

**(2000) 06 BOM CK 0112**

**In the Bombay High Court**

**Case No : Writ Petition No. 4483 of 1994**

Peico Electronics and Electricals Ltd.(Now known as Philips  
India Pvt.)

**APPELLANT**

**Vs**

Philips Employee's Union and Others

**RESPONDENT**

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**Date of Decision : 01-06-2000**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2  
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices  
Act, 1971 — Section 28(1)

**Citation :** (2000) 3 ALLMR 285 : (2000) 4 BomCR 347 : (2001) 2 BOMLR 353 :  
(2000) 86 FLR 267 : (2000) 4 MhLj 4

**Hon'ble Judges :** R.J. Kochar, J

**Bench :** Single Bench

**Advocate :** Mr. Mahesh v. Bhatt, Mr. Ashok Gupte and Mr. Rahul Nerlekar,  
instructed by Mr. L.M. Nerlekar, for the Appellant; S.M. Dharap, for the  
Respondent

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**Judgement**

R. J. Kochar, J.—The Petitioner, a Public Limited Company, is aggrieved by an Order dated 28.9.1994 passed by the Industrial Court, Maharashtra at Pune in Complaint (U.L.P.) No. 488 of 1983 filed by the Respondent Union u/s 28(1) read with Items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 declaring that the Petitioner Company had engaged in an unfair labour practice under Item 9 of Schedule IV of the Act by not paying to the concerned employees their wages for the month of July, 1983 and further directing the Company to pay them their wages/salaries for the month of July, 1983.

2. The Respondent Union filed the aforesaid complaint against the Petitioner Company claiming wages for the month of July, 1983 on the ground that the employees were ready and willing to work and they were reporting for work in the factory but they were not provided work and that there was no raw material available in the Company and that it was a deliberate decision of the Petitioner Company that no work should be given to those employees, to deny them wages

for the said period. It was their case that it was a calculated move on the part of the Company to victimise and harass the employees for their allegiance to the Respondent Union. On the other hand it was the case of the Petitioner Company before the Industrial Court that the employees had resorted to an illegal and unjustified strike from 1.7.1983 and therefore they were not entitled to get any wages. The Petitioner Company denied the contention of the Respondent Union that it did not provide any work and raw material to the employees to deprive them of their wages and that there was any deliberate or calculated decision to harass and victimise the employees in any manner. The Petitioner Company has further produced its Production Register, Stock Register and other relevant documents to show that there was sufficient stock of raw materials and that all the machines were absolutely good and in working condition and that there was a large number of orders pending with it to be executed within a stipulated period. It has also specifically pleaded that they had paid full wages to those who reported for work and offered themselves for work in other departments which depended on the back process departments wherein the concerned employees had gone on an illegal strike and therefore there was no work to the subsequent department. In these circumstances it was strongly and vehemently pleaded by the Petitioner Company that their intentions were absolutely clear and they had absolutely no Intention to deprive any employees of their wages and it was further contended that the concerned employees themselves were responsible for their decision not to work and to have resorted to an illegal strike. It is its further case that after getting inside the factory the employees were indulging into all sorts of illegal and indisciplined activities and they did not work at all to become entitled to get reliefs under the standing orders and under the contract of service. It therefore prayed for dismissal of the complaint. Both the parties adduced their respective oral and documentary evidence before the Industrial Court. On the basis of the pleadings and evidence before it, the Industrial Court framed points for determination and recorded its findings in favour of the Respondent Union holding that the employees were entitled to get their wages for the month of July, 1983 and by not making the said payment the Company had engaged in an unfair labour practice under Item 9 of Schedule IV of the Act.

3. I have carefully gone through the whole proceedings and I have also heard both the learned Counsel at length. -Shri Mahesh Bhatt, the learned Counsel for the Petitioner Company has launched a major attack on the learned Member of the Industrial Court by submitting that he had verbatim copied the written arguments submitted by the Respondent Union and that there was absolutely no independent application of mind by the learned Member to the facts and the law in the present case. Shri Bhatt has taken me through the written arguments and also reasoning part of the judgment and has satisfied me from the substantial portion of the reasoning part of the Judgment which distinctly Justified the attack of the learned Counsel. \_ It is clear from the body of the judgment that the Industrial Court has verbatim copied the submissions of the Union without even factually verifying from the pleadings whether the averments or statements were

correct or not. The learned Judge ought not to have done so. He ought to have decided the case independently on the basis of the evidence and material before him after due scrutiny.

4. Shri Bhatt has further submitted on the merits of the case that there was sufficient material on record to conclude that the employees had resorted to an illegal strike in the month of July, 1983 and therefore they were not entitled to any wages for the said period. Shri Bhatt further contended that there was no breach of the terms of service contract and there was no violation of any provision of the standing orders or any settlement as contemplated under Item 9 of Schedule IV of the Act and therefore there was no unfair labour practice engaged in by the Petitioner Company. It was further submitted by Shri Bhatt that the Judgment and Order of the Industrial Court was perverse and was contrary to the pleadings as well as the evidence on record. Shri Bhatt further submitted that there was no positive finding recorded by the Industrial Court whether there was or there was not any strike as contended by the parties. According to Shri Bhatt the employees were bound to perform their part of duties to enter the factory and to work and earn their wages. If the employees merely entered the factory and indulge into various acts of indiscipline and they did not do their work as per the provisions of the standing orders and the Industrial Disputes Act, 1947 the employees are not entitled to receive or get their wages and that the Petitioner Company was not liable to pay any wages to all such employees who did not perform their part of duties to Join the factory to work. He also assailed reasoning of the Industrial Court that the Petitioner Company had no right to deny any wages under the provisions of the Payment of Wages Act as provided under the Standing Orders as the Payment of Wages Act did not apply to any of the employees in view of the wage limit prescribed under the said Act which was crossed by all the employees in the Petitioner Company. He submitted that the logic and reasoning of the learned Judge would lead to ridiculous results.

5. On the other hand Shri Dharap, the learned Advocate for the Respondent-Union wholly supported the Judgment of the Industrial Court. Shri Dharap submitted that the Petitioner Company had failed to prove that the employees had resorted to an illegal and unjustified strike to be deprived of the wages for the month of July, 1983. It was further submitted by Shri Dharap that there was no evidence on record to show that the Petitioner Company had offered work to the employees and that they did not prove the same. According to Shri Dharap all the notices displayed by the Company were vague and of general nature. According to him, mere notices did not prove that the employees had resorted to a strike. Shri Dharap has consistently put forward his case that mere to go on strike could not amount to an illegal strike. He also contended that work was not provided to the employees and no production was shown in the Production Register. According to the learned Advocate, merely because machines were in working conditions it cannot be said that the employees were on strike. Shri Dharap vehemently submitted that a fact of a strike must be proved on the basis

of evidence and the Company has miserably failed to discharge its obligation. The Company has not brought on record even a single ingredient of strike. In his view the principle of no work no wages was not attracted in the present case as the employees were always ready and willing to work but the Company did not provide them with work. Shri Dharap finally contended that the order of the Industrial Court was a well reasoned order and it should not be interfered with in the given circumstances under extra ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

6. My conclusions would depend on my answer to a very crucial question whether the concerned employees had resorted to an illegal strike or whether they did not do their work after entering the factory to become entitled to get wages for the work done under the provisions of the Standing Orders and the Industrial Disputes Act, 1947? If it is found by me that the workers did not do their work and that they were on strike obviously they will not get their wages for the month of July, 1983. From the material on record what comes on the surface is the real hidden or concealed cause of the agitation by the Respondent Union and that is the dismissal of five office-bearers of the Union including its President. The Petitioner Company had dismissed five office-bearers of the Respondent Union summarily without holding any enquiry against them. Shri Bhatt has very vehemently submitted that they were the root cause of the evils spread in the factories as they were indulging into nefarious antilabour, antisocial and terrorist activities in the Company and therefore they were dismissed from employment by following extra ordinary course of dismissing them without any domestic enquiry. According to him, it was an impossibility to hold any enquiry against them as they were terror personified. Shri Bhatt further submitted that all the dismissal orders have been upheld upto the Supreme Court. He, therefore, justified the unceremonious action taken against them as they did not deserve any ceremony. The present agitations in the Company are engineered and instigated by them to create tense situation in the Company. It can reasonably be inferred that all the five office-bearers of the Union were dismissed from 29.6.1983 and immediately thereafter the present agitations were started. Even in the complaint filed by the Union we find a prominent focus on the alleged Illegal dismissal of the five office bearers of the Union. It is also mentioned in the complaint about suspension of 75 employees from the factory and other large scale suspension from employment of the Company. The Union has tried to make out a case of counter attack by the Company. It is averred in the complaint and elsewhere that the management had anticipated that the employees would resort to a strike from 1st July, 1983 to protest against the Company's action of dismissal of five office-bearers of the Union. In anticipation of such a strike according to the Union the Company did not provide work and raw materials to the employees so that the Company could plea that the employees were on strike and therefore no wages could be paid to them. The Union has tried to make out such a case as a counter blast that the Company did not want to run or work the machines and the departments. According to me, such a plea or case

put forward by the Union is extremely far-fetched and cannot be swallowed even by a man of an ordinary and average caliber. According to me, it is the other way around and it does not require more than 5 mlg. common sense to understand that the employees had indeed launched an ? agitation against the extreme action of the Company to dismiss and to throw the five important office-bearers of the Union from the Company most unceremoniously. Anyone who has known the trade union movement and its working would immediately know that the strike or the agitation was to protest against the Company's drastic and daring action of just throwing out the very important office-bearers of the Union. The case of the union that the Company had anticipated the employee's strike and that the employees did not resort to any such strike is totally bogus and it can never be accepted. According to me, the union should have courageously owned such an action of strike and agitations against the drastic action of dismissal of their office-bearers.

7. In foregoing paragraphs I have discarded the theory of the union that the employees had not resorted to any strike and that it was the management of the petitioner Company which did not give work to the employees by providing raw materials etc. and by keeping the machines covered under plastic envelopes. I have said so from the material on record. The first document is the resolution in the meeting of the Managing Committee held on 1.6.1983 whereby the President of the Union was authorised to initiate such industrial action to meet the Companies antilabour move and to take strong action/all steps etc. after condemning and protesting the Companies antilabour policies and its repressive measures against the workmen. The President was also authorised to initiate such strong actions including series of strikes of any duration and/or with different modus operandi/ industrial actions etc. This certainly indicates the union's strong action as determined in the resolution. To implement the said resolution the union had sent a notice dated 12.6.1983 to the Petitioner Company threatening it to face series of strikes and industrial actions if all charge-sheets and orders of suspension issued to various workmen during May/ June, 1983 were not withdrawn immediately. It was specifically mentioned in the said notice that it should be treated as a notice of strike required under the M.R.T.U. & P.U.L.P. Act. Copies of the said notice were forwarded to various authorities as required under the law. The Petitioner Management promptly replied the said strike notice by its letter dated 14.6.1983. It was pointed out to the Union that the said letter could not be treated as a strike notice as no date of the strike was mentioned. It was also mentioned in the reply that the demands were totally unreasonable and unjustified and that the threatened action was merely a cover-up the acts of indiscipline and other misconducts. It further appears from the notice dated 1.7.1983 displayed by the Petitioner Company that the employees had already started their agitations to give effect to its notice dated 12.6.1983 and started massive and concerted act of go-slow and various other acts of gross indiscipline. It is further reflected in the said notice that from 29.6.1983 (after expiry of 14 days from the strike notice) the employees in the

first shift and first general shift struck work, and resorted to agitations such as Gheraoe of officers, shouting slogans, abusing officers in filthy and vulgar language etc. The notice further describes the preceding days situation from afternoon 28.6.1983 and also the next days agitations. By this notice the petitioner Company notified that the Illegal strike and gross misconduct resorted to by the workmen were illegal and they should desists from such acts, warning the union against a severe action. The Respondent Union replied the said notice by its letter dated 2.7.1983. flatly denying the allegations and statements made in the said notice. It is significant to note that neither in the strike notice dated 12.6.1983 nor in the reply dated 2.7.1983 the Union has even whispered that the employees were ready and willing to work and that they were not given work and raw materials from 28.6.1983. Finding no Improvement in the situation the Petitioner Company displayed another notice dated 8.7.1983 describing the prevailing situation that the workmen entered the factory and without doing any work they indulged in various acts of Indiscipline which is verbatim described as under :

1. Assembling inside the factory near the gate office, during working hours.
2. Assembling outside the production building/shop during working hours.
3. Shouting Slogans inside the factory.
4. Abusing Officers in very filthy and vulgar language.
5. Threatening Officers with dire consequences.
6. Going in processions through the factory to cabins of officers, banging on doors, glass panes and partitions of officer"s cabins.
7. Making obscene gesticulations.
8. Loitering Inside the premises of the factory and being away from the place of work.
9. Gheraoing and restraining officers from carrying out their normal lawful duties.

The Union immediately on the next day replied the said notice denying the allegations made by the Company that the workmen did not work at all and they resorted to strike. This was the next earliest opportunity for the union to have specifically mentioned about the fact that the workmen were reporting for work and that the Company was not offering them work and raw materials and that the machines were not allowed to be operated. Except using patent adjectives and adverbs against the management there is hardly anything mentioned in the said reply to accept the union"s case tried to be made out before the Industrial Court. In the last but one paragraph of this reply it is stated in no uncertain language that they had decided strongly and firmly to agitate against the antilabour and antiunion actions whatever sufferings and sacrifices it may cost to them. This language clearly establishes the real intention of the union that it had instigated and led the workmen to a strike. It has reflected the union"s real

motive to lead the workmen to a strike at any cost. Agitation cannot be in the form of reporting for work and pleading that no work was being given to them and no raw material was made available. The next letter dated 10.7.1983 addressed by the Union to the Company is further cryptic and vague. By another notice dated 13.7.1983 the Petitioner Company further placed on record the scene Inside the Company which was reflected in the earlier notice quoted hereinabove. The said notice was again followed by notices dated 15.7.1983, 16.7.1983 and 18.7.1983 describing the situation verbatim prevailing in the factory. The Respondent Union by its letter dated NIL denied the allegations made in the aforesaid notices without mentioning anything about the alleged action of the Company in not giving work and raw material to the workmen who were allegedly ready and willing to work and who were allegedly reporting for work daily in the factory. By another notice dated 22.7.1983 the Petitioner Company placed on record by displaying the said notice on the notice board that the workman had resorted to a strike from 1.7.1983 and the said action was illegal and unjustified putting the Company to severe losses and that no wages would be payable to them for the period of strike. It was clarified that those departments which were working would however be paid their wages. Having found that the Union and the workmen were bent upon continuing their strike and indiscipline on the premises, the petitioner Company approached the Industrial Court by filing a Complaint (U.L.P.) No. 469 of 1983 and prayed for interim orders restraining the union from indulging into the aforesaid illegal activities on the premises of the Company. The Industrial Court by its order dated 21.7.1983 passed an ad interim order restraining the union from indulging into the illegal acts and unfair labour practices alleged by the Company. Meanwhile it appears that the union replied the notice dated 22.7.1983 displayed by the Company, by letter dated 22.7.1983. The contents are more or less the same, bare denials. By a notice dated 23.7.1983 the Petitioner Company pointed out the continued illegal actions of the Union and the workmen on the premises of the Company inspite of restraining orders of the Industrial Court. The Company further repeated the same by its notices dated 24.7.1983 and 25.7.1983. The Union by its reply dated 26.7.1983 merely called the names and did not say anything else. Finally the Industrial Court by its order dated 25.7.1983 confirmed its ad Interim order and restrained the Union from indulging into the acts narrated in the said order.

8. From the aforesaid discussion which I have elaborated a conclusion is inevitable that the workmen had resorted to a strike after giving a notice dated 12.6.1983 pursuant to its resolution dated 1.6.1983. Since the employees merely entered the factory and remained away from the work it cannot be said that they have fulfilled their part of the service contract. As per the standing orders and as per the definitions of "wages" and "workmen" even under the Industrial Disputes Act, 1947 the employees or the workmen are employed to do work and earn their wages after doing their work. No sooner the workmen complete their part of the duty the employer becomes liable to pay their wages for the work done by

the workmen. If the workmen merely entered the factory and did not do work as provided by the employer they are not entitled to any wages as per the service contract. It is mere a common sense to understand that workmen are employed to do work and they are not employed to not to do any work or refuse to do any work on the premises of the Company. The employer becomes liable to pay wages to the workmen for the work done by them. In our case the workmen had resorted to a strike by not doing their work. I am not able to accept their case that they were ready and willing to work but the Petitioner Company did not provide work and raw material to them and therefore they were entitled to wages. There is absolutely no manner of doubt in my mind that the workmen had resorted to a strike at the Instance and instigation of the Respondent Union and they did not accept to do work but they remain away from work and therefore, they were not entitled to get any wages for the whole period from 1.7.1983 as claimed by them in the Complaint following the principle of "No work No wages" laid down by the Supreme Court in the case of Bank of India v. T. S. Kelawala & Ors.,". The Supreme Court has observed that "It is not enough that the employees attend the place of work. They must put in the work allotted to them. It is for the work and not for their mere attendance that the wages/salaries are paid." The Supreme Court has also given its serious thought to the question of wages during the period of a legal strike. It would be useful to quote paragraph 26 of the said Judgment :

"26. The decisions including the one Impugned in this appeal which have taken the view which is either contrary to or inconsistent with the above conclusions, have done so because they have proceeded on certain wrong presumptions. The first error, as we have pointed Out at the outset, is to confuse the question of the legitimacy of the strike as a weapon in the worker"s hands with that of the liability to lose wages for the period of strike. The working class has indisputably earned the right to strike as an industrial action after a long struggle, so much so that the relevant industrial legislation recognises it as their implied right. However, the legislation also circumscribes this right by prescribing conditions under which alone its exercise may become legal. Whereas, therefore, a legal strike may not Invite disciplinary proceedings, an illegal strike may do so. It being a misconduct. However, whether the strike is legal or illegal the workers are liable to lose wages for the period of strike. The liability to lose wages does not either make the strike illegal as a weapon or deprive the workers of it. When workers resort to it, they do so knowing full well its consequences. During the period of strike the contract of employment continues but the workers withhold their labour. Consequently, they cannot expect to be paid."

In no uncertain terms the Supreme Court has laid down the principle that entitlement of wages does not depend on the legality or illegality of strike. The heart of the decision is whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. I cannot explain in any better and simple language than what the Supreme Court has done in paragraph quoted above.

9. The second Judgment on which Shri Bhatt placed his strong reliance was the case of Syndicate Bank & Anr. v. K. Umesh Nayak & Ors.," a celebrated judgment of five Judges of the Supreme Court delivered by Justice P. B. Sawant, who was also a party to the Kelawala's Judgment. The five Judges Bench has endorsed the ratio of the Kelawala in paragraph 27. The said paragraph 27 is reproduced hereinbelow :

"27. We, therefore, hold endorsing the view taken in T. S, Kelawala's as case that the workers are not entitled to wages for the strike period even if the strike is legal. To be entitled to the wages for the strike-period, the strike has to be both legal and justified. Whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Under the Act. the question has to be decided by the industrial adjudicator, it being an industrial dispute within the meaning of the Act."

10. The Industrial Court has committed a grave error of facts as well as law. It has not adverted to the case of the management and the documentary evidence available before it. The learned Member of the Industrial Court has failed to apply his mind to the notices and the letters addressed by the Union. I am not happy with the manner in which the Industrial Court has dealt with the oral evidence of the Company particularly the last witness Shri V. N. Koppikar. He is held not to be trustworthy because he had given all the facts and figures. According to the Industrial Court a witness who comes out with all the facts and figures becomes unworthy of reliance 1 The evidence of Shri Koppikar had remained unchallenged.

11. There is a grave fallacy and a serious error of law committed by the Industrial Court holding that if the employees have crossed the prescribed wage limit of Rs. 1600/- under the Payment of Wages Act, 1936 no deduction of any nature can be made under clause 11 of the Standing Orders. Clause 11(3) is an enabling provision which enables the management to deduct wages in the given circumstances in accordance with the Payment of Wages Act, 1936 in all cases to which they applied. It cannot be inferred that once the Payment of Wages Act ceased to apply the employer has no powers to deduct wages. Such an interpretation would lead to startling results and would definitely create a ridiculous situation viz., if a workman who draws less Rs. 1600/- p.m. his wages can be deducted while a workman who draws more than Rs. 1600/- per month no wages can be deducted. The Industrial Court has totally ignored the definitions given in the standing orders where a workman is defined as "a person employed in the establishment to do manual or technical work .....". As I have already held earlier that wages become payable to a workman when he performs his part of the duty. The employer does not pay the wages as a charity but he becomes liable to pay the wages to the workman who was employed to do the work and who has done such work. We have to construe the provisions of the standing orders altogether along with the provisions of the Industrial Disputes Act, 1947. At the most a workman who offers himself for work and is not given work by the employer he becomes entitled to get his wages for the failure of the

employer to provide such work to him when the workman was ready and willing to perform his part of the duty and he offers himself to do the work if provided for. I agree with the submission of Shri Mahesh Bhatt that the impugned Judgment of the Industrial Court is totally perverse and the same deserve to be quashed and set aside. I hold that the workmen had resorted to strike during the month of July, 1983 and therefore, they were not entitled to any wages for the said period. The Petitioner Company is not liable to pay any wages to the concerned workmen who were on strike and who did not do any work for the month of July, 1983. There is no failure on the part of the Petitioner Company to implement the standing orders, settlement or any agreement as contemplated by Item 9 of Schedule IV of the Act. The Petitioner Company has not engaged in an unfair labour practice within the meaning of Item 9 of Schedule IV of the Act. The complaint filed by the Respondent Union is devoid of any merits and the same is dismissed. The Writ Petition is allowed and Rule is made absolute in terms of prayer clause (a). No order as to costs.

12. Issuance of certified copy of this Judgment and Order is expedited.