

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1245 OF 2014

M/s Narendra Wire Traders Pvt.
Ltd

Petitioners

Vs

Maharashtra Employees
Union, ..

.. Respondent

Mr. Prathviraj Singh, Advocate for Petitioners.

Mr. Arshad Shaikh i/b Mr. Prashant Goyal, Advocate for
Respondent.

CORAM : R.G.KETKAR,J.
DATE : 17/02/2015

PC:

1. Heard Mr. Prathviraj Singh, learned counsel for the petitioners and Mr. Arshad Shaikh, learned counsel for respondent at length. Rule. Mr. Shaikh waives service on behalf of the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 226 of the Constitution of India, the petitioners have challenged the Judgment and order dated 12.3.2014 passed by the learned Member, Industrial Court, Mumbai (for short, "Tribunal") below Exhibit U-2, in Complaint (ULP) No.64 of 2014. By that order, the Tribunal allowed the application Exhibit U-2 and restrained petitioner no.2, Director of petitioner no.1-Company from engaging in any unfair labour

practice alleged against them and giving threat of dismissal, discharge or lock out to the respondent-union and its members until further orders. The petitioners are further restrained from selling, disposing of or alienating the machinery and manufacturing plant to any other third party. The Tribunal further restrained the petitioners from engaging other employees to the place of workers/members of the respondent-union for working in petitioner no.1-company and further directed them to withdraw any kind of unfair labour practice against the interests of workers who are members of the respondent-union if started. The Tribunal also restrained the petitioners to declare lock out or to go on closure of the petitioner no.1's unit.

3. In support of this petition, Mr. Singh submitted that the petitioners had issued general notice of closure dated 12.2.2014 setting out therein that due to lack of orders from market and other factors, the costs and other expenses incurred in manufacturing activities, the petitioner felt that they are unable to survive in the competitive market in their business field. In the circumstances, the Management has decided to close its manufacturing activities with effect from last working hour of 11.3.2014. The employees were directed to collect their legal dues from accounts department of the company. He submitted that there are 13 employees working with the petitioners. The respondent instituted complaint under Sections 28 and 30 r/w

Items 1(a),(b) and (6) of Schedule II and Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,1971 (for short, "Act"). He submitted that in the entire complaint, no case of closure was made out. In paragraph 3(i), what is contended is that petitioner no.2 Mr Mahesh Jain, Director of the petitioner-company, threatened the Union members-employees on 27.2.2014 at about 2 pm by calling them inside company's office of dismissal/discharge of their services and lock out of the factory on any date on or after 7.3.2014. He submitted that in the entire complaint it was not alleged about issuing threat of closure. He submitted that even in the complaint no prayer was made seeking injunction restraining the petitioners from going on closure. Despite that, the Tribunal had issued injunction to that effect. Thus, even in absence of any pleading of closure or prayer, the Tribunal issued injunction. He, therefore, submitted that the impugned order deserves to be quashed and set aside.

4. On the other hand, Mr. Shaikh invited my attention to section 2(cc) of the Industrial Disputes Act, 1947 (for short, "I.D.Act") and section 2(l) which defines the expression "closure" and 'Lock-out' respectively. He submitted that closure means the permanent closing down of a place of employment or part thereof. As against this, 'lock-out' means the temporary closing of a place of employment or the suspension of work, or the

refusal of an employer to continue to employ any number of persons employed by him. In short, he submitted that closure is of a permanent nature and lock-out is of a temporary closing of a place of employment. He submitted that the complaint under section 28 read with Items 1(a), (b) and 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act was instituted on 5.3.2014. He submitted that at that time no notice of closure was issued. He invited my attention to notice dated 12.2.2014 addressed by the petitioners to Deputy Labor Commissioner as also communication dated 7.3.2014 addressed by the petitioner to the General Secretary of the respondent. He submitted that in any case that if this Court is of the opinion that no case of closure is made out in the complaint, he will take out appropriate application before Tribunal for amending the complaint.

5. 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 respondent has instituted complaint under sections 28 and 30 read with Items 1(a),(b), 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act. Items 1,(a),(b), 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act read as under:

SCHEDULE II

“1. To interfere with, restrain or coerce employees in the exercise of their right to organize, form, join or assist a trade union and to engage in concerned

activities for the purposes of collective bargaining or other mutual aid or protection, that is to say,-

(a) threatening employees with discharge or dismissal, if they join a union;

(b) threatening a lock-out or closure, if a union should be organized;

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

SCHEDULE IV

9. Failure to implement award, settlement or agreement.

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

6. Perusal of the complaint shows that the respondent has not challenged the notice of closure dated 12.2.2014. In fact, the entire complaint is silent as regards proposed closure effected by the petitioners. Perusal of the prayers also shows that no prayer was made by the respondent seeking injunction against the petitioners from going on the proposed closure. I, therefore, find merit in the submission of Mr Singh that the impugned order is liable to be set aside. Hence, the Petition succeeds. Rule is made absolute with no order as to costs, in the following terms:

(i) The impugned order dated 12.3.2014 below Exhibit U-2 is quashed and set aside and Application U-2 is restored to the file of the Tribunal.

(ii) The respondent is at liberty to take out appropriate application for amendment of the complaint. Such application

shall be filed and served on the other side within one week from today. Reply, if any, shall be filed and served within one week from receipt of the application for amendment. The Tribunal is requested to decide the application for amendment on its own merits and in accordance with law within two weeks from filing of the reply. All contentions of the parties in that regard are expressly kept open.

(iii) The Tribunal is requested to decide Application Exhibit U-2 within four weeks from deciding the application for amendment. In the meantime, ad-interim order dated 6.3.2014 below Exhibit U-2 shall remain in force during the pendency of Exh.U-2. It is made clear that by restoring ad-interim order dated 6.3.2014 I have not expressed an opinion on merits of the case either way.

(R.G.KETKAR, J.)