Secretary of the Metal Box Workers'' Union recording the terms of certain discussions which

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were held between the Union and the Management on January 24, 1994. Amongst the suggestions which were made by the Management in the said letter was that the workmen at the Deonar and Mahul units should, accept a deferment of their salary /wages to the extent of 20% until the implementation of the scheme of rehabilitation in respect of the Company was commenced. In so far as the workmen at Worli were concerned, the. Company suggested that they should work in 3 rotational groups or take a deferment of payment to the extent of 30%. The communication dated January 27, 1994 was put up by the MBWU on the Notice Board on February 3, 1994. The bone of contention between the parties is as regards what took place thereafter on February 4, 1994. According to the employer, on February 4, 1994 at about 10.30 a.m., some of the active supporters of the Association of Engineering Workers instigated the workmen of the Deonar Factory to stop work. The work was accordingly completely stopped at the factory, as a result of which no dispatches were made from February 4, 1994. Some of these workers are stated to have forced other employees who were willing to work, to stop working. According to the Company, a group of workers entered into the cabin of Shri A. D''Lima and Mr. Sengupta, officials engaged by the Company in the managerial cadre, who were manhandled during the course of an altercation which ensued. On February 5, 1994, the employer put up a notice recording these, developments and stating that the workers had resorted to an illegal strike. Another notice was put up on, February 6, 1994 recording that a large segment of the work force continued to be on an illegal strike, On February 8, 1994 a notice was put up by the employer intimating the workmen that the employer was suspending operations at the Deonar unit. The notice stated that there was an illegal strike by the workmen from February 4, 1994 which had led to incidents of violence leading to a danger to life and property. In these circumstances, it was stated that the Company was suspending operations with effect from 5 a.m. on February 8, 1994. Paras 8 and 8.1 of the notice called upon the workmen to furnish an undertaking in a format which was provided by the Company and it was stipulated that the Company would consider the resumption of work if at least 75% of the work force furnishes a signed undertaking. The two paragraphs of the notice which are material for these proceedings may, therefore, be conveniently extracted:

"8. The management would be willing to consider lifting suspension of operations at the Deonar unit of West- Metals, once a minimum of 75% of the workforce of Deonar Unit signs an undertaking vide format enclosed (Annexure-A)

8.1 On receipt of the undertaking by minimum 75% of the total workmen strength of Deonar Unit on March 1, 1994, or earlier, the management would recommence operations at Deonar Factory within two weeks thereafter, subject to the undertakings from minimum 75% of the workmen being received not later than March 1, 1994. Only those workmen who sign the undertaking would be allowed to work. Those workmen who have not signed the undertaking will be given one month''s time to submit the signed undertaking."

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10. The undertaking which was sought from the workmen by the employer''s notice of February 8, 1997 was to be addressed to the General Operations Manager and was to be in the following terms:

"Dear Sir,

I am aware of the circumstances under which the Company suspended operations at Deonar unit which feeds both Deonar Manufacturing and Worli Manufacturing, as workmen of Deonar Factory had struck work from 1st shift on February 4, 1994.

This stoppage continued unabated unto (sic) February 7, 1994.

Management in their Suspension Notice dated February 8, 1994 have stated that if 75% of the workmen of Deonar unit of West Metals give an undertaking by March 1, 1994, as per format attached to the said notice, they would consider reopening the units a couple of weeks thereafter.

I have read and understood the implications of this undertaking. I hereby unconditionally, unequivocally and of my own accord undertake to:

(a) The period of suspension of operations shall be on "No-work- no-pay" basis, and I shall not either myself or through the union dispute the same.

(b) I shall abide by all Rules and Regulations discipline and shall not violate them. I will not engage in unilateral, illegal, indiscipline activities. I will at all time work diligently and with discipline, thereby enabling the company to economically provide goods and services to its customers, recognizing the compulsions of a sick company operating in the highly competitive business environment prevalent in the tin plate packaging industry.

(c) I further realise that engaging in "gheraos" and banding together with a group of workmen, and adopting coercive tactics for achieving demands is contrary to peaceful behaviour and amounts to indiscipline, making me liable for appropriate disciplinary actions as per the Company''s standing orders.

(d) I hereby undertake to give maximum productivity and perform any job, irrespective of grade, classification, scale, designation, etc. to ensure that the Company, which is a sick company can hold its position in the highly competitive market.

(e) In the event my colleagues do not work on the line, I am fully aware that the management could make wage deductions and I would be treated on "No-work-no-pay" basis.

(f) I hereby undertake that on financial matters and grievances pertaining to my status as a workman, I could opt to be represented for purposes of collective bargaining by the office bearers of the union, duly elected, but the union would be the sole bargaining agent with the management as per the constitution and past practice in this regard.

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In consideration of my undertaking as set out hereinabove I request you to allow me to resume work in terms of point 8 of Notice dated February 8, 1994, suspending operations from 5.00 a.m. on February 8, 1994."

In response to the notice of the Company, the Association of Engineering Workers raised a strong protest to the requirement that the workmen furnish such an undertaking. The union recorded that while the management may seek a simple undertaking regarding discipline and production; keeping the factory closed and not allowing the workmen to join their duties as a precondition that the workmen sign such an undertaking would amount to an illegal lock-out on the part of the employer.

The Issues which arise for decision:

11. The principal issues which have been canvassed before this Court in the present proceedings are:

(i) Whether the Industrial Court was justified in arriving at the finding that the workmen had resorted to an illegal strike;

(ii) If the strike was illegal, whether the Company was entitled to declare a lock-out in pursuance of the illegal strike and whether such lock-out could be characterized as legal and justified;

(iii) Whether the conduct on the part of the Company in requiring that an undertaking be furnished by the workmen in the format referred to above was justified; and

(iv) If it was not proper on the part of the Company to require that such an undertaking be furnished, whether the workmen were prevented by the demand of the Company from reporting for work.

12. These issues may now be considered:

A. Whether there was an illegal strike:

The Industrial Court, as noticed earlier, has come to the conclusion that the workmen had proceeded on strike on February 8, 1994. The principal evidence in this regard, was the deposition of Mr. Ashok Kumar Bannerji, the Operational Manager of the Company at its Deonar unit. Mr. Bannerji deposed to the fact that of February 3, 1994, the office bearers of the MBWU had displayed a letter of the Company on the Notice board. On February 4, 1994, he was informed by the shift incharge at about 10 a.m. that the workmen were rushing towards the room of Mr. D''Lima. Mr. Bannerji deposed to the fact that he went to the cabin of Mr. D''Lima and found that some workers had gathered there and other managerial personnel of the Company, Mr. Deshpande and Mr. Sengupta were present in the cabin. Mr. Bannerji then stated that in the course of the discussion in Mr. D''Lima''s cabin, Mr. D''Lima and Mr. Sengupta were manhandled by the workers. He stated that all the machines were stopped and the baking oven which was functioning was also stopped by the Maintenance Manager. According to Mr.

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Bannerji, the workers refused to work despite being called upon to do so by the management. Charge sheets were stated to have been issued to two workers in connection with the aforesaid incident. According to the witness, no work could commence between February 4, 1994 and February 7, 1994. The material part of the evidence of Mr. Bannerji was corroborated by the deposition of Mr. Vijay Sadanand Shenoy, who was a Foreman employed by the Company since 1967 and on the date of the deposition, a Supervisor.

13. The depositions of these two witnesses have been relied upon by the Industrial Court in coming to the conclusion that on February 4, 1994, the workmen did in fact proceed on an illegal strike. In so far as what took place thereafter on February 7, 1994 is concerned, one of the witnesses who deposed on behalf of the employer, Mr. P.D. Khanolkar, stated that he went for work in the Second Shift on February 7, 1994 and found that the workers were not working in the factory. The workers were in the factory premises and were sitting idle without any work. Mr. Bannerji has also stated in his evidence that the workers, in fact, came to the factory on February 7, 1994, but no work could start. In my view, the material on the record is sufficient to indicate that on February 4, 1994, the workers had struck work in the factory at Deonar. At the same time, it must be borne in mind that the Company has issued orders of suspension on February 4, 1994 only in regard to two workers Mr. Nopr Mohammed Murudkar and Mr. Jaykant Patil. These orders of suspension have been placed on the record before the Court. It is common ground between the learned counsel appearing on behalf of the parties that no disciplinary enquiry came to be held in respect of either of the two workers to whom orders of suspension were issued. The orders of suspension were issued in respect of the incident which took place in the cabin of Mr. D''Lima in the course of which two officials of the Company were manhandled. Mr. K.B. Gaokar, who deposed on behalf of the management before the Industrial Court stated in the course of his evidence that the Company has taken disciplinary action against the workers who had manhandled two senior Managers on February 4, 1994. It would, therefore, be reasonable to conclude that the incident of February 4, 1994 during the course of which two officials were manhandled, essentially involved two workers against whom suspension orders were initially issued though as stated earlier ultimately no disciplinary enquiry came to be held. The strike which was resorted to by the workers on February 4, 1994 was clearly an illegal strike. The strike was illegal with reference both to the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 as well as the Industrial Disputes Act, 1947. Sub-section (1) of Section 24 of the MRTU and PULP Act, 1971, defines an illegal strike inter alia to mean a strike which is commenced or continued without giving to the employer notice of strike in the prescribed form or within fourteen days of the giving of such notice. Similarly, under Sub-section (1) of Section 24 of the Industrial Disputes Act, 1947, a strike or lock-out is illegal if, inter alia, is commenced or declared in contravention of the provisions of Section 22 or Section 23 of the Act. Section 22 deals with prohibition of strikes

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and lock-outs in a public utility service and is not applicable in the present case. Section 23 of the Act provides as follows:

"23. General Prohibition of Strikes and lock- outs. -No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;

(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub- section (3-A) of Section 10-A; or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

14. In the present case, it is common ground that there was a settlement which had been entered into on November 1, 1991 with the then recognized Union, MBWU. The settlement was inter alia in relation to the question of wage reduction for a certain stipulated period having regard to the fact that the Company was a sick industrial Company. The strike which was resorted to by the workmen was during the subsistence of the settlement of 1991 in respect of a matter which was covered by the settlement. The strike came to be resorted to on February 4, 1984 following the notice which was put up on February 3, 1994 enclosing a copy of the Company''s communication dated January 27, 1994. The strike was in these circumstances, illegal in view of the provisions of Clause (c) of Section 23 of the Industrial Disputes Act. 1947, and Sub-section (1) of Section 24 of the MRTU and PULP Act, 1971.

(B) Whether the lock-out declared by the Company was lawful and justified.

15. The fact that the company suspended operations at the Deonar unit is not in dispute. Learned counsel for the management, however, submits that as a result of the deeming provision of Section 24(3) of the Industrial Disputes Act, 1947, the lock-out resorted to in respect to an illegal strike is not unlawful.

16. On behalf of the Union it was sought to be submitted that even assuming that there was a strike on February 4, 1994, the strike was illegal because of a non-compliance with the requirement of furnishing a notice of 14 days under the provisions of MRTU and PULP Act, 1971. Section 24(3) of the Industrial Disputes Act, 1947 provides that a lock-out declared as a consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal. It was sought to be submitted that since the illegality related not to the provisions of the Industrial Disputes Act, 1947 but to the MRTU & PULP Act, 1971, the employer was not entitled to the benefit of the provisions of Sub-

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section (3) of Section 24. There is no merit in the submission.

17. For one thing, it would be impossible to construe the provisions of Sub-section (3) as referring to an illegality only with reference to Sub-section (1) of Section 24 of the Industrial Disputes Act, 1947. The relationship inter se between the provisions of the Industrial Disputes Act, 1947 and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 has been considered by a Judgment of a learned single Judge of this Court, Ms. sUJATA MANOHAR, J. (as the learned Judge then was) in Balmer Lawrie and Co. Ltd., Bombay Vs. Balmer Lawrie Employees'' Union and another, . The learned single Judge held, after a review of the provisions of the two Acts that the Maharashtra Act was not meant to replace the relevant provisions of the Industrial Disputes Act, 1947. According to the Judgment of the learned single Judge, the MRTU and PULP Act, 1971 does not in any manner affect or override the provisions relating to the legality or otherwise of strikes or lock outs under any other law.

18. Even if it were to be held that the illegality in the strike related only to a failure to furnish the requisite notice under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, it cannot be said that the employer was precluded from taking recourse to the provisions of Sub-section (4) of Section 23 of the Industrial Disputes Act, 1947. Besides, as already noticed earlier, the strike was illegal with reference to the provisions of Section 23(c) of the Industrial Disputes Act, 1947 as well. That being the position, there is no merit in the submission that the lock- out which was declared in consequence of the illegal strike is not protected by the provisions of sub-section 3 of Section 24 of the Industrial Disputes Act, 1947. A reference may be made to the judgment of the Supreme Court in The Statesman Ltd. Vs. Their Workmen, where a Bench of three learned Judges held that "while Section 23 prohibits strikes and. lock-outs when proceedings mentioned there are under way, Section 24(3) absolves a lock-out of illegality if it is caused by an illegal strike." The Supreme Court held that the strike being illegal, "the lock-out that followed became a legal, defensive measure." (at para 15, pp 488-489). In these circumstances, there is no infirmity in the order of the Industrial Court in so far as the Court came to the conclusion that the lock-out which was imposed on February 8, 1994 was lawful and justified.

C. Whether the conduct of the Company in demanding an undertaking was justified:

19. The employer had, in the present case, sought an undertaking from the workmen by a notice dated February 8, 1994. The Industrial Court has held that the demand for such an undertaking was neither lawful nor proper. On behalf of the employer, it was sought to be submitted that the undertaking was entirely innocuous; mat it did not amount to an admission of guilt and mat, therefore, no fault could be found in the conduct of the employer. I have carefully considered this submission of the learned counsel and I am of the view that there was no

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justification for the employer to demand an undertaking in the format in which an undertaking was sought on February 8, 1994.

20. Before dealing with the nature of the undertaking which was sought in the present case, it would be worthwhile to have regard to the fact that the employer had in the present case sought an undertaking from the workmen on an earlier occasion together with a memorandum of settlement which was entered into on May 13, 1988. The undertaking required the workmen to assure that (i) they shall work in a disciplined manner and carry out lawful orders; (ii) that they will have their grievances sorted out through a constitutional method; (iii) that they would work towards achieving maximum production; and (iv) that they agree to work according to their grade in any Section, Department or Factory and to abide by the Standing Orders. The aforesaid undertaking was sought at the time when the Company had resorted to a lock-out in 1988.

21. In contrast, the undertaking which was sought in the present case, was entirely different in nature and character. The undertaking first and foremost requires every workman to state that he was aware of the circumstances under which the Company suspended operations as the workmen of the Deonar Factory has struck work between February 4, 1994 and February 7, 1994. Secondly, every workman was required to unconditionally and unequivocally undertake that the period of suspension of operations shall be on a "No-work-no-pay" basis and that the workmen shall not either individually or through the Union, dispute the same. Thirdly, the workman is required to undertake not to engage in "Unilateral, illegal and indisciplined activities." Fourthly, each workman is required to state that he realized that engaging in Gheraos and banding together with a group of workmen and adopting coercive tactics for achieving demands is contrary to peaceful behaviour and amounts to indiscipline, making him liable to appropriate disciplinary action. Fifthly, each workman is then required to furnish a further undertaking that he would perform any job which he is assigned irrespective of grade, classification, scale and designation. The next part of the undertaking is that the workman accepts that in the event that his colleagues do not work on the line, the workman himself would be treated on "no-work-no- pay" basis. Finally the workman has to accept the fact that on financial matters and grievances pertaining to the status of the workman, he would be represented only by the office bearers of the Union who were duly elected. In my view, almost every part of the undertaking is loaded with an admission of guilt or a waiver of legal rights by the workman.

22. Before dealing with the impact of such an undertaking, it would be worthwhile, however, to have regard to the decision of this Court in V.M. Gharat v. M.S. Apte in which, following a difference in the views expressed by two learned Judges of this Court the matter came to be placed before and considered by another learned Judge. The difference of opinion arose out of the judgments of Mr. Justice P.B. SAWANT (as the learned Judge then was) and Mr. Justice V.V. vAZE. The Judgments of the two learned Judges (though delivered as far back as

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on October 1, 1987) are reported in (1995) 70 FLR 30. The matter was thereafter placed before Justice R.A.JAHAGIRDAR and the judgment of the learned Judge is reported in 1988 2 CLR 222. (JAHAGIRDAR, J''s judgment is dated July 6, 1988). The earlier Judgments of the two learned Judges who constituted the Division Bench, are thus reported in a volume of the Law Reports subsequent to the judgment of Mr. Justice R.A.JAHAGIRDAR. In the case which was under consideration before the Court, the undertaking which was sought by the employer, was in the following terms:

"I .... employed in New Rashma Dyeing Private Limited, do hereby express that I am calling off the illegal strike that I commenced with all other workers with effect from April 2, 1978.

I further assure that after entering the factory I will discharge my duties properly and will not cause damage to the property, machinery and any material in the Factory.

In view of the above, I am willing to resume my normal duties and I may be allowed to resume my work."

P.B. SAWANT, J. noted that the first part of the undertaking required the workman to admit that the strike to which he had resorted was illegal and that the illegal strike was being called off. The Labour Court had in that case in fact, come to the conclusion that the strike was illegal. Despite the declaration of illegality in regard to the strike, SAWANT, J. was of the view that the demand for an undertaking was not lawful or justified since the admission which was called for on the part of the workmen would defeat the right of the workmen to challenge the order of the Labour Court. In this context, the learned Judge held as follows:

"This assertion having been made on behalf of the workmen at the first available opportunity and before they went to the factory to resume their duties, it was undoubtedly both high handed and illegal on the part of the Company to insist that the workmen should sign a document such as the undertaking in question in which they should admit that the strike which they had resorted to was illegal. Such admission on their part would certainly have defeated their right to challenge the order of the Labour Court. They would not be heard to blow hot and cold at the same time. The admission could have been held against them in any proceedings which they might have adopted to challenge the Labour Court''s order."

SAWANT, J. held that the insistence by the employer on an admission by the workmen in regard to the illegality of the strike as a condition precedent for their being allowed to resume duties was improper and illegal and the action on the part of the Company amounted to a lock-out within the meaning of Section 3(24) of the Act. Apart from this consideration, the learned Judge held that even assuming that the employer had succeeded in proving that there were acts of violence, indiscipline and damage to property, the employer could have been

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justified in asking for an undertaking from those workmen who were guilty of misdeeds. However, there was no justification for the employer requiring an undertaking on the part of all workmen. In that connection, the learned Judge held as follows:

"Assuming however that the employer has succeeded in proving that there were acts of violence, indiscipline and damages to the property, the question that still falls for consideration is whether insistence on such an undertaking from all the workmen, whether they were parties to the said acts or not, is justified. Surely in the last quarter of this century it is not necessary to emphasize that the contract of employment is always bilateral. The employer and the employees are equal partners in the enterprise of production. The employees are no longer to be looked upon as bonded slaves. The terms of their relationship with the employer are governed by the contract of employment and/or the relevant statutes. The employees therefore, cannot be treated as a tribe of delinquents much less can they be humiliated by asking them to sign undertakings which imply that they had indulged in misdeeds which they had not and that they atone for the same. One can understand and the employer will be justified, if such undertaking is taken from those workmen who are guilty of the misdeeds. But to insist on such undertaking from one and all is to subtract from the terms of their employment. It is not suggested that it is one of the terms of employment that whenever there are misdeeds on the part of some workmen, all workmen should enter, so to say the penitentiary, and give such undertaking. The contention that to act in a disciplined manner is an implied condition of service and hence there is nothing wrong in insisting upon such undertaking is to beg the question. If it is an implied condition of service, there is no need of such undertaking. If the undertaking is, innocuous, it serves no purpose except satisfying the ego of the employer which is nothing but a display of a feudalistic attitude towards the employees. Such attitude has to be discouraged in any egalitarian society and much more so in a society like ours which has pledged itself to establish a Socialist Republic. Article 43-A of the Constitution, specifically directs the State to take steps to secure participation of workers in the management of the industry. It cannot be argued that the case of these constitutional objectives will be furthered by acquiescing in or conniving at the action of the employers in insisting on such undertakings even from the innocent workmen which has the inevitable effect of demeaning the workmen. I am therefore of the view that to insist upon such undertakings from all workmen, irrespective of their conduct, is to subject them to indignity. The dignity of an individual is the bed rock of all human rights. It is and should be the basis of all human relationships including his contract of employment. To insist upon such undertaking therefore, is to affect the terms of his employment."

V.V. VAZE, J. differed with the view expressed by P.B. SAWANT, J. As stated earlier, the matter was thereafter placed for consideration before Mr. Justice R.A.JAHAGIRDAR since there was a difference in the views expressed by the two learned Judges. Justice R.A.JAHAGIRDAR agreed with the view which was taken

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by Mr. Justice P.B. SAWANT,JAHAGIRDAR, J. duly took note of the judgment of a Division Bench of this Court in Industrial Tubes Manufacturing Co. Ltd. Vs. S.R. Samant, Judge, Industrial Court and others, .JAHAGIRDAR, J. noted that in Industrial Tubes the allegation was that the employees "had taken up an attitude of naked defiance of law" and that they had indulged in go-slow tactics, acts of assault and of violence. In these circumstances, the Division Bench, while proceeding on the basis that these allegations were prima facie true, held that the employer was justified in the fact of the case from demanding a good conduct bond. The Division Bench, however, sounded the following note of caution at p. 449 of LLJ:

"This must, however, be borne in mind that the dividing line between justified and unjustified insistence on such bond is very thin. The Court has to scrupulously guard against the danger of this being abused making it just a pretext for coercing workmen to give up their just struggle with legitimate means".

JAHAGIRDAR, J. while agreeing with the view of P.B. SAWANT, J. did so in the following words:

"If the undertaking required the employee to merely say that he was calling off the strike which had been held to be illegal, one would not have complained, but the first part of the undertaking insists upon the confession on two grounds. The first ground is that the strike was an illegal strike and that the concerned employee did commence it with all the other employees with effect from April 2, 1978. In my opinion, by this the employees would have been prevented from agitating about the correctness of the finding given by the Labour Court in Application No. 39 of 1978."

21. Even if one leaves aside this part of the undertaking, the second part of the undertaking insisted upon by the respondent is also objectionable. In the second part of the undertaking, the employee was required to give an assurance that after entering the factory, he would not cause any damage to the property, machinery and any material in the factory. Was the insistence upon this part of the undertaking justified? The answer, in my opinion, is in the negative because there is, as I have repeatedly pointed out earlier, no evidence on record at all to show that at any time any particular employee or employees have indulged in causing any damage to the property, machinery and any material in the factory. If there was material on record, may be on the basis of the present law, the employer might have been justified in asking for an undertaking of this type. In the instant case, there is no material at all to justify this part of the undertaking."

23. A reference may also be made to a Judgment of a Division Bench of the Gujarat High Court in Swastik Textiles v. Rajansingh Santsingh and Ors., 1984 III LLJ 97, where an undertaking was sought from the workmen to the effect that they had joined an illegal strike; that they would act peacefully in a disciplined manner and shall not commit any similar or other misconduct. The Division

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Bench of the Gujarat High Court held that requiring the workers to admit that they had participated in an illegal strike and to furnish an assurance of not participating in such a strike in future and seeking pardon of the Company was unjustified in the circumstances of the case. The Court noted that even if it was open to the employer to take disciplinary proceedings against the workmen for participating in the strike, by demanding such a writing, what in effect and substance the employer was proposing to do was to hold the workmen guilty and impose punishment upon them without inasmuch as framing any charge or holding an inquiry.

24. In the present case, the undertaking which was sought was clearly not justified. The undertaking required the workmen to admit that the Company had suspended its operations because the workmen at Deonar had struck work between February 4, 1994 and February 7, 1994. The question as to whether the workmen at the Deonar Factory had struck work and whether the suspension of operations by the Company was in response to the strike by the workmen was a matter which was yet to be adjudicated upon and on which parties were fully within their rights in approaching a Court of competent jurisdiction. Under the provisions of Section 25 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, an employer of an undertaking is entitled to make a reference to the Labour Court for a declaration that the strike is illegal, just as the Union may seek a declaration that a lock-out is illegal. Where a strike or lock-out is declared as illegal by the Labour Court and such a strike or lock-out is thereafter withdrawn within 48 hours, it shall not for the purposes of the Act be illegal. In Gharat''s case (supra), both Justice P.B. SAWANT and Justice R. A.JAHAGIRDAR took the view that despite the fact that the Labour Court had declared the strike illegal, the employer was not justified in demanding an admission on the part of the workmen. In the present case, the undertaking which was sought was an admission that the workmen had struck work and the Company suspended operations in response to their having struck work. This was in my view, impermissible because it precluded the workmen from agitating their claims and rights before a Court of competent jurisdiction. Secondly, what the undertaking required was that the workmen should admit that the period during which the Company had suspended its operations, shall be on a no-work- no-pay basis. This, it must be noted, was not merely between the period February 4, 1994 and February 7, 1994, but continued so long as the Company chose to suspend its operations. The workmen were thus required to agree to a waiver of their right to receive wages during the period during which the company suspended its operations. Thirdly, the undertaking is equally flawed because Clause (e) of the undertaking required that in the event that the colleagues of the workman furnishing the undertaking did not work on the line, the workman himself would be treated as on "no-work-no-pay" basis. Thus, irrespective of whether or not the workman concerned was ready and willing to offer himself for work, he would be denied wages merely because his colleagues had not worked. The undertaking required the workman to state that he was not

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engaged in illegal or indisciplined activities and that he would not band together with a group of workmen. These objections to the undertaking must be considered with reference to the fact that the Company stated in its notice dated February 8, 1994 that the management would be willing to consider lifting the suspension of operations if at least 75% of the work force furnished an undertaking in the prescribed format. In the evidence which was adduced before the Industrial Court, the witness for the Company, Shri K.B. Gaokar, admitted that the Company had received undertakings from about 100 workers of the Deonar unit in terms of the appeal which had been made to the workers. Now it is common ground that even these 100 workers were not permitted to report for work. The Company''s decision was that at least 75% of the work force must sign the undertaking and that it is thereafter that the Company would consider whether to recommence operations. The learned counsel appearing on behalf of the Company sought to justify this on the ground that the Company would require the key personnel in the Unit to be present in order to start operations. There is no merit in this contention since no case whatsoever is made out in the evidence adduced to the effect that it was not possible for the Company to commence operations until 75% of the work force reports for work. Moreover, as already noticed, the Company had merely stated that it would "consider" restarting operations if 75% of the work force submitted an undertaking. Apart from this, it would be material to note that the witness on behalf of the Union (Jayendranath J. Sheth), expressly deposed that the workers were ready to give an undertaking to the effect that they will give normal production and would maintain peace and harmony in the Company. Mr. Sheth stated that the Union had informed the Company that the workmen were ready to give such an undertaking and had stated so before the Labour Commissioner in the conciliation proceedings. The Company has, however not accepted such an undertaking by contending that it would abide by the order that may be passed by the Court in the pending proceedings. During the course of cross-examination, the Company''s witnesses Mr. K.B. Gaokar and Mr. A.K. Bannerji were expressly asked whether the workmen had agreed to furnish a normal undertaking in regard to production and maintenance of discipline before the Deputy Commissioner of Labour but, the two witnesses were unable to deny this suggestion and stated that they had no knowledge of whether the workmen had agreed to furnish such an undertaking. In fact, Mr. Gaokar in response to a question which was posed to him stated in para 14 of his cross-examination that he was unable to state at present whether the Company would be ready to withdraw the suspension of operations even if the workers were ready to give an undertaking to maintain discipline and to give normal production.

25. In the circumstances of the present case, therefore, and having regard to the position in law, which has been settled, I am of the view that the demand for an undertaking on the part of the employer was illegal and unjustified. The employer by demanding the undertaking has effectively prevented the workmen from reporting for work. This is, therefore, clearly a case wherein a lock-out

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which was imposed by the employer on February 8, 1994 initially in response to the illegal strike cannot be justified in view of the undertaking which was required from the workmen as a condition precedent to their reporting for work. In view of the illegal strike which was resorted to by the workmen, the lock-out at its inception was not illegal in view of the provisions of Sub-section (4) of Section 23 of the Industrial Disputes Act, 1947. The lock-out however, ceased to be lawful and justified after the employer by his own conduct created a situation whereby the workmen were unable to present themselves for work. There is no justification on the part of the employer in demanding an undertaking in the terms in which it was sought. The unlawful demand for the undertaking has prevented the workmen" from reporting to work. On February 7, 1994, the workmen were in fact present in the factory and the witness on the part of the employer, Shri Khanolkar deposed that the workers were sitting idle without any work. On and from February 8, 1994, the demand of the employer for the undertaking effectively prevented the workmen even from entering the factory and reporting for work. In these circumstances, though I have come to the conclusion that the strike which was initially resorted to by the workmen was not justified, it would be equally necessary to apportion the blame for what subsequently took place. In Statesman Ltd. v. Their Workmen (supra), a strike had been declared, which was found to be illegal. The employer thereupon declared a lock-out, which was not illegal in view of the provisions of Section 24(3) of the Industrial Disputes Act, 1947. The management put up a notice stating that it has no option but to adopt closure until an assurance of normal and peaceful resumption of work was furnished. Such an assurance was in fact given by the Union despite which the employer stated that it would take steps to lift the closure as soon as the management is reasonably convinced that discipline and normal production will be maintained and that there would be no recurrence of the acts of indiscipline which led to the illegal strike and closure." The Tribunal directed the employer to pay half the wages due to the employees and the award of the Tribunal came to be sustained by the Supreme Court. The Supreme Court held that even if the lock-out which was initially imposed was lawful, having regard to the fact that it was a sequel to an illegal strike, the action of the employer in refusing to restart the work despite the assurance given to maintain peace and normal work was not justified. The Court held that "where the strike is illegal and the sequel to a lock-out legal" the Court would have to view the whole course of developments and to stop with examining the initial legitimacy." Consequently:

"If one side or other behaves unreasonably or the overall interests of good industrial relations warrant the Tribunal making such directions regarding strike period wages as will meet with justice, fairplay and pragmatic wisdom, there is no error in doing so. His power is flexible."

The Court had also held as follows:

"But the management cannot behave unreasonably merely because the lock-out

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is born lawfully, if by subsequent conduct, imaginatively interpreted, the unions have shown readiness to resume work peacefully, the refusal to re-start the industry is not right and the initial legitimacy of the lock-out loses its virtue by this blemished sequel."

The evidence and material on record would clearly show that the conduct of the employer was blameworthy and prevented the workmen from reporting for work. Having regard to the totality of the facts and circumstances of the case, I am of the view that the grant of a portion of back wages is called for. The order of the Industrial Court would need to be and is hereby modified by directing that the workmen be granted 50% of the back wages for the past period.

26. In the circumstances, Writ Petition No. 930 of 1995 filed by the employer stands rejected. Rule discharged. Writ Petition No. 1138 of 1995 shall stand allowed to the extent that the workmen shall be entitled to 50% of the back wages for the period after February 8, 1994. In the circumstances of the case, there shall be no order as to costs.

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