

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.541 OF 2014

- 1] BSE Limited
(Erstwhile Bombay Stock
Exchange Ltd.)
P & J Towers, Dalal Street,
Mumbai 400 001
- 2] The Managing Director & CEO
BSE Limited,
P & J Towers, Dalal Street,
Mumbai 400 001. ... Petitioners

Versus

- 1] Pramod Maruti Dhaware,
C/o. The Stock Exchange
Employees Union, P J Towers,
Mumbai 400 001
- 2] The Stock Exchange Employees
Union, C/o. The Stock Exchange
Employees Union, P J Towers,
27th Floor, Mumbai 400 001
- 3] The Presiding Officer,
5th Labour Court, Mumbai
- 4] The President,
Industrial Court, Mumbai. ... Respondents

Mr.K.M.Naik, Senior Advocate i/b. S.P.Salkar for petitioners
Mr.Sanjay Singhvi, Senior Advocate i/b. Rajmohan A Amonkar for respondent
Nos. 1 and 2.

CORAM : R. G. KETKAR, J.
DATE : 16TH JANUARY, 2015.

ORAL ORDER:-

Heard Mr. Naik, learned Senior Counsel for petitioner and Mr. Singhvi,

learned Senior Counsel for respondents No.1 and 2 at length. Mr. Naik, orally applies for deleting the names of respondents No. 3 and 4 as they are formal parties and no reliefs are claimed against them. Leave to amend is granted. Respondents No. 3 and 4 are allowed to be deleted. Amendments shall be carried out forthwith.

2] In view of the order dated 2nd May 2014 passed by this Court, Rule. Mr. Rajmohan waives service for respondents No. 1 and 2. At the request and by consent of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

3] By this Petition under Article 226 of the Constitution of India, the petitioners are challenging the (i) judgment and order dated 20th December 2013 passed in Revision Application (ULP) No.106 of 2013 as also (ii) order dated 23rd December 2013 passed in Complaint (ULP) No.274 of 2010 by the learned President, Industrial Court, Maharashtra, Mumbai (for short 'Tribunal').

4] By the order dated 20th December 2013, the Tribunal allowed the Revision Application filed by respondents and quashed and set aside the judgment and order dated 29th June 2013 passed by the learned Judge, 5th

Labour Court, Mumbai below Exh.U-2 in Complaint (ULP) No.274 of 2010 allowing the interim application. The Tribunal prima facie held and declared that the petitioners herein have engaged in and continue in unfair labour practices under items 1(a), (b) and (d) of Schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 (for short 'Act') and they are accordingly directed to cease and desist therefrom temporarily. The petitioners are also restrained from initiating disciplinary action against respondent No.1 in pursuance of the charge sheet dated 2nd December 2010 pending the complaint. By the subsequent order dated 23rd December 2013, below Exh.C-5, Tribunal rejected the application made by the petitioners for staying the operation of the judgment and order dated 20th December 2013. The relevant and material facts that are necessary for disposal of this Petition, briefly stated, are as follows.

5] Respondent No.1 was working as Special Assistant in the Information and Technology Department, which is located on the third floor of P & J Towers of BSE Building, Fort, Mumbai. It is the case of the petitioners that on 9th November 2010 at around 9.50 a.m., respondent No.1 instead of going to his department, which is located at 3rd floor, as an individual employee forcibly and unauthorisedly entered the 1st Basement of the said P.J. Tower which is a restricted area and only authorised personnel have access by using

the proximity card. In view of the 1993 bomb blasts wherein there was loss of lives and property on huge scale in the premises of the petitioner and also in view of the constant security threats faced by petitioner because of terrorists attacks and because of the specific instructions / directions given by the Department of Home Ministry (Central & State Governments), Intelligence Department and the Mumbai Police authorities regarding the maintenance of security at BSE premises, the said first Basement is marked as 'restricted area'. Respondent No.1 was very well aware that he was not at all authorised to access into the said restricted area.

6] At the entrance of the said P.J.Towers, respondent No.1 firstly interacted with Mr. Pradip Salvi, Security Guard posted at P.J.Towers entrance and pressurized him to accompany at the first Basement area as the respondent No.1 was fully aware that being a security staff, the said Mr. P. Salvi is authorised to access the first Basement area. Succumbing to the pressure exerted by respondent No.1 being the Chief Secretary of respondent No.2 Union of which the said Mr. Pradip Salvi is also a member, the said Mr. Pradip Salvi also accompanied respondent No.1 at around 9.56 a.m. upto the fire control room located at first Basement. Both, respondent No.1 and the said Mr. P. Salvi, taking advantage of the door opened by another security guard from SPS (who accessed the first Basement area to collect walkie talkie

from the Fire Control Room) entered the first Basement without using any proximity card. The said Mr. Salvi then accompanied respondent No.1 till Fire Control Room and returned alone to his post i.e. P.J. Towers entrance.

7] Respondent No.1 was also very much aware that only the authorised personnel can access CCTV Control Room and hence he had pressurized another security guard Mr. S. D. Chavan, who was assigned for the duty at CCTV Control / Monitoring Room in the first shift i.e. 7.00 a.m. to 3.00 p.m. to open the door and let respondent No.1 inside. The said Mr. Chavan also succumbed to the pressures exerted by respondent No.1 knowing fully well about his position in respondent No.2 Union of which he was also a member and allowed unauthorized entry of respondent No.1 into the CCTV Control / Monitoring Room. Thereafter, respondent no.1 had interacted with the said Mr. S. D. Chavan and came out of the said room approximately at 9.58 a.m. on the said day.

8] Upon interaction and in conspiracy with the said Mr. S. D. Chavan, respondent No.1 threatened Mr. Srinivasan Selvaraj (who was an employee of one of the petitioner's contractors - M/s. Col. Guard Force Pvt. Ltd.) with dire consequences if he continued to work in the said CCTV Control / Monitoring Room as a labour contract staff. Because of such threats from respondent

No.1, the said Mr. Selvaraj did not even report for his duty for 3 days because of the severity of the threats meted out to him by respondent No.1. Thereafter, upon further interaction with the said Mr. S. D. Chavan inside the CCTV Control / Monitoring Room, respondent No.1 came out of the said room with the help of the said Mr. Chavan, who opened the door for him at around 9.58 a.m.

9] Thereafter, respondent No.1 tried to open the first Basement door by his hand to come out and go towards the P.J. Towers entrance. Having realized that the first Basement door was locked, respondent No.1 searched for someone who could open the door for him. He then went towards the Fire Control Room situated in the first Basement area itself to seek help from someone for opening the first Basement door. Respondent No.1 then asked Mr. Vivekanand Pose, who was the employee of the contractor namely M/s. Nortex Fire Equipment and was the Fire Control Attendant, present in the Fire Control Room to open the door with his proximity card for which he obliged respondent No.1. Accordingly, respondent No.1 made his exit from the first Basement area towards P.J. Towers entrance.

10] The petitioners issued show cause notice on 12th November 2010 setting out therein that respondent No.1 has committed serious misconduct

covered by clauses 24(a), 24(h), 24(i), 24(m), 24(n) and 24(v) of the Model Standing Orders (for short 'M.S.O.'). It was further set out therein that in view of the threat to the safety and security of the organisation due to continuous threats from the terrorists attacks and specific instructions/ directions given by the Department of Home Ministry (Central & State Governments), Intelligence Department and the Mumbai Police authorities regarding the maintenance of security at BSE premises, the above acts of misconducts are viewed seriously by the management. Respondent No.1 was also called upon to show cause in writing as to why disciplinary action shall not be initiated against him.

11] On 12.11.2010, while respondent No.1 was on duty, at around 3.30 p.m., he was advised by his superior Mr. Vinay C. Dhopavkar, AGM – Human Resources to meet Mr. Laxman Gogulothu, Officer on Special Duty, who wanted to discuss with him about the reported unauthorized entry into the CCTV Control / Monitoring Room at the first Basement on 09.11.2010. Mr. Mahendra Tawde, the GM – HR of petitioner No.1 had also informed respondent No.1 on 11.11.2010 that Mr. Gogulothu wanted to discuss the subject matter with him. Accordingly, on 12.11.2010 at around 3.30 p.m., respondent No.1 in the capacity as an individual employee of the petitioner came to the 24th floor of the said P. J. Towers to meet Mr. Gogulothu along

with the said Mr. Vinay Dhopavkar as authorized by Mr. Mahendra Tawde as he was pre-occupied in another important meeting. Immediately thereafter, respondent No.1 had a meeting with Mr. Gogulothu in his office in the presence of Mr. V. Dhopavkar.

12] Mr. Gogulothu was in the process of advising respondent No.1 that his unauthorized entry into the said CCTV Control / Monitoring Room area was a matter of great / serious security concern as the entry into the said room is a highly restricted / prohibited area being security sensitive. When Mr. Gogulothu opened up the discussions on the subject, respondent No.1 instead of listening to him, started shouting at the top of his voice and defiantly stated that Mr. Gogulothu shall not discuss any security matter with him and instead should discuss only with the President of his Union. Mr. Gogulothu advised respondent No.1 not to raise his voice and shout but to maintain the discipline and say peacefully whatever he wanted to say. The said Mr. V. Dhopavkar also advised him to maintain the cool and answer the superior Mr. Gogulothu peacefully. But no wiser counsel prevailed upon respondent No.1 and he continued to arrogantly address Mr. Gogulothu.

13] Mr. Dhopavkar had repeatedly advised respondent No.1 to first listen to what a very senior officer Mr. Gogulothu had to discuss with him and

thereafter he will have an opportunity to put up his point of view. Despite such advice, respondent No.1, all of a sudden, got up from his seat and by pointing out his finger towards Mr. Gogulothu in an arrogant and angry manner, repeatedly threatened Mr. Gogulothu of dire consequences that he will create instability and disorder in the premises of petitioner No.1 and thereafter he abruptly left the meeting with the said threats. Owing to the arrogant, insulting, offensive and negative attitude of respondent No.1, the working environment in the premises of petitioner No.1 was charged with tension and anxiety.

14] The aforementioned acts reported against respondent No.1 were highly objectionable as the same were in the nature of deliberately disrespecting and disobeying the senior official of the petitioner which are serious and grave misconducts under the M.S.O. applicable. Therefore, the management of petitioner No.1 had issued another show cause notice dated 15.11.2010.

15] Respondent No.1 gave reply on 19th November 2010 to the first show cause notice dated 12.11.2010 setting out therein that neither he had entered any restricted area nor had he committed any misconduct as alleged. There is no such area as restricted or prohibitory area not to be entered by the employees of the BSE. It was further set out that many employees of

different departments, vendors and other persons are available in the area referred by the petitioners in the show cause notice. Respondent No.1 further stated that in the morning of 9th November 2010, he had been to first Basement in his capacity as the Chief Secretary of the Union to enquire about the recruitment of contract employees in CCTV monitoring room. Respondent No.1 denied to have indulged in any acts of misconduct as alleged against him in para 2 of the show cause notice. Respondent No.1 also gave reply on 19.11.2010 to the second show cause notice dated 12.11.2010 denying charges levelled against him.

16] By a communication dated 2nd December 2010, the petitioners informed the first respondent that after carefully going through the explanation offered by him to the first show cause notice, the same was not at all found to be satisfactory as it was not convincing. The contentions raised by the first respondent that “he had never entered in the restricted area nor had he committed any misconduct as alleged; that the second respondent Union has been taking all adequate steps for security and has been informing the management about the lapses on the part of security”, etc., were not acceptable. Accordingly, first charge-sheet was issued for misconducts covered under clauses 24(a), (h), (l), (n) and (v) of M.S.O. By a communication dated 10.12.2010, the petitioners informed respondent No.1

that the explanation / reply submitted by him to the second show cause notice was not found satisfactory. The petitioners issued second charge-sheet dated 10.02.2010 for misconduct covered under clauses 24(a), (h) and (l) of M.S.O.

17] Respondents Nos. 1 and 2 thereafter instituted complaint before the Labour Court on 14th December 2010. Pending the said complaint, an application under Section 30(2) read with Section 32 of the Act was taken out on 14th December 2010 praying for the following reliefs:-

(A) That pending the hearing and final disposal of the main complaint to stay the effect, implementation and operation of the show cause notices dated 12th November 2010 and 15th November 2010 issued to complainant No.1 by the respondents.

(B) That pending the hearing and final disposal of the main complaint to stay the effect, implementation and operation of the suspension order dated 18th November 2010 issued to complainant No.1 by the respondents;

(C) That pending the hearing and final disposal of the main complaint to stay the effect, implementation and operation of the charge sheet dated 2nd December 2010 issued to complainant No.1 by the respondents;

(D) That pending the hearing and final disposal of the main complaint to direct respondents No. 1 and 2 to allow complainant No.1 to resume his duties forthwith;

(E) That pending the hearing and final disposal of the main complaint to restrain respondents No. 1 and 2 from initiating any departmental enquiry against complainant No.1 in respect of subject matter of show cause notices dated 12th November 2010 and 15th November 2010 read with Suspension Order dated 18th November 2010 and charge sheet dated 2nd December 2010;

(F) That pending the hearing and final disposal of the main

complaint to restrain respondents No. 1 and 2 from terminating the services of complainant No.1 in any manner whatsoever without the permission of this Court.”

18] The petitioners filed affidavit in reply resisting that application. By judgment and order dated 5th October 2012, the Labour Court dismissed the application. Aggrieved by the decision, respondents No. 1 and 2 instituted the Revision Application (ULP) No.133 of 2012. By judgment and order dated 19th January 2013, the learned Tribunal allowed the Revision and quashed and set aside the order of the Labour Court dated 5th October 2012. The Labour Court was directed to decide the interim application afresh as early as possible and preferably within three months from the date of the order. Aggrieved by this order, petitioners instituted Writ Petition No.399 of 2013 in this Court. By an order dated 3rd April 2013, this Court dismissed the petition. Mr. Naik submitted that though the petitioners sought stay for a period of six weeks in order to enable them to approach higher Court, the order was not challenged. In short, the order of remand passed by the Tribunal attained finality.

19] After the remand, Exh.U-2 was decided by the Labour Court and by an order dated 29th June 2013, Exh.U-2 was rejected with a direction that the prolonged departmental enquiry shall be completed within three months from the date of the order and both the parties shall cooperate with the Enquiry

Officer for completing the enquiry within the stipulated period. Mr.Naik states that the enquiry was completed on 29th September 2013.

20] Aggrieved by this order, respondents No. 1 and 2 preferred Revision Application being Revision Application (ULP) No.106 of 2013 which was allowed by the Tribunal on 20th December 2013. Application Ext.C-5 for staying the operation of that order was rejected on 23rd December 2013. It is against these orders passed by the Tribunal, the petitioners have instituted the present petition under Article 226 of the Constitution.

21] In support of this petition, Mr. Naik submitted that the first show cause notice was issued on 12th November 2010 in respect of unauthorised entry made by the first respondent at BSE premises Basement No.1, which is marked as restricted area. Respondent No.1 forcibly entered the Basement area and pressurised the security guard posted there. He submitted that on the same date i.e. 9th November 2010 at about 3.30 p.m. the first respondent was advised by his superior Mr.Vinay Dhopavkar, AGM (Human Resources), to meet Mr.Laxman Gogulothu, OSD who wanted to discuss with the respondent No.1 about the reported unauthorised entry into the CCTV control room. Accordingly, the respondent No.1 went to meet Mr.Gogulothu along with Mr.Vinay Dhopavkar, who was authorised by Mr.Mahendra Tawde as he was

pre-occupied in another meeting. Immediately, the respondent No.1 and Mr.Dhopavkar had a meeting with Mr.Gogulothu. Mr.Gogulothu was in the process of advising the respondent No.1 that his unauthorised entry into the said CCTV control room area was a matter of great security concern as the entry in the said room is highly restricted, that being a prohibited area being security sensitive.

22] Respondent No.1, instead of listening to Mr.Gogulothu started shouting at the top of his voice and defiantly stated that Mr.Gogulothu should not discuss any security matter with him and instead should discuss only with the President of his Union. Mr.Gogulothu advised the respondent No.1 not to raise his voice but to maintain the discipline and say peacefully whatever he wanted to say. The said Mr.Dhopavkar also advised him to maintain cool and answer the superior Mr.Gogulothu peacefully. But no wiser counsel prevailed upon respondent No.1 and he continued to arrogantly address Mr.Gogulothu. The said Mr.Dhopavkar repeatedly advised the respondent No.1 to first listen to what a very senior officer Mr.Gogulothu had to discuss with him and thereafter he will have an opportunity to put up his point of view. Despite such advice, the respondent No.1, all of a sudden got up from his seat and by pointing out his finger towards Mr.Gogulothu in an arrogant and angry manner, repeatedly threatened Mr.Gogulothu of dire consequences of creating

instability and disorder in the premises of petitioner No.1 and thereafter abruptly left the meeting with these threats.

23] Mr.Naik submitted that in view thereof, second show cause notice dated 15th November 2010 was issued to respondent No.1. Respondent No.1 replied to the said show cause notice on 19th November 2010. It was set out therein that at about 1.30 p.m. on 12th November 2010 he was called by one Vinay Dhopavkar, AGM – Human Resources stating that Mr.Gogulothu has to discuss certain matter with him. Thereafter, again at 2.45 p.m. Mr.Dhopavkar called the respondent No.1 saying that Mr.Gogulothu wanted to meet him for a few minutes. Accordingly, the respondent No.1 went to 24th floor at 3.30 p.m. to meet Mr.Gogulothu. He waited there for some time and then, he entered the cabin of Mr.Gogulothu. On seeing the respondent No.1, Mr.Gogulothu started using derogatory words. He also abused him by using his caste and religion and also referred the President of the Union Mr.Bhai Jagtap, MLC in a most derogatory words. Mr.Gogulothu further threatened him of dire consequences and when the respondent No.1 asked Mr.Gogulothu as to why he was called for, Mr.Gogulothu got annoyed. His behaviour was objectionable, indecent and unbecoming of any decent person. Respondent No.1 was humiliated by Mr.Gogulothu by using derogatory and abusive words against him and against the President of Union. Mr.Naik submitted that the

explanation offered by the first respondent was considered and was not found satisfactory. By letter dated 10th December 2010, the second charge sheet was issued. He submitted that in the present complaint, the respondents No. 1 and 2 have challenged the show cause notice dated 12th November 2010 and 15th November 2010 as also the suspension order dated 18th November 2010 and charge sheet dated 2nd December 2010. However, the second charge sheet dated 10th December 2010 is not challenged.

24] Mr.Naik submitted that by notice dated 29th December 2008, it was made known to all the concerned that with an object to tighten the security arrangements on account of high risk to BSE building, based on recommendation of security advisor/ consultant, access control doors have been installed in both the basements, hence the entry is restricted for any and all unauthorised person/s. BSE will be making these access control system operative in first week of January 2009. Therefore, it would be necessary to replace existing ID cards by issuing proximity cards. The members who have facility of parking their vehicle in either of the basements of BSE building were requested to surrender ID cards of drivers and where vehicles have been parked by members themselves, gold cards issued to members should be surrendered. In addition to above it was also informed to all BSE staff and staff of trading members that both the basements are out of bound for all.

Those who wish to enter the basements for official reason need to acquire the proximity card. BSE staff can have their request approved from their respective HODs whereas staff of trading members can apply in ID card department after producing consent letter from trading member on their respective letter head. The proximity card / ID cards would be issued only upon authorisation from Chief Security Officer. He submitted that respondent No.1 does not have proximity card.

25] Mr.Naik submitted that after remand the Labour Court considered the application under Exh.U-2 afresh and by order dated 29th June 2013, rejected the same. By an order dated 20th December 2013, the Tribunal allowed the application Exh.U-2. He invited my attention to paras 22 to 25 thereof. He submitted that in para 22, the Tribunal noted that it has very limited scope in its revisional jurisdiction while deciding legality and propriety of the order under challenge. In para 23, it was noted that the Labour Court had referred to the documents and provisions of law in paras 6 and 7 of its order. But the learned Judge did not record his assessment and conclusion as regards some documents. Merely referring to the documents in the body of the order is not sufficient.

26] In para 24, the Tribunal noted that while deciding the interim relief

application, the Judge has to record findings as to whether there is any prima facie case of unfair labour practice; The balance of convenience lies in whose favour and also whether the applicants would suffer irreparable loss if the reliefs sought are not granted. These are the parameters to be considered by the Courts while deciding the interim applications. In para 25 it was noted that none of the parameters were taken into consideration by the Labour Court while deciding the interim relief application. It was further noted that though in revisional jurisdiction, the Tribunal has limited scope, it would not be appropriate to remand the matter again for fresh trial to the trial Court. Maybe, this can be called as usurpation of the powers of the trial Court by the revisional Court. According to the Tribunal, there was no other remedy than to consider the dispute based upon the documentary evidence and decide the interim relief application, otherwise there will be no end to the litigation.

27] Mr.Naik seriously criticized the manner in which the Tribunal decided the Revision Application. He submitted that having noted these facts in the impugned order and in particular paras 24 and 25, the Tribunal ought to have remanded the matter to the Labour Court. If at all the Tribunal was not satisfied about the manner in which the interim application was decided, it could have very well directed the other judge to decide the interim application on remand. Instead of adopting this course, the Tribunal decided the

application on merits. Mr.Naik also submitted that the notice dated 29th December 2008 was considered in para 38 of the impugned order and it was observed thus:-

“38.....No doubt there are circulars dated 29.12.2008 and 14.1.2011 notifying about not entering in the restricted area, but entry of its own employee and his intention to enter into the restricted area is required to be considered by the management. If there is ill-intention, the management have every right to take disciplinary action against the employee who acted against the interest of the management.”

28] Mr. Naik submitted that the Tribunal failed to consider the purport of the circular dated 29th December 2008. The said circular is applicable to the employees as well and there is no question of considering whether the employee is entering the area with any particular intention or not. He submitted that by order dated 20th December 2013, the petitioners were restrained from **initiating disciplinary action against the first respondents** in pursuance of the charge dated 2nd December 2010. After the said order the petitioners filed an application Exh.C-5 for stay of the operation of the order dated 20th December 2010. The Tribunal rejected the same.

28] While rejecting the said application, the Tribunal observed that the interim relief application is allowed but all the reliefs in the said application were not granted. Specifically the petitioners herein are restricted from

initiating the disciplinary enquiry against the first respondent, in pursuance of the charge sheet pending the hearing and disposal of the main complaint. In other words, Mr.Naik submitted that by the order dated 20th December 2013, the Tribunal restrained the petitioners from initiating the disciplinary action and by subsequent order dated 23rd December 2013, observed that by order dated 20th December 2013, the petitioners are restrained from initiating any disciplinary enquiry. He submitted that the impugned orders suffer from serious errors of law apparent from the face of record and, therefore, deserve to be quashed and set aside.

29] On the other hand, Mr. Singhvi supported the impugned orders. He submitted that the first show cause notice dated 12th November 2010 does not refer to the circular dated 29th December 2008. The said notice also does not state that the respondent No.1 acted in violation of that circular. He invited my attention to reply dated 19th November 2010 wherein, the respondent No.1 denied having entered in the restricted area or committing any misconduct as alleged. In fact, there is no such area as restricted area or prohibited area which cannot be entered by the employees of BSE. The area which is described as prohibitory area, many employees of different departments, vendors and other persons have been seen having free access therein. He submitted that the respondent No.1 is General Secretary of a recognised

Union. He got information about the petitioners engaging services of unregistered security agencies. It is in this context he had been to the first Basement to enquire about the same. He denied that he pressurised Mr.Salvi, the Security Guard or that he entered any restricted area as alleged. After having confirmed the fact that the contract employees have been appointed in the sensitive area, the respondent No.1 came back to his workplace. He submitted that the respondents are also equally concerned about the security measures of BSE building and in fact the very presence of unregistered guards at site itself is a threat to the BSE building. The petitioners did not accept the explanation of the respondent No.1 and issued a charge sheet dated 2nd December 2010. Even in the letter dated 2nd December 2010, the circular of 29th December 2008 is not referred.

30] Mr.Singhvi submitted that at 12.43 p.m. on 14th January 2011, Vilas Dange e.mailed to all BSE mail users/ BSE employees setting out therein that basements No. 1 and 2 are out of bounds for all ranks except those on duty. It is a restricted area and only those who have been granted access through access control may visit the restricted area i.e. Basement 1 and 2. All were also requested to ensure that their respective access control doors are locked always and every time. In this e-mail, circular dated 29th December 2008 is not referred. On the same date at about 6.58 p.m. second e-mail was sent by

Mr.Vilas Dange to all employees setting out therein that further to his e-mail on the access to the 1st and 2nd Basement being a restricted area a clarification is issued. Even in this second e-mail, the circular dated 29th December 2008 is not referred.

31] Mr.Singhvi invited my attention to questions 64 and 65 which were put to the witness during the course of enquiry proceedings. Questions No.64 and 65 and answers thereto at page 368 of Writ Petition are to the following effect:-

“Q.64. I put it to you that by circular dated 14.1.2011 the CCTV room has been declared as restricted area, it is correct?

Answer: I may be shown the circular to offer my comments.

(The DR produced xerox copy of the circular and the same was marked as Exh.No.26). Yes. Your suggestion is correct but it is only a reminder citing earlier circular.

Q.65. Can you produce copy of that circular you are claiming?

Answer: I do not have it in my custody.”

32] While replying to question No.64, the witness admitted that the suggestion given was correct but it was only a reminder citing earlier circular. He invited my attention to the say of the Management Representative on the representation of the Defence Representative to produce earlier circular

referred by Mr. Sambhaji Pawar-Management Witness No.2 in answer to question No.66. It is noted therein that the document demanded by the Defence Representative i.e. earlier circular, exhibit-26 is already on record and that the circular is already produced. The Defence Representative protested the misrepresentation made by the Management Representative in that regard and pointed out that the answer is misleading as in Exh.26 Mr.Dange has referred to the earlier mail by the words “further to may mail” in sentence No.1 of email sent at 6.58 p.m. In short he submitted that in both the emails, the circular dated 29th December 2008 was not referred and it is normal practice of BSE to send all the circulars by email.

33] Mr.Singhvi invited my attention to para 20 of the order dated 5th October 2012 passed by the Labour Court and submitted that the learned Judge rightly posed the question as to whether respondent No.1 by making entry in CCTV control room committed grave misconduct as per the provisions of the M.S.O. Ultimately, in para 22, the learned Judge recorded a categorical finding that the allegations of misconduct levelled against the respondent no.1 do not amount to misconduct. Despite that finding, the Labour Court rejected Exh.U-2.

34] After the order of remand, the learned Labour Court again considered

Exh.U-2 afresh. Though the documents were referred, the learned Judge did not record any finding and / or conclusion thereon. He invited my attention to the relevant extract of entry register at the Basement and submitted that this extract shows numbers of visitors visited Basement area. In particular, the first respondent entered the Basement at 9.57 a.m. for meeting Mr.Chavan and left the Basement at 9.58 a.m. In other words, the first respondent was hardly in the first Basement area for one minute. He invited my attention to question No.69 to 72 and the answers given to those questions which are to the following effect:

“Q.69 What is the purpose of maintaining the In and OUT register in the CCTV Control Room?

Ans: Whenever electricians/mechanics enter CCTV control room including sweeper, they are suppose to record their presence.

Q.70 Is it correct to say those who are making entry in this register get access to CCTV Control Room?

Ans: It is not correct to say so.

Q.71 Is it essential to make entry in the IN and OUT register to get access to the CCTV Control Room?

Ans: Yes, it is essential to make entry to enter CCTV Control room.

Q.72 Please tell me whether it is correct to say that Mr. Pramod Dhaware had completed all procedures before he allegedly entering the CCTV control room?

Ans: No, it is not correct to say so because whenever a technician, electrician or sweeper enters the CCTV Control room, it is with our specific permission and Mr. Pramod Dhaware did not seek or take any permission from the Security Department before entering the CCTV Control Room.”

35] On the basis of these questions and answers, he submitted that without proximity card, people are allowed to enter the Basement on the basis of the permission. He submitted that the first respondent did not go surreptitiously and in fact his name is entered into the entry register. Even, the Tribunal had recorded a categorical finding in the impugned order in para 36 that there is no record or document to show that respondent No.1 had forcibly entered into the Basement / CCTV control room. He invited my attention to paras 36 to 38 of the impugned order.

36] Mr.Singhvi further relied upon section 20 of the Act and submitted that as an Office Bearer of a recognised union, the first respondent is entitled to inspect any place in an undertaking where any employee of the undertaking is employed. For all these reasons, he submitted that the first respondent did not commit any misconduct and as and by way of victimisation the BSE has initiated action against respondent No.1 and he has been put under suspension. Mr.Singhvi submitted that the Tribunal has supervisory powers to correct the errors committed by the Labour Court and therefore, no case is made out for interference under Article 226 of the Constitution.

37] I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record.

The short question is whether the Tribunal was justified in passing impugned order. More so, when in paras 22 to 25, the Tribunal specifically recorded the finding that the Labour Court did not decide the application for interim relief on the touchstone of the principles laid down in deciding the interim application.

38] I have already dealt with the observations made by the Tribunal in paras 22 to 25. The Tribunal committed serious error in exercising jurisdiction vested in it. Once the Tribunal recorded that the Labour Court did not decide the interim application by considering whether any prima facie case of unfair labour practice was made out, as also without deciding in whose favour balance of convenience lies and whether the applicants (respondents No.1 and 2) would suffer irreparable loss if the interim relief is not granted, the Tribunal ought to have remitted the matter to the Labour Court for deciding it afresh. If at all the Tribunal was not satisfied with the manner in which the concerned Judge decided the application, it was open for it to transfer the application to some other judge on remand. However, instead of doing this, the Tribunal proceeded to decide the application on merits. It is not as if that the Tribunal was not aware of its limitations. In fact in para 22, the Tribunal recorded that the Industrial Court has very limited scope in its revisional jurisdiction while deciding the legality and propriety of the order

under challenge. That apart, even in para 25, it was recorded that though in revisional jurisdiction, the Industrial Court has a limited scope, it would not be appropriate on its part to remand the matter again for fresh trial and this could be called as usurpation of the powers of the trial Court by the revisional Court. Despite this finding, the Tribunal proceeded to decide the application on merits.

39] That apart, in paragraph 38, the Tribunal recorded a finding that respondent No.1 had entered in the restricted area by following the procedure by recording his entry in the register maintained at the gate and that he had not hidden anything from the management. It was further observed that merely entering into the restricted area for a minute by an employee himself and that too for hearing grievance of the members of union cannot be said to be a misconduct, even under the provisions of the Model Standing Orders. Prima facie, in my opinion, the Tribunal committed serious error in making these observations.

40] The Tribunal also noted that there are circulars dated 29th December 2008 and 14th January 2011 notifying about not entering the restricted area but entry of its own employee and his intention to enter into the restricted area is required to be considered by the management. If there is ill intention, the

management have every right to take disciplinary action against the employee who acted against the interest of the management. But, here the management has failed to prove that intention of the respondent No.1 of entering in the restricted area was ill motivated. There is no report from any security personnel to that effect. In my opinion, these observations were prima facie irrelevant and in the context of the circular dated 29th December 2008, were prima facie, wholly uncalled for. These matters are to be considered in the enquiry proceedings. Prima facie, intention of an employee is also irrelevant. Mr. Singhvi relied upon Section 20(1)(c)(iii) of the Act to contend that respondent No.1 being a General Secretary of the respondent No.2 Union, has a right to inspect, if necessary, in an undertaking any place where any employee of the undertaking is employed.

41] On the other hand, Mr. Naik submitted that the said right has to be exercised in such manner and subject to such conditions as may be prescribed. He relied upon Rule 21 of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Rules, 1975 (for short 'Rules') and submitted that the said right has to be exercised provided the office bearer carries with him a letter of authority in Form-H and informs the employer before hand which place in the undertaking he desires to inspect. In the present case, respondent No.1 did not comply the conditions stipulated in Rule 21 of the Rules. Mr.

Singhvi was not in a position to point out any material to indicate that respondent No.1 has followed the procedure laid down in Rule 21 of the Rules. I, therefore, prima facie, do not find any merit in the submission of Mr. Singhvi based upon Section 20 of the Act. For all these reasons, the impugned order cannot be sustained and is required to be set aside.

42] At the same time, I find merit in the submission of Mr. Singhvi that the learned Judge of the Labour Court did not decide the application properly. The learned Judge of the Labour Court in para 19 observed that after going through the charge sheet and case papers, he found that the concerned officer Mr. Gogulothu had not called the complainant directly, but the complainant himself went in his chamber along with Mr. Vinay Dhopavkar. These observations of the learned Judge of the Labour Court are contrary to the record as it is the case of the petitioners themselves that Mr. Vinay Dhopavkar advised first respondent to meet Mr. Gogulothu. That apart, as observed earlier the Tribunal noted that the learned Judge of the Labour Court did not decide the interim application by considering the necessary parameters while considering the application for interim reliefs. For all these reasons, I am satisfied that the impugned orders are liable to be set aside.

43] In the result, the Petition succeeds. Rule is made absolute with no

order as to costs in the following terms:

- a. The impugned orders dated 20th December 2013 and 23rd December 2013 below Exh.C-5 in Revision application (ULP) No.106 of 2013 are quashed and set aside;
- b. Exh.U-2 is restored to the file of the Labour Court for deciding it afresh. I am informed at the Bar that the concerned Judge of the Labour Court, who decided the application Exh.U-2 has retired. If any party aggrieved by the decision of the Labour Court files proceedings in the Industrial Court, the same shall be decided by the Judge other than the President who has passed the impugned order;
- c. All contentions of the parties on merits are expressly kept open;
- d. Leave to amend the complaint is granted so as to incorporate the challenge to second charge sheet dated 10th December 2010;
- e. During the pendency of Application Exh.U-2, the petitioners would be at liberty to proceed in the matter. However, they shall not take any final decision against respondent No.1 during the pendency of the Application U-2;
- f. The learned Judge of the Labour Court is requested to decide the application, Exh.U-2 as expeditiously as possible and in any event within three months from the receipt of the authenticated copy of this order.

(R. G. KETKAR, J.)