

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9196 OF 2014**

Engineering Workers Association
Vs
1.Radium Creation Limited and
Ors.
Petitioner
.. Respondents

Ms. Nayna D. Buch a/w Mr. Shailesh K. More, Advocate for
Petitioner.

Mr.P.N.Anaokar a/w Rahul D Oak, Advocate for Respondents no.1
to 3.

CORAM : R.G.KETKAR,J.
DATE : 03/02/2015

PC:

1. Heard Ms. Nayna Buch, learned counsel for the petitioner and Mr.P.N.Anaokar, learned counsel for respondents no. 1 to 3 at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner-Union has challenged the Judgment and order dated 24.7.2014 passed by the learned Member, Industrial Court, Thane (for short, "Tribunal"), below Exhibit U-2 in Complaint (ULP) No.194 of 2014. By that order, the Tribunal rejected the application filed by the petitioner praying for direction to the respondents not to give effect of lock-out and allow the workers, whose names are mentioned in the notice of suspension of operation to resume their normal duties and pay their wages in view of the undertaking of the petitioner.

3. The petitioner has instituted complaint of unfair labour

practices under section 28 read with Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short, "Act"). The petitioner prayed for the following reliefs in the complaint:

"(a) that this Hon'ble Court may be pleased to hold and declare that respondent has engaged in the Act of Unfair Labour Practice under Item 6 of Schedule II and item 9 and 10 of Schedule IV of the MRTU and PULP Act.

(b) To quash and set aside notice dated 05/07/2014 issued by the respondents to the workmen pertaining to the alleged illegal lock-out.

(c) To direct the respondents to lift the lock-out and allow the workmen whose names are mentioned in suspension of operation notice to resume their normal duties and provide them work and pay their wages regularly in view of the undertaking of the complainant.

(d) pending the hearing and final disposal of the complainant, the Hon'ble Court be pleased to issue interim/ad-interim injunction in terms of prayer clause (b) and (c).

(e) Any other relief this Hon'ble Court may deem fit and proper in favour of complainant.

(f) Costs and Compensation."

4. During the pendency of the complaint, the petitioner took out application-Exhibit U-2 and claimed the following relief:

"(a) direct the respondents not to give effect to the lock-out and allow the workmen whose names are mentioned in suspension of operation notice to resume their normal duties and provide them work and pay their wages regularly in view of the

undertaking of the complainant.”

In the complaint, the petitioner asserted that the respondents vide their letter dated 5.7.2014 had effected a partial lockout. Without prejudice to their rights and contentions to challenge the illegal lock-out, the petitioner-union is ready to furnish an undertaking to the Tribunal about the peace, production and discipline restoration of normalcy. It was further asserted that the lock-out notice dated 5.7.2014 is illegal, improper, bad in law and done with ulterior motives only to victimize the members of the petitioner-union. On these amongst other assertions, the petitioner prayed for declaration that the respondents have engaged in unfair labour practice under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act; to quash and set aside the notice dated 5.7.2014 issued by the respondents to the workmen pertaining to the alleged illegal lock-out; to direct the respondents to lift the lock-out and allow the workmen whose names are mentioned in suspension of operation notice to resume their normal duties and provide them work and pay their wages regularly in view of the undertaking of the petitioner.

5. The respondents resisted the complaint by filing Written Statement. In so far as the allegation pertaining to lock-out notice dated 5.7.2014 is concerned, that was dealt in paragraphs 29 and 30. The respondents denied that the incidents stated in annexure to the notice of lock-out are created stories or are

false and fabricated. It was submitted that when required the respondents would lead evidence to prove every such incidence including CC TV footages as well as documentary evidence. The respondents also denied that the respondents are guilty of unfair labour practices under item 6 of Schedule II or the lock-out is illegal or without compliance of due process. It was submitted that the lock-out is in compliance of all statutory provisions and therefore is legal and proper.

6. By the impugned order, the Tribunal rejected the application Exhibit U-2. In paragraph 6 of the order, the Tribunal noted that the respondents, by notice dated 2.7.2014 suspended the operation and by notice dated 5.7.2014 proposed the lock-out in the company with effect from 20.7.2014 in respect of the employees and the said lock-out is for the reasons attached to the notice of lock-out. Before the Tribunal, it was contended that the lock-out effected by the company with effect from 20.7.2014 is in violation of the provisions of law; that the reasons set out in the notice of lock-out are improper and, therefore, the lock-out effected by the respondents is in violation of the provisions of law and as such is illegal and improper.

7. In paragraph 8, the Tribunal considered the provisions of Section 24(2) of the Act which deals with "illegal lock-out". The expression "illegal lock-out" is defined under section 24(2) and the same reads as under :

“In this Act, unless the context requires otherwise,-

(2) **“illegal lock-out”** means a lock-out **which is commenced or continued** -

(a) without giving to the employees, a notice of lock-out in the prescribed form or within fourteen days of the giving of such notice;

(b) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of any of the matters covered by the notice of lock-out;

(c) during the period when a submission in respect of any of the matters covered by the notice of lock-out is registered under section 66 of the Bombay Act, before such submission is lawfully revoked;

(d) where an industrial dispute in respect of matter covered by the notice of lock-out has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceeding or before the date on which the arbitration proceeding is completed or the date on which the award of the arbitrator comes into operation, whichever is later;

(e) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of lock-out;

(f) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court compulsorily under sections 72, 73 or 73-A of the Bombay Act, during such arbitration proceeding or before the date on which the proceeding is completed, or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of lock-out; or

(g) in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such

proceeding, if such proceeding is in respect of any of the matters covered by the notice of lock-out :

Provided that, nothing in clauses (f) and (g) shall apply to any lock-out where the employer has offered in writing to submit the industrial dispute to arbitration under sub-section (6) of section 58 of the Bombay Act, or section 10-A of the Central Act; and

(i) the union does not accept the offer;

(ii) the union accepts the offer, but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act,

and thereafter, the dispute has been referred for arbitration of the Industrial Court under section 73-A of the Bombay Act; or where the Central Act applies, while disagreeing on the choice of the arbitrator the union does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act;

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

In the present case case, the respondents have given notice of lock-out on 5.7.2014 and the lock-out is effective from 20.7.2014, i.e. after 14 days of giving such notice and not within 14 days as mentioned. The Tribunal, therefore, prima facie held that the lock-out is not illegal and is not in violation of Section 24(2)(a) of the Act.

8. Ms Buch did not seriously dispute that initiation of the lock-out is legal. She, however, submitted that continuation of the

lock-out is illegal, more so when the petitioner is ready and willing and, in fact, has given the undertaking to this Court. Even in paragraph 14 of the impugned order, the Tribunal recorded that in the notice of lock-out, it is set out that the lock-out shall continue to be effective till such time the company is satisfied of peace, production and discipline restoration of normalcy and, therefore, the petitioner can approach to the respondents by giving necessary undertaking to that effect, which they were ready to furnish before the Court. She submitted that necessary undertaking is already filed in this Court. The petitioner is ready and willing to give similar undertaking to the company.

9. Ms Buch submitted that Section 2(l) of the Industrial Disputes Act, 1947 (for short, "I.D.Act") defines the expression "lock-out" to mean the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. She submitted that having regard to the definition of the expression "lock-out" under the I.D.Act, the lock-out contemplated is the temporary closing of a place of employment. In the present case, the notice of lock-out was given on 5.7.2014 to be effective from 20.7.2014. Though the petitioner is ready and willing to furnish undertaking as per the lock-out notice, still the respondents are not willing to lift the lock-out. The Court while exercising powers under Articles 226

and 227 of the Constitution of India will be justified in directing the respondents to lift the lock-out. She submitted that continuing the lock out for such a long period itself amounts to illegal lock-out. In support of her submissions, she relied upon the decision of the Apex Court in the case of *The Statesman Ltd Vs. Their Workmen*, 1976 I L.L.J 484 and submitted that the respondents cannot behave unreasonably merely because initiation of the lock-out is lawful. In other words, she submitted that though the notice of lock-out is valid at the inception, nonetheless the respondents have continued lock-out for unreasonably long period and that amounts to illegal lock-out.

10. On the other hand, Mr. Anaokar supported the impugned order. He invited my attention to the provisions of Sections 24 and 25 of the Act. He submitted that in the present case, the petitioner filed complaint under Item 6 Schedule II and Items 9 and 10 of Schedule IV of the Act. According to the petitioner, for the grounds set out in paragraphs Z1, Z3 and Z4 of the complaint, the lock-out is illegal. The Tribunal has prime facie held that the lock-out is not illegal. He further submitted that under section 25(2) of the Act the petitioner can move the State Government for making a reference to the Labour Court for a declaration whether the lock out is illegal. Under sub section (5) of Section 25 where any lock-out is declared to be illegal, the employer has option to withdraw it within forty-eight hours of

such declaration whereupon such lock-out shall not, for the purposes of the Act, be deemed to be illegal under the Act. He further submitted that proposing or continued a lock-out deemed to be illegal under the Act is an unfair labour practice covered by item 6 of Schedule II of the Act. So if the lock-out is not illegal under the Act, whether lock-out is legal or illegal under any other provisions of the Act is wholly irrelevant in order to attract Item 6 of Schedule II. In support of this submission, he relied upon the decision of this Court in the case of *Bombay Tyres International Ltd Vs. Maharashtra General Kamgar Union & Anr*, 1994 I CLR 642.

11. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the respondents have issued notice dated 5.7.2014 declaring their intention to effect lock-out with effect from 20.7.2014, for the reasons explained in Annexure attached thereto. The Tribunal has prima facie recorded a finding that the lock-out is not illegal. As noted earlier, the petitioner has filed complaint under Item 6 of Schedule II of the Act. Item 6 of Schedule II reads as under :

“6. Proposing or continuing a lock-out deemed to be illegal under this Act”

Items 9 and 10 of Schedule IV of the Act which are to the following effect:-

“9. Failure to implement award, settlement or agreement.

7. To indulge in act of force or violence.”

12. Ms Buch relied upon the decision of the Apex court in the case of the **Statesman Ltd** (supra). In that case, after a full-fledged trial, the Industrial Tribunal held that the blame for the strike and the lock-out had to be apportioned to both sides and in that view ordered payment of half wages during the period of lock-out. In that case, the Court was concerned with three disputes. Out of the three issues, two dealt with petty items like warm coats for the subordinate staff and canteen allowance for the employees' canteen staff. The other item which was meaty enough related to the wages during the period of work stoppage from 20th September, 1966 to 8th November, 1966. The Tribunal after considering the totality of the circumstances directed apportionment of wages. In my opinion, this Judgment does not advance the case of the petitioner for more than one reason. In the first place, the Court was dealing with a situation prior to coming into force of the present Act, namely, M.R.T.P & P.U.L.P. Act, i.e. from 20.9.1966 to 8.11.1966. Secondly, the I.D.Act does not define the expression “illegal lock-out” which expression is defined in the Act. Thirdly, as far as the present Act is concerned, whether the lock-out is legal or illegal has to be considered on the basis of evidence on record as also having regard to the

provisions of the Act. For the purpose of deciding the complaint under the item 6 of Schedule II of the Act, one cannot have recourse to provisions of any other Act as held by this Court. In the case of **Bombay Tyres International Ltd** (supra), it was observed in paragraph 30 as under :-

“30. However, Dr. Kulkarni, learned counsel for respondent-complainant produced before me a reference which is pending and the reference is at the instance of the petitioner-company and he contended that the view taken by the learned Member on the basis of Section [23\(a\)](#) and [23\(b\)](#) of the Industrial Disputes Act is the correct view. **But, learned counsel appearing for the petitioner - company contended that in order to attract Item 6, any lock-out which is proposed or continuing a lock-out must be deemed to be illegal under this Act. So if the lock-out is not illegal under this Act, whether lock-out is legal or illegal under any other provisions of the Act is wholly irrelevant in order to attract Item 6 of Schedule II. He relied upon Section [24\(2\)\(a\)](#) and [24\(2\)\(b\)](#) and contended that the proceeding which is pending in reference is not in respect of any of the matters covered by the notice of lock-out. There is considerable force in the contention of the learned counsel appearing for the petitioner-company. It does appear that the learned member, Industrial Tribunal misdirected himself in taking aid of Section [23\(a\)](#) and [23\(b\)](#) of Industrial Disputes Act, when he is required to consider the illegality of the lock-out under the provisions of this Act, he cannot look into illegality of the lock-out under the provisions of any other Act. Therefore, he ought to have addressed himself whether pendency of any reference has got anything to do with respect to matters covered by notice of lock-out. He has not admittedly addressed himself on this aspect and, therefore, he has committed an error.”**

(emphasis supplied)

In view of the above decision, It is necessary for the petitioner to establish the legality of the lock-out in terms of the provisions of the Act.

13. I, therefore, do not find that the Tribunal committed any error in dismissing the application for interim relief Exhibit U-2. It will be for the petitioner to consider whether to amend the complaint so as to challenge the continuation of the lock-out or to invoke Section 25(2) of the Act. Subject to above, the Writ Petition fails and the same is dismissed.

(R.G.KETKAR, J.)