
(2010) 12 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 8774 of 2010

Thomson Press Kamgar Sanghatana	APPELLANT
Vs	
Thomson Press (India) Ltd. and Another	RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 10(3), 12, 2(k), 24(1)

Citation : (2011) 3 LLJ 409

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Jane Cox, for the Appellant; C.U. Singh, SC, K.S. Bapat, instructed by Mahesh Shukla, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—Rule made returnable forthwith, by consent.

This writ petition has been filed by a Trade Union registered under the Trade Unions Act, 1926. It represents the workmen employed with the Respondent No. 1-Company. The Petition has been filed to challenge the order dated October 15, 2010 passed by the Industrial Court, Thane in Complaint (ULP) No. 174/2010, allowing the Respondents to resile from the statement made on their behalf by their advocate, that they were not going to remove the plant and machinery from their Airoli establishment. For the sake of convenience, the Petitioner will be referred to as "the Union" and the Respondents will be referred to as "the Company". The facts giving rise to the present Petition are as follows:

2. The Company is engaged in the business of printing and runs Printing Presses all over India. It commenced operations in the Press at Airoli, Navi Mumbai in 2005. About 160 permanent workmen employed in the establishment at Airoli formed the Union on April 30, 2010 and registered it under the provisions of the Trade Unions Act, 1926. The Company was informed about the formation of the Union by a letter dated May 11, 2010. The Union also called upon the Company

not to remove any machinery which was being used in the Airoli Press out of the premises of the establishment. A meeting was also sought by the Union with the officers of the Company in order to discuss several pending grievances of the workers. The Company replied to the letter of the Union and called upon it to prove that the workmen had formed the Union. It also conceded that it was intending to shift the machinery and that it was being done in the best interest of the Company. The Company also disclosed that once the machinery was shifted the employees in the Airoli Unit would be suitably utilized or deployed in either the local Unit or in the Press where the machinery was being shifted. A Charter of Demands was submitted by the Union on May 26, 2010. The demands raised pertained to 30 demands including revision in wages, dearness allowance etc. as well as abolition of contract labour. Since the Union was not called for any discussions, it sent a reminder to the Company on June 5, 2010. According to the Union, the Company did not pay any heed to its demands and, therefore, it filed a complaint on June 1, 2010 alleging that certain unfair labour practices had been committed by the Company under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of the Unfair Labour Practices Act, 1971, (for short "the MRTU & PULP Act") The complaint was registered as Complaint (ULP) No. 148/2010. The Union pleaded that the workers were made to work overtime for at least four hours each day but were not paid wages in consonance with the law. The Union also alleged that the Company had started victimizing the workmen for having joined the Union and for having submitted a Charter of Demands. An injunction was sought against the Company from removing the raw materials, semi finished goods, finished goods and plant and machinery from the factory premises i.e. the Press.

3. The Union then issued a notice to the Company on June 9, 2010 declaring that a strike would be commenced from June 26, 2010 in respect of the Charter of Demands submitted to the Company. One of the active members of the Union was immediately issued a letter transferring him to the Company's Unit at Faridabad. That order was challenged by the Union in Complaint (ULP) No. 182/2010. The Industrial Court refused to stay the transfer order. The Union challenged the order passed in this Court in a writ petition. The Company, withdrew the transfer order and therefore the writ petition was also withdrawn.

4. It appears that the Company was restrained, by the Industrial Court by its order dated June 11, 2010 passed in Complaint (ULP) No. 148/2010, from removing the raw materials, plant and machinery from the factory premises. The Company ultimately responded to the demands submitted by the workmen after becoming aware of this order. The Industrial Court heard the application for interim relief and granted permission to remove raw material, which according to the Company, was required for printing annual general reports pertaining to six companies. It also permitted the Company to remove semi finished goods and permitted the shifting of machinery which was under utilized. The Industrial Court recorded a statement made on behalf of the Company that it would not retrench any of the employees or close down or shift the factory without

following the due process of law. This statement was accepted by the Industrial Court and the application for interim relief was rejected.

5. The strike commenced on June 26, 2010 pursuant to the notice of strike submitted by the Union. The Union filed Complaint (ULP) No. 174/2010 before the Industrial Court, Thane on July 2, 2010. It was alleged that the Company has indulged in unfair labour practices under Items 1(a) and 4 of Schedule II and Items 2, 4, 5, 8, 9 and 10 of Schedule IV of the MRTU & PULP Act. The Union contended that the Company intended to engage fresh hands in place of the striking workmen. It was further pleaded that the Company had removed and was intending to remove raw material, plant and machinery, semi finished goods from the factory premises in order to have the work completed by other workers so as to break the unity of the workmen and stultify the strike called by the Union. No ad-interim relief was granted by the Industrial Court as an undertaking was given by the advocate for the Company that it had no intention to close down the factory or to shift the factory or to retrench the workmen without following the due process of law. A reply was filed by the Company, thereafter, contending that the work in the establishment was being carried out with the help of the nonstriking workmen, supervisors, junior managerial staff etc. as also contract workers who were engaged by the Company much before a strike was called. It was also pleaded that Company could not be restrained from engaging the services of its own workmen from other Units by transferring them to Airoli Unit. The Industrial Court by its order dated July 9, 2010 refused to grant any interim relief, on the basis of the assurance given by the Company, that it had no intention to close down or shift the factory or to retrench the workmen without following the due process of law. The statement of the advocate for the Company in respect of shifting of the machinery was recorded thus:

29. So far as restraining the Respondents from removing any raw materials, plant and machinery, semi finished goods, tools equipments, furniture's and fixtures from the factory premises of the Respondents or from any way selling, mortgaging, alienating or creating any third party right in respect of land, plant and machinery is concerned, the advocate Shri. G.C. Pathak has stated that the Respondents are not going to sell the factory and they will not remove the plant and machinery. Therefore, in view of this statement made before the Court, the complainants are not entitled for any reliefs. The complainants had also made a prayer to restrain the Respondents from recruiting any fresh hands in place of the complainants and it has been stated across the Bar by advocate Shri. G.C. Pathak that they will not recruit the fresh hands but advocate Shri. G.C Pathak has submitted that the workers on strike, cannot restrain the Respondents from bringing the workers from the other unit of theirs to comply with the orders of the customers. Advocate Shri. G.C. Pathak has stated across the Bar that they were not sell land, plant and machinery and factory premises, pending the hearing of the complaint and in the circumstances considering the statements made across the Bar nothing survival and I do not find any unfair labour practices proved by the complainants for grant of interim relief and therefore I

pass the following order.

6. This order was challenged by the Union by preferring a Writ Petition No. 5476/2010. I had disposed of the petition with the following directions:

ORDER

(i) Prima facie the Company is engaging in unfair labour practices under Items 8 and 9 of Schedule IV of the MRTU & PULP Act.

(ii) During the pendency of the Complaint, the Company is restrained from;

(a) recruiting any person whether from the open market or from its own establishments elsewhere in the country in its establishment at Airoli.

(b) transferring raw material, semi finished goods, finished goods, which may be lying in the establishment at Airoli.

(c) removing the plant and machinery from the establishment at Airoli, during the pendency of the strike.

7. Being aggrieved by my order, the Company filed Letters Patent Appeal No. 177/2010. The Division Bench of this Court by its order dated August 9, 2010 has not interfered with my order in respect of the directions contained in ii(a) As regards ii(b), the Court observed that since no prayer had been made before the Industrial Court for restraining the Company from removing the finished goods from factory, the direction was unjustified and, therefore, finished goods were permitted to be removed under the supervision of the Investigating Officer of the Industrial Court. The material which was not owned by the Company but by its customers was to be returned if demands were made by the customers, after seeking permission from the Industrial Court. The application was to be made within two weeks of the order being passed by the Division Bench. As regards the removal of the semi finished goods, the Division Bench has not interfered with my order. The Division Bench then considered the directions in para ii(c) and passed the following order:

7...So far as direction contained in paragraph ii(c) of the order is concerned, according to us in view of the clear statement made before the Industrial Court that the Appellant does not intend to remove any plant or machinery from the establishment, the learned single Judge was perfectly justified in making that order. However, in case the Appellant wants to resile from that statement and wants to transfer some machineries, the Appellant shall be at liberty to approach the Industrial Court for permission to withdraw its statement. The Learned Counsel appearing for the Appellant informs us that his application for review is already pending before the Industrial Court. The Industrial Court shall dispose of that application in accordance with law as expeditiously as possible. In case the issue is not already raised in the Review Application, the Industrial Court shall permit that issue to be raised and decide it in accordance with law. Till the Industrial Court makes any order, the order passed by the learned single Judge

will continue to operate and two weeks after the Industrial Court makes an order, in case the order of the Industrial Court permits the Appellant to remove the machineries.

8. An application for modification of the order passed by the Industrial Court was filed in July 2010 after I had passed my order on July 22, 2010. This application was registered as Review Application (ULP) No. 6/2010. The main prayer of the Company was that the words "plant and machinery" appearing in the order of the Industrial Court in paragraph No. 29 of the judgment and order dated July 9, 2010 should be read as "factory". That application was dismissed by the Industrial Court on September 2, 2010. The Court was of the view that there was no inherent power in the Court to review its own order by reading the word "factory" in place of the words "plant and machinery". The Court observed that by substituting the word "factory" in place of "will not remove the plant and machinery" would amount to amendment of the order and not correction of an error.

9. As the Division Bench of this Court by its order had granted liberty to the Company to request the Industrial Court to permit it to resile from its statement regarding removal of plant and machinery, a fresh application was preferred by the Company on September 18, 2010. The prayers sought in the said application are as follows:

(a) This Hon''ble Court may be pleased to allow the Respondents to withdraw their following statements as recorded in Para No. 29 of the order dated July 9, 2010 passed below Exhibit U-2:

29...the advocate Shri G.C. Pathak has stated that the Respondents are not going to remove the plant and machinery.

(b) This Hon''ble Court be further pleased to allow and permit the Respondent Company to shift/remove the following machines from their Airoli Unit to its Faridabad and Noida Units:

(a) Goss 600 D Web Printing Machine Five Colour Heatset Machine with its supporting equipments and accessories.

(b) Muller, Martin Accoro Binding Line Machine for Finishing Operation with its supporting equipment and accessories.

(c) Muller Martini Saddle Stitching Machine with its supporting equipment and accessories.

(d) Ventura Sewing Machine with its supporting equipment and accessories.

(e) Ventura Sewing Machine with its supporting equipment and accessories.

10. The application was opposed by the Union, mainly on the ground that if the application was allowed, it would mean that the Company would be permitted to remove its machines. It was contended that in my order I had already made

certain observations about the Company being injected from removing the plant and machinery which, according to the Union, were binding on the Industrial Court and, therefore, it should not grant the application of the Company. Besides that it was contended that the aforesaid machines were the very lifeline of the operations in the establishment at Airoli and, therefore, their removal would adversely affect the workers.

11. The Industrial Court by its impugned order dated October 15, 2010 has granted the prayer of a Company and permitted it to withdraw the statement made on its behalf, by its advocate, that it would not remove its plant and machinery from the Airoli Unit. It has further granted permission to the Company to shift the five machines mentioned above out of the premises at Airoli. The Industrial Court accepted the statement made by the Company that only 5 machines out of the 168 machines were being removed as the Company was suffering from huge losses at the Airoli Unit. The Industrial Court observed that it was for the Company to organize its own business and decide which machines should be maintained in its establishments at each place. The Industrial Court observed that the Company was in the process of removing its machinery much prior to the declaration of the strike. The Court also observed that the Company had stated that it would bring back the machines, if necessary, in case the Union succeeds in the complaint and, therefore, the workmen would not be prejudiced if permission to remove the five machines was granted.

12. It appears that the Charter of Demands which had been submitted by the Union has been admitted into conciliation by the Conciliation Officer in respect of all except one demand. The demand which has not been admitted into conciliation pertains to abolition of contract labour.

13. Ms. Cox, the learned advocate for the Union, has argued that the application filed by the Company for permission for withdrawal of its statement and permission to remove certain machines was not maintainable. She submitted that the Division Bench of this Court by its order dated August 9, 2010 had been informed by the Company that a Review Application was pending before the Industrial Court. The Division bench then directed that the Industrial Court could consider whether to permit the Company to resile from its statement and transfer some machines, in accordance with law. The Industrial Court was directed to review and dispose of that application as expeditiously as possible and in accordance with law. Ms. Cox, therefore, submitted that the Division Bench meant that an amendment would have to be sought in the Review Application which was pending, in the event the Company wanted to resile from its statement. According to her, the Company could not have filed a fresh application, as it had done in the present case, for being permitted to withdraw its statement about removal of plant and machinery and further to transfer five machines to their other establishments.

14. This submission of Ms. Cox, in my opinion, is not tenable. A perusal of the order of the Division Bench indicates that the Review Application was to be

disposed of expeditiously and if the issue regarding transfer of machines was not raised in the pending application, the Company was permitted to raise that issue before the Industrial Court for it to decide it in accordance with law. This, in my opinion, will not mean that the Company could only raise that issue by amending the Review Application. Although that course could have been adopted by the Company, it has chosen to file a fresh application which, in my opinion, was permissible in view of the order of the Division Bench. Therefore, the first submission of Ms. Cox is not tenable.

15. Ms. Cox then submitted that because of the statement of the Company, the Industrial Court, while considering the Union's application for interim relief, had not granted any injunction in respect of removal of plant and machinery. She submitted that the Company cannot be permitted to withdraw its statement now. According to her, if the Industrial Court was inclined to permit the statement to be withdrawn, then it ought to have considered the question of granting an injunction in respect of removal of plant and machinery, afresh. Ms. Cox submitted that by permitting the Company to withdraw its statement and further granting permission to remove certain machines, the Industrial Court has, in fact, stultified the object of the strike. She submitted that the very act of removal of machinery results in an unfair labour practice as those machines would be used by workmen in other units of the Company for the printing of material which was being carried out in the Airoli Press prior to the strike, thus, defeating the very purpose of the strike. According to her, Item 8 of Schedule IV of the MRTU & PULP Act must be given a wider connotation so as to include within its sweep the removal of plant and machinery from an establishment where a legal strike is in progress. She submitted that the object or motive to remove the plant and machinery is in fact to break the strike and to use the machines elsewhere to perform the work of the Airoli Press and, therefore, a liberal interpretation must be placed on Item 8 or the rationale of the Act would be defeated. The learned advocate then pointed out that the strike in its inception was in respect of all the demands which were pending consideration. However all the demands, except the one regarding abolition of contract labour have been admitted into conciliation, and therefore the learned advocate submitted that the strike was now confined only to that demand. She then submitted that in view of my order passed on July 22, 2010 the Industrial Court has erred in permitting the Company to withdraw its statement and further allowing the removal of the five machines mentioned in their application.

16. Mr. Singh, the Learned Counsel appearing for the Company, submitted that although a statement was made on behalf of the Company that, the plant and machinery would not be removed or shifted, it is necessary to shift certain machines and, therefore, the Company wants to resile from that statement. He pointed out that the proposal to shift the machines was envisaged in November 2009 itself and quotations for dismantling the machines were obtained and finalized by April 2010. According to him, therefore, the present strike had nothing to do with the removal of the machines and, the Company has rightly

been permitted to resile from its statement. He then pointed out that the letter from the Union dated May 11, 2010 recognized the fact that the machines were being shifted to other locations. According to him, the demands raised by the Union do not include any dispute with regard to shifting of machines. He submitted that it was necessary to shift the machines to Faridabad and other centers since the workload in the Airoli establishment had dropped. Keeping the machines idle would entail heavy depreciation and, therefore, according to Mr. Singh, the Company had decided to shift the machines. He pointed out that although 5 out of 168 machines were being shifted, the Company had already installed substitute machines in the Airoli factory, so that the work in the Airoli factory would not be hampered once the strike was called off. He then submitted that, assuming without admitting, the strike may have been legal in its inception, its continuation cannot be said to be legal after the demands were admitted in conciliation. On September 18, 2010 (sic) all the parties were informed by letter dated November 10, 2010 (sic) of this fact by the Conciliation Officer. Mr. Singh submitted that while on a strike, the workers can only withhold their own labour and cannot prevent those workmen who wished to work. The removal of the machines, according to him, was not as a result of the strike; nor was it a ruse for breaking the strike. He pointed out that it was necessary to move the machines to Faridabad and other centers only in order to cut the losses which have been incurred by the Company. He submitted that the Company is the best judge of how to utilize its machines to their optimum capacity and to organize its business. The Court cannot direct it to conduct its business with a particular machine in a particular manner, urged the Learned Counsel. Therefore, the question of granting any injunction against the Company does not arise. Mr. Singh further submitted that the order passed by me on July 22, 2010 has merged in the order passed by the Division Bench in the Letters Patent Appeal and, therefore, the Union cannot rely on any observations made by me in this order.

17. A perusal of the order passed by the Division Bench indicates that my finding with respect to the raw material, finished goods, semi finished goods has been set aside. The finding with respect to the removal of plant and machinery is confirmed in view of the statement made on behalf of the Company before the Industrial Court. Although the Division Bench has permitted the Industrial Court to consider whether the Company could be permitted to resile from its statement and remove certain machines, it has not set aside my observations with respect to removal of machinery from the establishment at Airoli.

18. In the BLACK'S LAW DICTIONARY, the word "resile" has been defined as:

- (1) to retract (a statement, allegation, etc.);
- (2) to draw back (from an agreement, contract, etc.);
- (3) to return to one's original position.

19. In the Concise Oxford English Dictionary, Indian Edition, the word "renege"

has been defined as:

(1) to go back on a promise, undertaking or contract (archaic) renounce or abandon;

(2) another term for revoke (in sense 2)

20. The word "renege" means to fail to keep a promise or commitment; to back out of a deal in the BLACK'S LAW DICTIONARY.

21. In my opinion, no new facts have been placed on record by the Company for it to be permitted to resile from its statement. The Company had contended in its earlier affidavit in reply filed in Writ Petition No. 5476/2010 that machines have always been transferred from one establishment of the Company to another over several years, even prior to the strike. It was also contended that the Company did not intend to shift all the machines except the five named i.e. the Goss Web Printing Machine, Stitcher, Sewing Machine and Accoro Perfect Binding Machine. The Company had also pointed out that alternate or substitute machines have already been shifted to Airoli from its up country establishments and, therefore, work would be available to the workmen regardless of the shifting or removal of these machines which were of high value. The same reasons are mentioned in the application filed by the Company before the Industrial Court for permission to withdraw its statement.

22. The only reason for the Industrial Court to have accepted the Company's contention is that:

...The Company has been doing the business of printing and it cannot be restrained from removing the machinery, if the need arises and the Company cannot be kept bound continuously because it is the right of the employer to organize his business when need arises and it is the function of the management to direct a particular machine to be used and, therefore, the statement, which was made, requires to be followed to be withdrawn and hence, so far as the first prayer in this application is concerned, the same is allowed."

23. The reason for permitting the Company to resile from the statement made is, in my opinion, not credible or acceptable, especially in view of the fact that there is a pending strike which, prima facie, is legal. The Industrial Court has accepted the statement made in paragraph 11 of the application made by the company that, if the machines are required, they will be brought back and new machines will also be brought into the Airoli Press. It is difficult to accept such a statement made on behalf of the Company. A statement was made by it earlier, stating that it will not remove plant and machinery. It has filed the present application to resile from that statement. By allowing the application, the Industrial Court has permitted the Company to renege on its earlier statement and not merely to resile. A solemn promise was made on behalf of the Company which the Industrial Court accepted and, therefore, did not grant an injunction regarding removal of plant and machinery. Now it is not improbable that the Company

would again seek to renege from the statement about bringing back the machinery or new machines, once the strike is withdrawn. Therefore, it is difficult to accept this statement made on behalf of the Company. Once the Company is not permitted to retract from the statement, the question of allowing it to remove any machinery does not arise.

24. Significantly the initial application which was filed by the Company after my order was passed was for a modification of the words used in the order i.e. substitution of the word "factory" for the word "plant & machinery" in the statement made by the advocate for the Company. Therefore, even at that stage, the Company did not think it necessary to resile from its statement or abandon its earlier course of action. The Industrial Court has observed that the Company was justified in its action of seeking the removal of the plant and machinery because it had produced various documents on record to show that the removal of the machinery was in progress much prior to the strike. It may be true that it was proposed to remove the machines prior to the declaration of the strike. However, that by itself cannot mean that the Company should be permitted to renege on its statement. It was made on behalf of the Company, knowing full well its implications on the process of removing the machines which allegedly commenced prior to the strike. Unless some significant or drastic change has occurred after the Industrial Court accepted the statement of the Company and was led to believe that no injunction was necessary to restrain the Company from removing the plant and machinery, the Company cannot be allowed to "resile" from its earlier statement as in fact it is reneging on it.

25. While deciding the application filed by the Company, the Industrial Court has not considered the impact of the application on the injunction sought by the Union by way of interim relief pending its complaint. Interim relief is normally granted in furtherance of the final relief which could be granted to a party. It is to be granted in order to ensure that the specific cause of action in a matter is not frustrated by any act of the opposite party pending the hearing of the proceedings. The unilateral act of a party during the pendency of the proceedings should not frustrate the proceedings or render them in fructuous. In my opinion, if the Company is not restrained from removing the machinery, the strike would be frustrated. Furthermore, the statement made on behalf of the Company and recorded by the Industrial Court was a composite one. The Company had stated that it had no intention to sell land, plant and machinery and factory premises, pending the hearing of the complaint. The Company has not stated with any clarity or unambiguity in the application filed by it whether it wants to resile from the entire statement as recorded by the Industrial Court or only a part.

26. Mr. Singh has submitted that it is the Company which would be the best judge of how to organize its business and no Court can direct the Company to conduct its business in a particular manner. There is no doubt that it is always the prerogative of the Company to decide how to utilize its machinery. This would be true in a normal situation. However, when there is a strike in an

establishment, the Company cannot be permitted to frustrate that strike by removing the machinery. An injunction would have to follow if the strike is prima facie legal, as in this case. Where a legal strike is in progress, in my opinion, the Court cannot stultify the result of such cessation of work resorted to by the workers by permitting the Company to remove its plant and machinery. That would in effect make the strike a futile weapon. Although removal of machinery during the pendency of a legal strike is not enumerated as an unfair labour practice, in my view, Item 8 of Schedule IV of the MRTU & PULP Act would take into its ambit such an unfair labour practice. If the machines are permitted to be shifted elsewhere, the Company could always get the work, done on these machines at a new site. The machines could then be covertly used by workers employed in other Presses of the Company for printing the same products as were being printed in the Airoli Unit. Prima facie, this would be an unfair labour practice under Item 8 of Schedule IV of the MRTU & PULP Act.

27. The very purpose of declaring a strike is to ensure that the demands of the workers are met. Although most of the demands are admitted in conciliation, one demand i.e. the abolition of contract labour still remains. It is true that this demand cannot be considered under the Industrial Disputes Act and the workers may have to approach the appropriate forum under another legislation. However, abolition of contract labour would still constitute an industrial dispute, as defined in Section 2(k) of the Industrial Disputes Act. Prima facie, the strike which commenced continues to be legal in respect of this demand, although the other demands have been admitted in conciliation. Section 24 of the MRTU & PULP Act deals with what constitutes an illegal strike. Clause (c) of Sub-section (1) provides that an "illegal strike" which is commenced or continued during the pendency of conciliation proceedings under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of matters covered by the notice of strike. Abolition of contract labour is a matter covered by the notice of strike. The strike which is in progress has been declared pursuant to the notice of strike. Therefore, the strike is in respect of a matter covered by the notice of strike and cannot be termed, prima facie, as an illegal strike. Neither in its commencement nor its continuation today can it be considered to be an illegal strike, prima facie.

28. It has been argued by Mr. Singh that the continuation of the strike would certainly be illegal as the demands raised by the Union have been admitted into conciliation. According to him, therefore, the Company must be permitted to retract from its earlier statement of maintaining the plant and machinery in the same condition at Airoli. In the case of Delhi Administration, Delhi Vs. Workmen of Edward Keventers and Another, , the Supreme Court considered the scope of the provisions of Section 10(1) and Section 10(3) of the Industrial Disputes Act, 1947, (for short "the I.D. Act") The Court held that two conditions were necessary for the applicability of the provisions of Section 10(3) of the I.D. Act; there must be an industrial dispute existing and the existing dispute should have been referred for adjudication. The Court has observed that when the industrial

disputes are referred u/s 10(1) of the I.D. Act for adjudication, a prohibitory order for the continuance of a strike can be issued u/s 10(3) of the I.D. Act. This is because the power to prohibit a strike or a lock out comes into play only when the dispute has been made a subject matter of a Reference u/s 10(1) of the I.D. Act. The Court, therefore, ruled that the reference of a dispute and prohibition of a strike in respect of other demands which are not referred is impermissible. Thus, the provisions of Section 10(3) of the I.D. Act operate only when the dispute in respect of the strike is covered by the reference made u/s 10(1) of the I.D. Act and not otherwise. Ms. Cox, the learned advocate appearing for the Union, submitted that the provisions of Section 24(1)(c) of the MRTU & PULP Act in fact make it abundantly clear that only when such matters, as are covered by the notice of strike, are admitted into conciliation that a strike could be declared as illegal. She submitted, therefore, that when the Supreme Court in the case of a more stringent provision of a law, as Section 10(3) of the I.D. Act, has interpreted it to mean that it would be effective only when "such" disputes as are covered by the strike notice are referred, the same interpretation must be placed on the provisions of the Section 24(1)(c) of the MRTU & PULP Act. This submission of Ms. Cox is correct. In the present case, the strike commenced because 30 demands which were raised by the Union were not considered by the Company. 29 of those demands have been admitted into conciliation. However, the demand in respect of abolition of contract labour is not covered by the conciliation proceedings, probably because such a demand cannot be considered by the Conciliation Officer acting u/s 12 of the I.D. Act. Thus, the continuation of the strike today cannot be said to be illegal, *prima facie*.

29. Mr. Singh has brought to my notice the decision of a Constitution Bench of the Supreme Court in the case of *Syndicate Bank and another Vs. K. Umesh Nayak*, , to buttress his argument that the Union has acted irresponsibly while declaring a strike. The Court has observed as under at pp. 849 and 850 of LLJ:

9. The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is abuse by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, "irritation strike" or staying at work but deliberately doing everything wrong, "running-sore strike", i.e., disobeying the lawful orders, sit-down, stay-in and lie-down strike etc. etc. The cessation or stoppage of work whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lockout and has also provided a machinery for peaceful investigation, settlement, arbitration and

adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and Regulations many times, provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lockout as a direct action is *prima facie* unjustified. This is, particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal.

The question whether a strike or lockout is legal or illegal does not present much difficulty for resolution since all that is required to be examined to answer the question is whether there has been a breach of the relevant provisions. However, whether the action is justified or unjustified has to be examined by taking into consideration various factors some of which are indicated earlier. In almost all such cases, the prominent question that arises is whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lockout is not to be resorted to because the party concerned has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of the rule of "might is right". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the Section of the society which can well await the resolution of the dispute by the machinery provided for the same. The strike or lockout as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilized to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the Act places additional restrictions on strikes and lockouts in public utility services.

With the emergence of the organized labour, particularly in public undertakings and public utility services, the old balance of economic power between the management and the workmen has undergone a qualitative change in such undertakings. Today, the organized labour in these institutions has acquired even the power of holding the society at large to ransom, by withholding labour and thereby compelling the managements to give in on their demands whether reasonable or unreasonable. What is forgotten many times, is that as against the employment and the service conditions available to the organized labour in these undertakings, there are millions who are either unemployed, underemployed or employed on less than statutorily minimum remuneration. The employment that workmen get and the profits that the employers earn are both generated by the utilization of the resources of the society in one form or the other whether it is

land, water, electricity or money which flows either as share capital, loans from financial institutions or subsidies and exemptions from the Governments. The resources are to be used for the wellbeing of all by generating more employment and production and ensuring equitable distribution. They are not meant to be used for providing employment, better service conditions and profits only for some. In this task, both the capital and the labour are to act as the trustees of the said resources on behalf of the society and use them as such. They are not to be wasted or frittered away by strikes and lockouts. Every dispute between the employer and the employee has, therefore, to take into consideration the third dimension, viz., the interests of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer or the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect. This is true of the action in both public and private sector. But more imperatively so in the public sector. The management in the public sector is not the capitalist and the labour an exploited lot. Both are paid employees and owe their existence to the direct investment of public funds. Both are expected to represent public interests directly and have to promote them.

30. These observations of the Supreme Court must be read in the context of the matter which arose before the Court. The question which fell for consideration before the Court was whether workers who proceed on a legal and justified strike in a public utility service, such as a Bank, would be entitled for wages for the period of the strike. The observations cannot be torn out of context and be read to mean that the workers' right to strike can be stultified by orders passed by the Courts. The Constitution Bench has recognized that a strike is resorted to by the labour to compel their employer to see the justness of the demand. Stringent restrictions on strikes and lock outs are in place under the MRTU & PULP Act as well as the I.D. Act. The Union in the present case has resorted to a strike because their demands were not met, after giving the mandatory notice. Mr. Singh's contention that the strike was not justifiable is not a matter which falls within the ambit of the MRTU & PULP Act. In any event, the employer has not bothered to approach the Court for a declaration that the strike commenced by the workers under the banner of the Union is illegal. It must be borne in mind that the complaint has been filed by the Union alleging that the Company is indulging in or attempting to indulge in unfair labour practices under several Items including under Item 8 of Schedule IV of the MRTU & PULP Act. As I have already noted that Item 8 must be interpreted liberally and while doing so, the Court must consider the necessity to grant interim relief in furtherance of the pending complaint, as held by a learned single Judge of this Court, as he then was (SRIKRISHNA J.), in the case of Dalal Engineering Pvt. Ltd. Vs. Ramrao Bhaurao Sawant and others, .

31. In such circumstances, in my opinion, the Industrial Court has erred in allowing the Company to resile from its statement made merely because of the

high value of the machines. The fact that the Company would incur great losses and hardships is not a ground to permit the Company to resile from its statement without granting an injunction to the workmen. When the statement was made, the Company was aware that the removal of the machinery especially the five machines mentioned above was in the pipeline, as submitted by Mr. Singh. Despite this, the Company chose to make the statement and it cannot be permitted to renege from it now. The fact that the Company is incurring huge losses or it wants to reorganize its business in a better manner cannot lead to the conclusion that it should be permitted to resile from its statement as and when "the need arises" or it feels it necessary to do so. An injunction has not been granted by the Industrial Court only because of the statement made by the Company. The very purpose of the strike would be defeated if the Company is permitted to remove the machinery. As I have already observed, it would be futile to expect workmen to proceed on a strike and not cause financial embarrassment and economic drain on the employer. The strike is a means to ensure that the employer would negotiate with the workers and accede to their demands. The strike, though not a fundamental right, is a tool whereby the workers can withhold their labour so that the employer sees reason and the justness of their demands. Permitting the Company to resile from its statement of not removing plant and machinery and to allow it to remove five machines would mean that the interim relief sought by the Union in respect of removal of plant and machinery has been rejected without hearing the parties on that count. The considerations which the Court must bear in mind while deciding whether to grant an injunction are different from those while deliberating on whether the Company should be permitted to retract its statement. The Industrial Court has not considered this aspect of the matter at all while granting the relief to the Company.

32. In my opinion, therefore, the order of the Industrial Court is incorrect and must be set aside. Accordingly, the impugned order dated October 15, 2010 passed by the Industrial Court, Thane in Complaint (ULP) No. 174/2010 is set aside.

33. The Writ Petition is allowed.

34. Rule made absolute.

35. No orders as to costs.