

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6446 OF 2015

Transport and Dock Workers Union
A trade union registered under the
Trade Unions Act, 1926, having its
office at P.D. Mello Bhavan,
Carnac Bunder, Mumbai-400 038

.....Petitioner

V/s.

M/s. Shree Sadguru Krupa Freight Services
having its office at Sonari,
Post JNPT Township, Taluka-Uran
District-Raigad-400 707

.....Respondent

** **

Mr. Sushil Mahadeshwar a/w. Ms. Ranjana Todankar, Advocate for the
petitioner.

Mr. A.V. Bukhari, Senior Counsel a/w. Mr. V.K. Wasnik and Mr. B.D.
Birajdar, Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

14th August, 2015.

JUDGMENT :-

1). The two orders impugned in this petition are, the order dated 25th
March, 2015 passed on Exhibit-U-3 by the Labour Court in Reference
(ULP) No. 1 of 2015 and the order dated 20th June, 2015 of the Industrial

Tribunal on Revision Application (ULP) No. 17 of 2015. By Exhibit-U-3 the petitioner had sought rejection of the Reference contending that the same is not maintainable. The Labour Court dismissed the application and the Industrial Tribunal has confirmed the order of dismissal by rejecting the revision.

2). The brief factual background of the petition is that, the respondent employer filed, on 12th February, 2015, Complaint (ULP) No. 34 of 2015 before the Industrial Tribunal alleging unfair labour practice under Item-1 of Schedule-III of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, ("MRTU & PULP Act" for short) and, *inter-alia*, sought a declaration that the strike commenced and continued from 25th January, 2015 by the petitioner is illegal. It had moved an application for interim relief which was dismissed. The review sought of the order was also not successful. Thereupon, the respondent, on 7th March, 2015 filed Reference Application (ULP) No.1 of 2015 before the Labour Court, Mahad under Section 25 of the MRTU & PULP Act for a declaration that the strike commenced and continued by the petitioner is illegal under Section 24(1) (a) of the MRTU & PULP Act.

3). On 10th March, 2015 the petitioner vide Exhibit-U3 raised a preliminary objection to the Reference contending that the Labour Court, Mahad has no jurisdiction to entertain and try the Reference before it

since the Industrial Tribunal, Thane was already seized of the matter. The Industrial Tribunal has also exercised its jurisdiction and expressed its *prima-facie* view that the strike is not illegal. Therefore, no resort could be made by the respondent to Section 25 of the MRTU & PULP Act. The Labour Court, by its order dated 25th March, 2015 rejected the preliminary objection and held that, it has jurisdiction to entertain and decide the Reference made to it.

4). The Labour Court, by the impugned order, has held that the power of declaration of illegal strike under Section 25 of the MRTU & PULP Act vests only with the Labour Court and the declaration made by the Labour Court in the Reference application in respect of the strike or lockout is binding and must be followed in any other proceedings under the MRTU & PULP Act. The Industrial Tribunal has limited jurisdiction to decide the complaint of unfair labour practice and does not have adjudicatory jurisdiction of justification and adequacy of strike. Thus the jurisdiction of the Industrial Tribunal is to entertain and decide the complaint of unfair labour practice in respect of the illegal strike but the Labour Court has jurisdiction to declare the strike or lockout as illegal. The Labour Court also observed that subject matters of the two proceedings before the Labour Court and the Industrial Tribunal being different, the bar under Section 59 of the MRTU and PULP Act, is not applicable.

5). The provisions of the MRTU & PULP Act, resorted to by the

respondent while filing complaint before the Industrial Tribunal and the Reference before the Labour Court i.e. Item-I of Schedule-III and Section 25 of the MRTU & PULP Act read as follows :-

SCHEDULE-III
Unfair Labour Practices on the part of Trade Unions

“1. To advice or actively support or instigate any strike deemed to be illegal under this Act.”

“25. Reference of Labour Court for declaration whether strike or lock-out is illegal :-

(1)Where the employees in any undertaking have proposed to go on strike or have commenced a strike, the State Government or the employer of the undertaking may make a reference to the Labour Court for a declaration that such strike is illegal.

(2)Where the employer of any undertaking has proposed a lock-out or has commenced a lock-out, the State Government or the recognised union or, where there is no recognised union, any other union of the employees in the undertaking may make a reference to the Labour Court for a declaration whether such lock-out will be illegal.

Explanation-For the purposes of this section, recognised union includes a representative union under the Bombay Act.

(3) No declaration shall be made under this section, save in the open Court.

(4) The declaration made under this section, shall be recognised as binding, and shall be followed in all proceeding under this Act.

(5) Where any strike or lock-out declared to be illegal under this section is withdrawn within forty-eight hours of such declaration, such strike or lock-out shall not, for the purposes of this Act, be deemed to be illegal under this Act.”

. It would also be convenient to note Section 59 of the MRTU & PULP Act.

“59. Bar of proceedings under Bombay or Central Act :-

If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertain by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act.”

5). Mr. Mahadeshwar, the learned Advocate appearing for the petitioner, vehemently submits that by passing the impugned orders, the Courts below have infact disregarded the decision of Division Bench of this Court in **Maharashtra General Kamgar Union and Ors. V/s. Balkrishna Pen Pvt. Ltd and anr. reported in 1987 (3) Bombay**

Case Reporter page 425. He argues that, by the decision cited, this Court has held that the Industrial Tribunal and the Labour Court do not have exclusive jurisdiction to decide whether any strike is legal or illegal. According to him, the decision lays down that after coming to the *prima-facie* view, that the strike is legal, the second stage for the Industrial Tribunal will be to decide the legality of the strike and if it comes to the conclusion that the strike is legal, it will proceed to disposed off the complaint. He therefore argues that, after the Industrial Tribunal expressed its *prima-facie* view as regards the legality of the strike, the respondent could not have approached the Labour Court by resorting to Section 25 of the MRTU & PULP Act. He further submits that the decision of the Division Bench has been followed with approval by another Division Bench of this Court in **Modistone Ltd V/s. Modistone Employees Union and Ors. reported in 2001 (89) FLR page 867.**

6). Mr. Bukhari, the learned Senior Counsel appearing for the respondent submits in reply that, Section 25 read with Section 24 of the MRTU & PULP Act confers exclusive jurisdiction upon the Labour Court to decide the Reference for declaration of the strike or lockout illegal. The power of the Industrial Tribunal under Section 5(d) read with Sections 28 and 30 of the MRTU & PULP Act is for declaration of unfair labour practices under various items including those relating to illegal strikes

and giving consequent direction to cease to or desist from indulging in such acts/omissions. Thus, the objects and purposes of the provisions conferring powers on the Labour Court and the Industrial Tribunal are distinct and different. He also submits that the, *prima-facie*, opinion expressed by the Industrial Tribunal while rejecting the respondent's application for interim relief, cannot be said to be the deciding factor and that the complaint made by the respondent alleging unfair labour practices by the respondent is still pending for final consideration of the Court.

7). In view of the rival submissions, the questions that arise for consideration of the Court are, (i) whether the Labour Court has exclusive jurisdiction to declare strike or lockout as illegal, (ii) whether the power vesting in the Labour Court under Section 25 of the MRTU & PULP Act and the power vesting in the Industrial Tribunal under Section 28 read with Item-1 of Schedule-III of the MRTU & PULP Act, are distinct and different resulting into jurisdiction of the two Courts, and (iii) whether exercise of jurisdiction by the Industrial Tribunal under Section 28 read with Item-1 of Schedule-III of the MRTU & PULP Act would bar or prevent the Labour Court from exercising its jurisdiction under Section 25 of the MRTU and PULP Act.

8). Bare reading of Item-1 of Schedule-III and Section 25(1) of the MRTU & PULP Act is sufficient to indicate that the power to declare a

strike or lockout illegal vests exclusively with the Labour Court. Section 25(1) specifically provides for making of a Reference to the Labour Court for “a declaration” that such strike is illegal. Thus, the reference thereunder can be made for such declaration, simplicitor, even without seeking any consequential relief and on the basis of such declaration any other relief or action available under the MRTU & PULP Act can be sought. This view is fortified by sub-section 4 of Section 25 of the Act, whereunder the declaration made shall be recognised as binding and shall be followed in all proceedings under the Act. Item-1 Schedule-III treats certain acts relating to illegal strike as unfair labour practice. The acts described are “to advise or actively support or instigate a strike deemed to be illegal under the Act”. The declaration therein is of unfair labour practice consequent upon a deemed illegal strike. The provision would permit the Industrial Tribunal to give a finding, whether the strike is “deemed to be illegal” and thereafter give declaration of the specific unfair labour practice. It cannot give general declaration of legality of strike *dehors* the acts specified.

9). The Balkrishna Pen's case before the Division Bench of this Court involved order of the Industrial Tribunal passed under the MRTU & PULP Act. By the impugned order, the Industrial Tribunal had allowed the complaint filed by the employer and declared that the strike commenced by the employees was illegal and that some of the employees

had committed unfair labour practices under Schedule-III of the MRTU & PULP Act. The challenge to the decision was on the ground that, the Industrial Tribunal while exercising its jurisdiction under Section 30 of the MRTU & PULP Act could not have decided the question of deemed illegality of the strike under the Act before there was such a declaration by the Labour Court under Section 25 of the Act. Thus, the petition had infact proceeded on the premise of exclusive jurisdiction of the Labour Court in declaring strike as illegal strike. The question posed by the Division Bench for its consideration in the petition was, “Whether the Industrial Tribunal by itself could decide, Whether the strike is deemed to be illegal under the Act”. In the complaint filed under Section 30 for declaration that the employees had committed unfair labour practice amongst others under Item-1 of Schedule-III of the MRTU & PULP Act, the Division Bench after considering the purpose and provisions of the MRTU & PULP Act and the citations before it, held that, the Industrial Tribunal could decide the question of legality of the strike by following the same procedure as that to be followed by the Labour Court under Section 25 of the Act and it was not necessary for the Industrial Tribunal to wait until such a declaration is given by the Labour Court. The reasons to support the decision given by the Division Bench read as follows :-

“ . The Act thus casts a duty on the Industrial court to decide complaints with regard to all other unfair labour practices including the one described in item 1 of Schedule III which reads

as follows :-

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

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

to investigate the complaint under Section 30 of the Act. The said power is implicit in it and should be read and deemed to have been vested in the Court under section 30 read with section 5(d) and item 1 of Schedule-III and item 6 of Schedule-II.”

. Later at para-14, the Division Bench outlined broadly the procedure to be followed by the Courts in such cases in following words :-

“If there is an application for interim relief the Court will have to dispose it of on the basis of its prima-facie view of the matter. The second stage will be the stage when the Court records its finding whether the strike or the lock-out is legal or illegal. If it comes to the conclusion that it is legal, it will proceed to dispose of the complaints forthwith, accordingly. However where the conclusion is that it is illegal, it should make the declaration in the open Court as required by sub-section (3) of Section 25 and give 48 hours time to the party concerned to withdraw it as required by sub-section (5) of the said section. It is only if the strike or the lock-out is not withdrawn during the said period, that it should proceed to decide whether it is “deemed to be illegal under the Act” as required by item 1 of Schedule-III and item 6 of Schedule-II as the case may be. The last stage is the stage where the Court proceeds to find out whether, in the strike, there was advice, active support or instigation and by whom, and in the case of lock-out whether it was proposed or continued. If this procedure is followed, there should ordinarily be no difficulty in trying

the complaints.”

10). The second decision cited by Mr. Mahadeshwar is also of the Division Bench of this Court, wherein the question was of justifiability of a lockout and the jurisdiction of the Industrial Tribunal in considering the same under Item-9 of Schedule-IV of the MRTU & PULP Act. The Division Bench rejected the similar argument that the unfair labour practice under Item-6 of Schedule-II is attracted only after the Labour Court on Reference gives a declaration under Section 25 that the lockout is deemed to be illegal. Relying upon its earlier decision in *Balkrishna Penn's* case and the decisions cited before the Division Bench deciding *Balkrishna Pen's* case, it was held that it is not necessary for the Industrial Tribunal to await final declaration in respect of deemed illegality from the Labour Court under Section 25. Such a procedure of approaching two Courts is not at all conducive for industrial peace and for early settlement of the disputes and it would not advance the object of the legislature in enactment of the MRTU & PULP Act.

11). The third decision cited by Mr. Mahadeshwar is of learned Single Judge of our High Court in **The Chandrapur Zilla Cement Kamgar Sangh V/s. Manikgarh Cement and Ors. reported in 1988 (1) Bom.C.R. 72**. In that case, an argument had been advanced that if both, i.e. Industrial Tribunal and the Labour Court are allowed to

consider the issue of legality of the strike, it would lead to two conflicting decisions by two different authorities, which cannot be the intention of the Legislature. The argument was rejected by the learned Single Judge in following words :-

“In my opinion, there is no substance in this submission. The State Industrial Court has got to, prima-facie, find out as to whether the strike is legal or not. In the absence of any declaration by the Labour Court under section 25 of the Act, the State Industrial Court cannot take it for granted that the strike is legal. Whether to grant interim relief or not is a discretion of the Court and the same has to be exercised judicially. While exercising the discretion the Court has got to examine the complaint on merits in order to find out, prima-facie, whether there is substance in the complaint. If the argument of Mr. Khan is accepted and taken to its logical end, it would mean that the State Industrial Court has no jurisdiction even to examine the case on merits prima-facie. Such an approach, in my opinion, would be contrary to all the well-known principles governing the issue of granting interim relief.”

12). On careful reading of the decisions cited by Mr. Mahadeshwar and the statement of law made therein, it becomes clear that, it has not been held by any of the decisions that the power of the Labour Court under Section 25 of the Act to declare strike/lockout as illegal is not the exclusive jurisdiction. Infact, the decisions have proceeded on the

premise that, jurisdiction of the Labour Court is exclusive jurisdiction and it has further been held that merely because the Labour court has exclusive jurisdiction under Section 25 of the MRTU Act, to give a declaration that a strike/lockout is illegal, the Industrial Tribunal is not prevented from deciding the question, whether the strike/lockout is illegal. In the circumstances, I find no merit in the submission of Mr. Mahadeshwar that once having invoked the jurisdiction of the Industrial Tribunal under Item-1 of Schedule-III of the MRTU & PULP Act, the respondent could not have approached the Labour Court with Reference under Section 25 of the Act and the Reference filed is not maintainable. Perusal of the order of the Labour Court on the question of maintainability raised by the petitioner and the order of the Industrial Tribunal in deciding the Revision Application therefrom shows that, the Courts below have correctly appreciated the position in law to hold that the Reference before the Labour Court is maintainable since the subject matter of the two proceedings are distinct and different. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)