

(1991) 09 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 2714 of 1986

Murlidhar Raghoji Savant

APPELLANT

Vs

General Manager, Mather and Platt (I) Ltd. and Others

RESPONDENT

Date of Decision : 17-09-1991

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 33
Industrial Employment (Standing Orders) Act, 1946 — Section 15

Citation : (1992) 2 BomCR 184 : (1992) 2 LLJ 394

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

1. This writ petition under Article 227 of the Constitution of India impugns an order dated March 27, 1986 made by the First Labour Court, Pune, in Complaint (ULP/LCP) No. 40 of 1984, under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, (hereinafter referred to as "the Act").

2. The first respondent is a company carrying on business in the engineering industry and owns a factory at Pune. The petitioner was employed in the said factory. The factory, at the material time, employed about 600 workmen. The workmen resorted to a tool-down strike from May 18, 1983 to June 22, 1983 and thereafter a total strike from June 26, 1983 to July 2, 1983. During this period, a meeting was held on May 29, 1983, near Mehta Hospital, Chinchwad, Pune, which was addressed by the activists of the union sponsoring the strike. During the meeting, one Moses Gabriel Francis, a senior workman of the factory, voiced his doubts as to the advisability of carrying on the strike. He urged upon the workmen to reconsider the continuation of the strike, which was inflicting hardship on the workmen. Moses also called a meeting of the dissenting workmen on June 3, 1983, at another venue, whereat there were discussions as to ascertaining the possibility of holding discussions with the first respondent's management to arrive at some settlement for resumption of work in the factory.

The section of the workmen, led by their militant trade union leaders, perhaps, did not approve of this line of thinking of the other section. On June 5, 1983, at about 1 a.m. the petitioner, along with K. R. Shinde, C. B. Bidkar, D. T. Jadhav and a large number of other workmen, numbering about 70 to 80, went to the residence of the said Moses, located in a colony popularly known as Ruston Colony, at a distance of 4 to 8 Kms. from the factory of the first respondent. Some of the workmen in the crowd shouted out to Moses, demanding that he open the door of his house. Moses, naturally, frightened for dear life, refused to oblige. Some of the workmen in the crowd then started abusing him and pelted stones at the entrance door of his house. The front and rear doors of the house of Moses were then broken open by banging large stones thereupon, and the crowd of workmen rushed into the house, K. R. Shinde, D. T. Jadhav, C. B. Bidkar and the petitioner, accompanied by a few more workmen, who were prominently conspicuous, assaulted Moses, the members of his family consisting of his wife, his son and his daughter-in-law with hands and sticks. They also damaged the property inside his house, bodily lifted him, carried him outside the house and threw him down on the ground. Thereafter, he was severely beaten up with a cycle chain by the petitioner, which caused him serious injuries and profuse bleeding. While Moses was being beaten someone from the crowd of the workmen shouted at him as to why he was attempting to break the strike and come in the way of the livelihood of 600 workmen. This incident led to chargesheets being served upon the workmen who were suspected to be involved in the said incident of assault. We are concerned only with the cases of the petitioner and one C. B. Bidkar, the petitioner in Writ Petition No. 1312 of 1989.

3. The petitioner was served with two chargesheets, one dated May 18, 1983, and the other dated June 27, 1983. In the first chargesheet dated May 18, 1983, the charge levelled against the petitioner was that, on May 14, 1983, one workman. S. D. Bhosale, was found taking out of the factory two packets of Chiwda, which was available for sale to workman at subsidised rates in the factory canteen, contrary to specific instructions notified by earlier notices in that regard. The said Bhosale, who was detained during a search at the canteen, refused to surrender the Chiwda packets. The Assistant Jamadar, who was on duty, advised him that he was not permitted to take the Chiwda packets out of the factory as there were specific instructions notified by notices to that effect, and he took the said Bhosale to the company main gate. In the meantime, the petitioner came to the spot, challenged the authority of the Assistant Jamadar in preventing Bhosale from taking the Chiwda packets outside the factory when other workmen had done so. When the petitioner's attention was drawn to the notices which prohibited the carrying of Chiwda packets and other eatables out of the factory, the petitioner said that he was not bothered about the notice and that, in any event, Bhosale must be allowed to leave the factory with the Chiwda packets, and, thereafter, the matter may be referred to the Personnel Manager. The Personnel Manager also came to the scene and explained to the said Bhosale

that the act of taking the Chiwda packets out of the factory was contrary to the express terms of the company's notice dated May 11, 1983, and, therefore, he should return them to the canteen. It is alleged that, even at this juncture, the petitioner retorted that he was not bothered about the notice and that no mention should be made about the said notice. On account of the attitude adopted by Bhosale, which was encouraged and supported by the petitioner, the said Bhosale was allowed to leave the factory with the Chiwda packets intact with him. This was alleged to be a misconduct punishable under Standing Order 24(a), 24(d), 24(1) of the Model Standing Orders applicable to the workmen concerned.

4. The second chargesheet dated June 27, 1983, levelled far more serious charges against the petitioner in connection with the assault which took place on Moses on the night of June 5, 1983. After setting forth the particulars of the allegations, it was alleged that the acts alleged against the petitioner amounted to misconduct of "(i) abetting or acting in furtherance of the illegal strike", a misconduct under sub-clause (b) of Clause 24 of the Model Standing Orders, and (ii) "commission of an act subversive of discipline or good behaviour on the premises of the establishment," a misconduct under sub-clause (1) of Clause 24 of the Model Standing Orders. An enquiry was held into the misconducts alleged by both the said chargesheets, whereat the petitioner was found guilty of the misconducts alleged against him by both the chargesheets. He was consequently dismissed from service by an order dated March 3, 1984, after consideration of the findings of the Enquiry Officer, his past record, the serious nature of the misconducts proved against him and the absence of any extenuating factors.

5. The petitioner challenged the order of dismissal passed against him by his complaint before the Labour Court, Pune, alleging unfair labour practice under Item 1(a), (b), (d), (f) and (g) of Schedule IV of the Act. The Labour Court, which tried the complaint, raised the following issues and answered them all against the petitioner :-

"(1) Does complainant petitioner prove that the enquiries held by the opponent respondent is in utter disregard of the principles of natural justice ?

(2) Does complainant prove that his services are terminated for patently false reasons ?

(3) Does he prove that his services are terminated not in good faith but in the colourable exercise of opponent's right ?

(4) Does he prove that opponent is engaged in unfair labour practice ?

(5) Does he prove that he is entitled to declaration ?

(6) Does he prove that he is entitled to reinstatement ?

(7) Does he prove that he is entitled to back wages ?

Consistent with these findings, the Labour Court was of the view that there was

no unfair labour practice proved against the first respondent, and dismissed the petitioner's complaint. The petitioner is before this Court, under Article 227 of the Constitution of India, to impugn the said order of the Labour Court.

6. The only contention which has been pressed with vehemence is the one pertaining to the finding of the Labour Court that the misconduct under Model Standing Order 24(1) had been proved and brought home to the petitioner. Incidentally, regarding the misconduct of taking out Chiwda packets, which was perhaps overshadowed by the far more serious allegations as to assault on Moses, nothing has been urged at the Bar.

7. Mr. Dharap, learned advocate for the petitioner, strenuously urged that the reasoning of the Labour Court was contrary to the law laid down by the Supreme Court in *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, . He also urged that the Labour Court has misdirected itself by misreading and misunderstanding the ratio of the said judgment, and, consequently, that the order of the Labour Court is assailable and deserves to be quashed.

8. The only question that needs to be considered in the present petition is, what is the true import of the misconduct described in Model Standing Order 24(1) as "commission of any act subversive of discipline or good behaviour on the premises of the establishment".

9. Section 2-A of the Industrial Employment (Standing Orders) Act, 1946, which applies to the first respondent's establishment, provides that, where the said Act applies to an industrial establishment, the Model Standing Orders for every matter set out in the schedule applicable to such establishment shall apply to such establishment from such date as may be appointed by the State Government. It is not in dispute that the Model Standing Orders do apply to the petitioner's establishment. Section 15 of this Act empowers the appropriate Government, by notification in the Official Gazette, inter alia, to make rules setting out Model Standing Orders for the purposes of the Act. The scheme of the Industrial Employment (Standing Orders) Act, 1946, is that the Model Standing Orders, notified in respect of items of industrial matters enumerated in the schedule to the Act, govern the relations between employer and workmen till they are replaced by Standing Orders certified in accordance with the provisions of the Act. The Schedule to the Act enumerates the matters to be provided in Standing Orders Model or Certified-under this Act. Item 9 of the Schedule of this Act reads as under :-

"Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct".

In exercise of its powers u/s 15 of this Act, the State Government has enumerated Model Standing Order No. 24 which defines the acts or omission on the part of the workmen which would amount to misconduct. The Supreme Court's decisions in *Glaxo Laboratories case* (supra) and in *A.L. Kalra Vs. Project*

and Equipment Corporation of India Ltd., lay down that Standing Orders or rules require the employer to define with sufficient precision the terms of employment, particularly those pertaining the definition of misconduct, and it would not be open to the employer to treat any act as a misconduct, unless it was precisely so defined previously. Keeping in view the objective sought to be achieved by prescribing the conditions of employment in Standing Orders, nothing could be said to be a misconduct, unless it had been so defined, and it was not permissible for an employer to declare an act a misconduct, ex post facto. This, undoubtedly, is a salutary principle of law enunciated by the Supreme Court for guidance of all Courts and parties.

10. Though some contentions were urged as to the concept of a misconduct in general, I think it would be unnecessary to pursue this line of reasoning, in view of the definitive pronouncements made by the Supreme Court in *Glaxo Laboratories*" case (supra) and *Kalra*"s case (supra). I shall, therefore, proceed to examine the contentions canvassed at the Bar on the basis that the first respondent-employer was bound to implement the terms of the Model Standing Orders, and, as a corollary, the first respondent had no power under the Model Standing Orders to punish any act which was not defined as a misconduct thereunder.

11. Model Standing Order 24(1) defines as a misconduct the "Commission of an act subversive of discipline of good behaviour on the premises of the establishment". The concept is not new and has been enunciated by industrial adjudicators and Courts, after much debate, over the period, spanning four decades and half, of evolution of industrial jurisprudence in this country.

12. The view taken by the Supreme Court in *Glaxo Laboratories*" and *Kalra*"s cases (supra) appears to be somewhat inconsistent with the earlier view taken by a three Judge Bench of the Supreme Court in *Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others*, , vide paragraph 22 (p. 264) :

"Standing Orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may commit. Even though a given conduct may not come within the specific terms of misconduct described in the Standing Orders, it may still be a misconduct, in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action. Ordinarily the Standing Orders may limit the concept but not invariably so."

13. Steering clear of the above controversy, for the purpose of the present judgment, however, I shall assume that the law laid down by the Supreme Court on the subject is that the Standing Orders must specifically enumerate any act before it can be termed as a misconduct, as, for deciding the present petition, it is unnecessary to enter into a discussion of larger and broader issues of law. Examining the law on the subject, with this perspective, it is seen that the ultimate test is whether the act that is complained of would amount to a

misconduct within the meaning of Model Standing Order 24(L).

14. The question as to whether an act, which takes place outside the premises of the industrial establishment, can amount to a misconduct punishable under the Standing Orders, has been the subject of much debate from the early" 50s. In *Shalimar Rope Works Mazdoor Union v. Shalimar Rope Works Ltd.* 1953 II LLJ 876 the Labour Appellate Tribunal considered a Standing Order which used almost the same language in defining the misconduct as under Model Standing Order 24(L). It rejected categorically the argument of the workmen that an act committed outside the premises/precincts of the industrial establishment could never amount to a misconduct, and held that any act on the part of the workmen having the tendency or effect to disturb the peace and good order should be regarded as subversive of discipline. The Labour Appellate Tribunal pointed out that a fight in the factory between two workmen, during the working hours over their private affairs, will be an act subversive of discipline, even if the Standing Order did not specifically mention such an act as a misconduct. Equally, it would be regarded as an act of misconduct for which an employer may punish by dismissal or otherwise, even if it occurs outside the working hours and outside the factory or place of business of the employer, if the act :

(i) is inconsistent with the fulfillment of the express or implied conditions of service, or

(ii) is directly linked with the general relationship of employer and employee, or

(iii) has a direct connection with the contentment or comfort of the men at work, or

(iv) has a material bearing on the smooth and efficient working of the concern.

These principles the Labour Appellate Tribunal deduced from the judgment of the Privy Council in the case of *Clouston & Co. Ltd. v. Corry* 1906 A. C. 122 and that of the Court of Appeal in *Tomlinson v. The London, Midland and Scottish Railway Company* 1944 (1) All ER 536 . We may ignore, for the purpose of the present discussion, the first two propositions indicated by the Labour Appellate Tribunal, in view of the basic assumption which governs our perspective, viz., that nothing that has not been defined as a misconduct can be punished as one, and concentrate on propositions (iii) and (iv). The law laid down by the Labour Appellate Tribunal was sound, firmly grounded in realities of life, and conducive to healthy and productive Industrial Relations. The same propositions of law were echoed, though independently, by the Kerala High Court in *C. Kunhikutty Vs. Workmen of the Malabar Roadways Service*, , held that the quarrel had taken place with a stranger, outside the premises of the industrial establishment, over a purely private affair, and, hence, the dismissal was bad.

15. In *C. Kunhikutty's* case, the Kerala High Court considered this issue. After a survey of the judgments of the Supreme Court in *Agnani v. Badri Das & Ors* 1963 I LLJ 684 and *Central India Coalfields v. Ram Bilas* 1961 I LLJ 546, which were

specific instances of workmen being charged with acts which had taken place outside the premises or precincts of the employers' industrial establishments, the Kerala High Court considered the question on general principles. It referred to the judgment of the Court of Appeal in *Tomlinson v. L. M. S. Rly Co.* 1944 (1) All E R. 537. In that case, the appellant was alleged to have, during the meeting of a canteen committee held outside the usual hours of duty, assaulted a co-employee on account of a dispute with regard to the conduct of said meeting and also behaved in a disrespectful manner to a superior officer who was present. The termination of his service on this ground was challenged by contending that the employee's conduct at the meeting was not a misconduct within the meaning of the machinery of negotiations for railway staff, and, alternatively, that it was not such exceptionally grave misconduct entitling the company to dismiss him summarily under the applicable rule. The following observations of Lord Greene M.R. were cited with approval by the Kerala High Court :- 1970 II LLJ 487) :

"It was said that there were men who in their leisure time, do something which it was no part of their duty to do. I agree, but just let us see what they were doing. The company in a matter concerning the welfare of its employees which it was anxious to foster and encourage sets up the machinery of a committee to deal with that particular welfare organisation. The proper setting up and organisation of this canteen was a matter of very great interest to the company, and of very great interest to the employees themselves. It was intimately linked with the general relationship of employers and men and the contentment and comfort of the men in their work. That being the object and a committee being set up for that purpose, this appellant proceeds to act in such a way as not only to interfere with the proper and smooth working of that machinery, but no make it impossible to carry it on smoothly any further if conduct of that kind was going to become the rule. Annoyed because a fellow member had pointed out that the had no right to be in the chair, and pointed out no doubt with some emphasis, he rushed at that employee and violently assaulted him, with the result that he had to go to hospital. Moreover, it does not stop here, because not only did he assault him in that way, but he threatened him that, if he opposed him or aggravated him, as he put it, again he would be treated in a similar manner. Conduct of that kind is calculated completely to wreck and make impossible the working of the machinery that the company was endeavouring to set up for the benefit of the workers and indirectly for the benefit of the company itself. It seems to me quite impossible to suggest merely because this happened outside working hours that it was so disconnected with the employment as to make it wrong to regard it as misconduct within Cl. 8. To say that seems to me to shut one's eyes to the obvious realities of the situation".

The High Court then considered the judgment of the Supreme Court in *C. Kunhikutty Vs. Workmen of the Malabar Roadways Service*, :

"Even though it is open to a management to take up disciplinary proceedings

against a worker for his misconduct outside working hours, the basic principle which should guide the management in taking the proceedings is whether the misconduct of the worker has any relation with the employment, whether the misconduct is to a co-worker or to a stranger and whether the misconduct was committed within the precincts of the concern. Even in the absence of Standing Orders the management can take disciplinary proceedings against a worker for his conduct outside working hours, provided the employer reasonably thinks that the conduct has a relation with the employment or that the conduct is such that the employee is unworthy to be employed."

16. In *Victory Flask Company (Private) Ltd. v. Govind Phagoji Borje* 1976 II LLN 560 a learned Single Judge of this Court (Lentin, J) was called upon to interpret the very Model Standing Order 24(L), and he had this to observe :-

"On a plain reading of Standing Order 24(L) I have no hesitation in coming to the conclusion that the words "on the premises of the establishment", must be read in conjunction with the words immediately preceding, viz., "subversive of discipline or good behaviour" and not with the opening words, "commission of any act". It is not that the act need be committed on the premises of the establishment, but that the result of such an act would be subversive of discipline or good behaviour on the premises of the establishment. The commission of the act has no nexus or connexion with the premises of the establishment. It is the effect or result of that act, viz., indiscipline or bad behaviour which must make itself manifest in the premises of the establishment."

17. In *Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen*, , the Supreme Court considered the very Model Standing Order 24(L). This was a case where certain employees were assaulted, far away from the premises of the factory, inside a train travelling from Thane to Mulund. An argument was made that the language of the Standing Order indicated that the act which could be punished as an act subversive of discipline must have taken place within the limits of precincts of the establishment. The Supreme Court categorically rejected this argument and held : (p. 394)

"..... In our opinion, on a plain reading of the clause, the words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequence of such an act manifests itself. In other words, an act, wherever committed, if it has the effect of subverting discipline or good behaviour within the premises or precincts of the establishment, will amount to misconduct under Standing Order 24(L). We are unable to agree that Standing Order 24(L) leaves out of its scope an act committed outside though it may result in subversion of discipline or good behaviour within the premises or precincts of the establishment in question. Such a construction in our view would be quite unreasonable."

18. The proposition of law deducible from a conspectus of authorities, during the

period 1953 to 1975, appears too firmly settled and could not have been intended to be dislodged, by a sidewind, by the pronouncement in Glaxo Laboratories" case (supra). It is difficult to accede to the contention advanced on behalf of the petitioner that the judgment in Glaxo Laboratories" case is a radical departure from the law laid down in Munchandani"s case (supra). Both Munchandani and Glaxo Laboratories were judgments of Benches of the Supreme Court consisting of three Judges. There is no evidence in the Glaxo Laboratories; case (supra), that the law laid down in Munchandani"s case (supra), was departed from or, much less, intended to be over-ruled. The observations of the Supreme Court in paragraph 12 of the judgment (Labour Law Journal) make it clear that the decision in Glaxo Laboratories" case (supra) turned solely on the peculiar phraseology of the Standing Order which Their Lordships were considering. Though Munchandani"s case (supra) was cited as laying down a broad proposition of law on the subject, the Supreme Court distinguished it on facts by observing : Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, :

"The decision proceeds on the language of the Standing Order which came for interpretation before this Court. There is a marked difference between the language of Cl. 10 of S.C. 22 under which action is proposed to be taken by the appellant in this case and S.C. 24(1) that came for interpretation in that case."

It is thus clear that, far from over-ruling the judgment in Munchandani"s case (supra), Glaxo"s case (supra) distinguishes it on facts as the phraseology of the concerned Standing Order was radically different, a doubt has arisen before the High Court as to the true construction of the Standing Order. The High Court resolved the difficulty by referring to the Hindi version, which, in no uncertain terms, indicated that what was defined as a misconduct could only be an act committed within the premises of the establishment or in the vicinity thereof. The Supreme Court specifically referred to this circumstance and distinguished Munchandani"s case (supra).

19. In my view, there is no difficulty in holding that it is law laid down in Munchandani"s case which must supply to the petitioner"s case, for the simple reason that the petitioner"s case is governed by Model Standing Order 24(L), which was the very same Standing Order considered and interpreted by the Supreme Court in Munchandani"s case. As I read them, with great respect, the observations in the Glaxo"s judgment must be taken to be confined to and arising out of the peculiar phraseology of the Standing Order which was before the Supreme Court. I am in respectful agreement with the observations of the Supreme Court in Glaxo Laboratories : Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, :

"A Clause with a statutory flavour "like legislation must at all costs be interpreted in such a manner that it could not operate as a rogue"s charter" Davis and Sons v. Alkin 1977 I.C.R. 662."

In my judgment, interpreting the Standing Order applicable to the petitioner's case, in the manner suggested by the petitioner's counsel, would make it operate as a "rogue's charter".

20. Mr. Rele, learned counsel for the first respondent, brought to my attention a very recent judgment of a learned Single Judge of this Court (Dhanuka, J) in *Bhavani Metal Works v. Pandurang R. Sawant & Ors.* 1991 (I) CLR 147, which is relevant and supports the view taken by me. It was vehemently contended in this case that the law laid down by the Supreme Court in *Munchandani's case* (supra) must be deemed to have been over-ruled by the observation made in *Glaxo Laboratories' case* (supra). After having carefully considered the two judgments the learned Single Judge took the view that the earlier judgment in *Munchandani's case* (supra) had been merely distinguished by the Supreme Court in *Glaxo Laboratories, case* (supra) but had not been over-ruled, as both were judgments of co-ordinate Benches of three Judges and there was no intention of any such over-ruling. The learned Judge was, therefore, of the view that both the judgments were operative and binding, each in its own sphere, and that the Trial Court had to, on the facts of each case, decide which judgment was liable to be invoked.

21. Though Mr. Rele drew my attention to a judgment of the learned Single Judge of the High Court Karnataka in *Bemco Hydraulics Ltd. v. Deputy Labour Commissioner and Conciliation Officer & Anr.* 1990 II LLN 537, I am of the view that this judgment does not really touch upon or decide the contention canvassed on behalf of the petitioner. The learned Judge in this case was merely concerned with the refusal of the Tribunal to grant approval to an action of the dismissal against a workman by following the judgment of *Glaxo Laboratories, (supra)*. The Karnataka High Court resolved the difficulty by pointing out that it was not open to the Tribunal to hold that a *prima facie* case has not been made for granting approval u/s 33(2)(b) of the Industrial Disputes Act, 1947. This decision, therefore, is not of relevance for resolving the controversy before me.

22. After having carefully considered the judgments cited at the Bar, I am of the view that the view expressed by the Labour Appellate Tribunal in *Shalimar's case* (supra) stands affirmed by the Supreme Court in *Munchandani's case*, in regard to propositions (iii) and (iv) though the said judgment was not cited before the Supreme Court, nor noticed in *Munchandani's*. Propositions (iii) and (iv) of *Shalimar's case* are relevant for understanding the concept of what is "an act subversive of discipline". As long as the employer keeps himself within the terms of the Standing Order, if the act of misconduct, though occurring outside the industrial establishment, has a rational nexus of impinging upon the industrial relations, then, in my view, the act would be "subversive of discipline on the premises of the establishment" and squarely fall within the definition of misconduct given in Model Standing Order 24(L). Antithetically, a purely personal or private quarrel, outside the establishment, which has nothing to do with the capacity or status of the persons involved, qua workmen, having no deleterious

effect on the industrial relations, would fall outside the scope of Standing Order 24(L), as it could then be legitimately held that such acts would have no tendency to subvert discipline on the premises of the establishment.

23. Judging from this standpoint, I have no hesitation in upholding the reasoning of the Labour Court. The workmen were on strike for a considerable period, its fallout being inevitable hardship to workmen. A section of the work-men developed second thoughts on continuing the strike. This section was led by Moses. Moses, foolhardy that he was, made bold to voice his dissent, at the meeting held on June 3, 1983, and May 29, 1983. As a matter of fact, it was Moses who was instrumental in calling for a second meeting on May 29, 1983, to take a second look at the situation. The essence of democracy is that dissent is not only tolerated but encouraged, and democracy is neither anathema to, not incompatible with, Industrial Relations. Unfortunately, the section of the workmen led by the present petitioner and the petitioner in Writ Petition No. 1312 of 1989, appeared to take the view that their stand of continuing the strike was just and all dissent must be smothered, lest it weaken the solidarity of workmen. Ergo, they lead a section of the like-minded to the residence of Moses in the dead of night, not for beseeching him to give up his thinking nor for preaching the benefits of unison in thoughts or deeds, but to overawe and silence him by sheer muscle-power. They call upon him to open the doors of his house, and upon his declining to do so, break open the front and rear doors. They march into his house, like a band of marauding goons; they assault the lady of the house, the son and daughter-in-law of Moses and also Moses. They pick up Moses bodily, carry him out and throw him on the ground. Then, the petitioner delivers the coup de grace of assault with a cycle chain to cure Moses of his chronic disease of cavil. If this be a conduct of the concerned workmen, viz., (the petitioner and the said C. B. Bidkar) (the petitioner in Writ Petition No. 1312 of 1989), can it be said that this was an assault for a purely personal and private matter unconnected with the industrial relations in the establishment of the first respondent ? Looked at from the point of view of law or common sense which are not sworn enemies - I think that the answer can but be negative.

24. An argument, perhaps out of desperation, was made by the learned advocate for the petitioner that, during the relevant period, since the workmen were already on strike, no act committed by the workmen could have had the tendency to subvert discipline on the premises of the establishment. As held by the Karnataka High Court in Bemco's case (supra), the mere fact that there is an ongoing strike does not confer any immunity upon the workmen from the disciplinary control of the employer. According to this argument, even for a moment, would amount to giving a "rogue's charter" to acts of indiscipline, to borrow the words of the Court of Appeal reiterated by the Supreme Court. In my judgment, the act of assault on Moses, though it took place outside the factory premises, had a direct and rational nexus with the industrial relations between the employer and the workmen in the establishment; it had a direct connection with the contentment or comfort on the men at work and had a direct and

material bearing on the smooth and efficient working of the Company. Consequently, I have no hesitation in accepting the view of the Labour Court that assault on Moses by the petitioner and other workmen amounted to an act subversive of discipline or good behaviour on the premises of the establishment within the meaning of Model Standing Order 24(L). There is no reason to interfere with the impugned order of the Labour Court.

25. In the result, the petition fails, and is hereby dismissed. Rule is discharged. However, there will be no order as to costs.