

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.427 OF 2016

Vibhag Niyantrak (Divisional Controller)
Maharashtra State Road Transport
Corporation,
Latur Division, Latur.

...Petitioner...

Versus

Kamalakar Harishchandra Somwanshi,
Age : 51 years, Occu. : Service,
R/o : Chandeshwar, Latur.
District : Latur.

...Respondent...

WITH

WRIT PETITION NO.428 OF 2016

Vibhag Niyantrak (Divisional Controller)
Maharashtra State Road Transport
Corporation,
Latur Division, Latur.

...Petitioner...

Versus

Shafi Ahemad Iftekhar Ahemad Patel,
Age : 58 years, Occu. : Service,
R/o : Khorl gali, Latur.
District : Latur.

...Respondent...

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**WITH
WRIT PETITION NO.429 OF 2016**

Vibhag Niyantrak (Divisional Controller)
Maharashtra State Road Transport
Corporation,
Latur Division, Latur.

...Petitioner...

Versus

Shivaji S/o Rajaram Mule,
Age : 50 years, Occu. : Service,
R/o : India Nagar, Latur.
District : Latur.

...Respondent...

**WITH
WRIT PETITION NO.430 OF 2016**

Vibhag Niyantrak (Divisional Controller)
Maharashtra State Road Transport
Corporation,
Latur Division, Latur.

...Petitioner...

Versus

Angad Shabhusing Chavan,
Age : 56 years, Occu. : Service,
R/o : Bhatangali, Latur.
District : Latur.

...Respondent...

**WITH
WRIT PETITION NO.431 OF 2016**

Vibhag Niyantrak (Divisional Controller)
Maharashtra State Road Transport
Corporation,
Latur Division, Latur.

...Petitioner...

Versus

Ramesh Dnyannoba Dhepe,
Age : 56 years, Occu. : Service,
R/o : Bhatangali, Latur.
District : Latur.

...Respondent...

**WITH
WRIT PETITION NO.432 OF 2016**

Vibhag Niyantarak (Divisional Controller)
Maharashtra State Road Transport
Corporation,
Latur Division, Latur.

...Petitioner...

Versus

Sanjay Bhagwantrao Gaikwad,
Age : 56 years, Occu. : Service,
R/o : Sai Road, Latur.
District : Latur.

...Respondent...

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Shri D.S. Bagul, Advocate for petitioners.
Shri S.B. Gastagar, Advocate for respondents.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.02.2016

ORAL JUDGMENT :

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1] In all these petitions, the petitioner is challenging the judgment and order dated 8.7.2015 delivered by the Industrial Court, Latur, in Complaint (ULP) Nos.180/2011, 175/2011, 179/2011, 177/2011, 178/2011 and 176/2011, filed by the respondent – employees respectively.

2] The petitioner in all these petitions is the Maharashtra State Road Transport Corporation. All the sole respondents in these petitions are the employees, who have been charged with for having participated in an illegal strike, which occurred on 28.11.2000. Considering the involvement of the respondents in a common act, which is a common issue in all these petitions, they have been taken up together for hearing.

3] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

4] By the impugned judgment, the Industrial Court, Latur, has allowed the complaints filed by the respondents with costs. Unfair labour practice under Items 9 and 10 of Schedule IV of the Maharashtra

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Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, has been declared against the petitioner. The order of stoppage of one increment by way of punishment, has been set aside by the Industrial Court.

5] The contentions of the learned Advocate for the petitioner – Corporation can be summarized as follows:-

- a] The employees belonging to the largest union of the employees in the M.S.R.T. Corporation called for a strike on 28.11.2000.
- b] The notice of strike did not fulfill the requirement of 14 days notice period.
- c] On 28.11.2000, the strike commenced leading to the non-plying of the Buses.
- d] A loss of Rs.2,42,345/- to the petitioner – Corporation was assessed by the competent authority.
- e] Complaint (ULP) No.216/2000 was filed by the petitioner before the Industrial Court at Latur thereby seeking a declaration of unfair labour practices for having resorted to an illegal strike by invoking Items 1(a) and (b), 5 and 6 of

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Schedule III of the MRTU & PULP Act, 1971.

f] The Industrial Court concluded that the declaration of illegal strike was not sought by the petitioner u/s 25 of the 1971 Act from the Labour Court and hence the complaint was untenable before the Industrial Court.

g] By judgment dated 10.8.2007, Complaint (ULP) No.216/2000 was dismissed by the Industrial Court.

h] Prior to the decision in the complaint, charge-sheet dated 23.7.2001 was issued to all these respondents alleging their involvement in the illegal strike and for committing a misconduct under the Discipline & Appeal Rules of the MSRTC.

i] Full-fledged domestic enquiries were conducted against all the respondents.

j] Not a single respondent took a defence in response to the charge-sheet or by way of evidence before the Enquiry Officer that there was an oral or written agreement between the union and the Divisional Controller of Latur that no action

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against the employees in relation to the illegal strike would be initiated.

k] Barring one employee namely Shivaji Rajaram Mule (Writ Petition No.429/2016), none of the other respondents took a stand in response to the second show cause notice that there was some agreement between the union and the Divisional Controller.

l] Only Shivaji Rajaram Mule has taken the stand that there were some minutes recorded between the Divisional Controller personally and the union office bearers by which it was agreed that the striking workers would be pardoned for their illegal strike.

m] The report of the Enquiry Officer based on the evidence recorded, held the respondents guilty of the charges leveled upon them.

n] A second show cause notice dated 21.8.2010 was issued to each of the respondents proposing the punishment of reducing the basic pay by two stages.

o] After hearing the respondents and

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considering their replies, the petitioner passed an order dated 31.8.2010 imposing the punishment of reduction in basic pay by two stages.

p] The respondents preferred departmental appeals before the first appellate authority as was permissible under the Rules.

q] By order dated 4.5.2011, their appeals were partly allowed and the punishment was reduced to reduction in basic pay by only one stage.

r] All the respondents challenged the orders of punishment issued by the first appellate authority by filing the above mentioned complaints before the Industrial Court.

s] The punishment was questioned by the respondents on the ground of its proportionality.

t] The prayer set out in the complaint was that the order of punishment dated 4.5.2011 be set aside on the ground that it amounts to a disproportionate punishment.

u] The Industrial Court by its judgment and order impugned dated 8.7.2015, allowed the complaints, set aside the order of punishment and

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exonerated all the respondents.

v] When the proportionality of the punishment was at issue, the Industrial Court had no reason to go into the aspect as to whether the petitioner had rightly initiated the enquiry against the respondents or not.

w] There was no agreement dated 28.11.2000 between the MSRTC and the union, which purportedly absolved all the respondents on the assurance by the petitioner that no action would be taken against the respondents.

x] Since no such document was in existence, there was no question of producing the same before the Industrial Court.

y] The Industrial Court has allowed the complaint only by drawing an adverse inference that because the minutes of meeting dated 28.11.2000 were not produced in the enquiry, there is a presumption that the petitioner – Corporation had agreed not to initiate any action against the respondents.

z] Even if it is assumed that there were some

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minutes written down between the Divisional Controller and the union representing the respondents, the same cannot be said to have a binding effect on the petitioner – Corporation since the Divisional Controller was not authorized to sign such minutes on behalf of the petitioner.

aa] Though the act of illegal strike is considered to be a grave and serious mis-conduct, the management had proposed the punishment of reduction in basic pay by two stages, which was further reduced by the first appellate authority.

ab] Unless the punishment is shockingly disproportionate, the Industrial Court could not have interfered with the impugned order.

ac] The Industrial Court also considered that the earlier Complaint (ULP) No.216/2000 seeking declaration of an illegal strike under Schedule III of the 1971 Act, had been dismissed by the Industrial Court.

ad] The Industrial Court had no reason to refer to the dismissal of the earlier complaint.

6] Shri Gastagar, learned Advocate appearing on behalf of all the respondent – employees, has strenuously supported the impugned judgment. His submissions can be summarized as follows:-

a] Though the strike notice did not give 14 days notice period to the petitioner, the respondents had indulged in a peaceful strike.

b] None of the respondents had ever stopped the Buses from plying or had prevented the non-striking employees from discharging their duties.

c] The conduct of the respondents has not caused any loss to the MSRTC.

d] The MSRTC was not pro-active and could not diffuse the situation by taking active steps so as to avert a strike.

e] The charges leveled upon the respondents were denied in the enquiry.

f] Though none of the respondents took a stand in response to the charge-sheet or in the enquiry that there were compromise minutes, one employee Shivaji Rajaram Mule in reply to the second show cause notice had averred that there were minutes

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recorded between the Divisional Controller and the union and hence the petitioner was precluded from initiating any enquiry.

g] Resorting to a strike is a legal weapon with the workmen and an act of resorting to a strike cannot be termed to be a grave or serious mis-conduct.

h] Reduction of basic pay by one stage is a major punishment and would cause irreparable harm and serious prejudice to the respondents.

i] Issuance of a warning or any punishment lesser than reduction in basic pay could be a commensurate punishment if it is presumed that the charges are proved against the respondents.

j] No perversity can be found in the impugned judgment.

k] The minutes of meeting dated 28.11.2000 are in the custody of the petitioner and non-production of the said document rightly led the Industrial Court to draw an adverse inference.

l] The impugned judgments do not call for any interference and the petitions deserve to be

dismissed.

7] I have considered the submissions of the learned Advocates and have gone through the enquiry record made available with their assistance.

8] Though the issue of dismissal of Complaint (ULP) No.216/2000 filed by the petitioner seeking declaration of illegal strike under Schedule III of the 1971 Act, is not subject matter of adjudication before this Court, I find it proper to make certain observations in the light of the reference made by the Industrial Court to the dismissal of the said complaint.

9] The petitioner had preferred Complaint (ULP) No.216/2000 invoking the Items under Schedule III for seeking a declaration of unfair labour practices and a declaration that the strike be pronounced as illegal. The Industrial Court has dismissed the said complaint on the ground that unless a declaration u/s 25 of the 1971 Act is not sought and not made by the Labour Court, the Industrial Court does not have jurisdiction. This issue is no longer *res-integra*.

10] Section 25 of the 1971 Act reads as under:-

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

(1) Where the employees of 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 proceedings 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 purpose of this Act, be deemed to be illegal under this Act."

11] Schedule III under the 1971 Act reads as under:-

"Unfair Labour Practices on the part of Trade Unions:

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

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2 To coerce employees in the exercise or their right to self-organisation or to join unions or refrain from joining any union, that is to say-

a for a union or its members to picketing in such a manner that non-striking employees are physically debarred from entering the work-place;

b to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking employees or against managerial staff.

3 For a recognised union to refuse to bargain collectively in good faith with the employer.

4 To indulge in coercive activities against certification of a bargaining representative.

5 To stage, encourage or instigate such forms to coercive actions as willful "go slow" squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.

6 To stage demonstrations at the residences of the employers or the managerial staff members."

12] Items 1, 2(a), 2(b) and 5 were relevant before the Industrial Court in the said complaint. An issue as to whether the Industrial Court has the inherent power to declare a strike or lock out illegal or not, fell for the consideration of the Division Bench of this Court in the matter of *Maharashtra General Kamgar Union & Ors. v. Balkrishna Pen Pvt. Ltd. & Ors.* (1987 II CLR 375). This

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Court considered the scope of the powers of the Labour Court as well as the Industrial Court. It was also considered that when an application for seeking recognition of an union is placed before the Industrial Court u/s 11 of the 1971 Act, if the employer came up with a plea that the union had resorted to a strike, which was illegal or is deemed to be illegal within the period of six months prior to the month of filing of the application for recognition, would entitle the Industrial Court to consider the said objection and deal with the aspect as to whether such a strike could be termed as being deemed to be illegal.

13] It would be apposite to reproduce the conclusions of this Court set out in paragraph nos.3 to 15 of the judgment in the case of *Maharashtra General Kamgar Union & Ors.* as under:-

"3. The question whether the strike was illegal as contemplated by the said items raises in its turn three questions, namely :

(1) Was the strike "deemed to be illegal under the Act" as required by the said item :

(2) Had the strike commenced before the expiry

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of 14 days from the date of the receipt of the strike notice, and

(3) Was the strike in respect of demands covered by the subsisting settlement ?

The first is a question of law and the other two are questions of fact. The first question revolves round the meaning of the expression "deemed to be illegal under the Act" used in the said item, and the question whether the industrial Court, while exercising its jurisdiction under Section 30 can decide the question of the deemed illegality of the strike under the Act before there is such a declaration by the Labour Court under Section 25 of the Act. Since as stated earlier this question has been agitating the industrial world particularly because of the conflicting decisions of this Court, it has become necessary for us to go into it a little exhaustively and to scrutinise the various provisions of the Act which is undoubtedly a badly drafted piece of legislation. The authorities cited before us also show that the learned Judges have tried to reconcile the conflicting provisions of the Act to find a way out in the cases which fell for decision before them.

4. As is evident from its preamble, the Act has been placed on the statute book

(i) to provide for the recognition of Trade

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Unions for facilitating collective bargaining and to state their rights and obligations; (ii) to confer certain powers on unrecognised unions, (iii) to provide for declaring certain strikes and lock-outs as illegal; (iv) to define and provide for the prevention of certain unfair labour practices; (v) to constitute Courts as independent machinery for carrying out the purposes of according recognition to Trade Unions and to enforce the provisions relating to unfair practices; and (vi) to provide for matters connected with the aforesaid purposes.

It is thus evident that for the aforesaid purposes the Act is intended to be a Code by itself. The other provisions of the Act so far as they are relevant for our purpose have to be scrutinised in the light of these objects of the Statute.

Section 3 of the Act contains definitions and among others it defines "recognised union" and "unfair labour practices." Section 4 makes provision for constituting Industrial Court and Section 5 states its duties. Among the duties entrusted to the Industrial Court are the following : (a) to decide an application by union for grant of recognition to it; (b) to decide an application by a union for grant of recognition in place of a union which has already been recognised under the Act; (c) to

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decide an application from another union or an employer for withdrawal or cancellation of the recognised union; (d) to decide complaints relating to unfair labour practices, except unfair labour practices falling in item I of Schedule IV : (e) to decide reference made to it on any point of law either by any Civil or Criminal Court : and (f) to decide appeals under Section 42 from the orders of the Labour Court.

5. "Labour Court" is defined under Section 6 and Section 7 states that the duty of the Labour Court is to decide complaints relating to unfair labour practice described in item 1 of Schedule IV and to try offences punishable under the Act. Chapter V consists of Sections 24 and 25 which deal with illegal strikes and lock-outs. Section 24(1) defines "illegal strike" whereas Section 24(2) defines "illegal lock-out". Section 25(1) empowers either the State Government or the employer to make a reference to the Labour Court for declaration that the strike is illegal; whereas Section 25(2) gives power to the State Government or to the recognised union to make a similar reference to the Labour Court for declaration, whether the lock-out is illegal. Under this sub-section the reference can be made either when the employees propose to go on strike or commence it. Section 25(3) enjoins on the Labour Court to make the declaration of

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legality or illegality of the strike or lock-out in open Court with a purpose. The declaration made under this section shall further be recognised as binding and has to be followed in all proceedings under the Act as is specifically ordained by sub-section (4) thereof, Sub-section (5) of the Section which is very material for our purpose states that where any strike or lock-out declared to be illegal under the said 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."

6. Chapter VI which contains Sections 26 to 29 deals with unfair labour practices. Section 26 defines "unfair labour practices" as those which are listed in Schedules II, III and IV of the Act and Section 27 states that no employer or union and no employee shall engage in any unfair labour practice. Section 28 lays down the procedure for dealing with complaints relating to unfair labour practices to be followed by the Industrial Court or the Labour Court, as the case may be. The normal period for entertaining the complaints of unfair labour practice is 90 days from the occurrence of the unfair labour practice which period can be extended for good and sufficient reasons. Section 29 states that the order of the

Industrial Court or Labour Court, that unfair labour practice has or has not been committed, shall be binding on all parties to the complaint as well as on all the parties who were summoned to appear as parties to the complaint, whether they appear or not. In the case of an employer, the order is binding also on his heirs, successors and assigns, while in the case of employees, it is binding on all persons who on the date of the complaint are employed in the undertaking and also on all persons who may be subsequently employed in the said undertaking.

7. Chapter VII which consists of Sections 30 to 37 deals with the powers of the Industrial and Labour Courts, among others, while deciding the complaint of unfair labour practice. Under Section 30 (1) the Court has power to declare that an unfair labour practice has been engaged in or is being engaged in by any person named in the complaint and also to specify any other person who has engaged or is engaging in the same. It has also the power to direct all such persons to cease or desist from the unfair labour practice, and to take such affirmative action as may in the opinion of the Court be necessary to effectuate the policy of the Act. It has also the power to direct that recognition of the recognised union which has

engaged in or is engaging in any unfair labour practice be cancelled or that all or any of its rights be suspended. What is more, sub-section (2) thereof, gives power to the Court to pass such interim orders including any temporary relief or restraining order, as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in the proceeding), pending final decision. Section 31 gives power to the Court to proceed ex parte when the party summoned does not appear. Section 32 which assumes importance in the present case, then reads as follows :

"Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act."

It is not necessary for our purpose to refer to the other provisions of the said Chapter.

8. Chapter IX provides for penalties. Chapter VIII deals with powers of Labour and Industrial Courts to try offences under the Act. Chapter X is the usual Miscellaneous Chapter and all that is necessary for our purpose to note from the said Chapter are the provisions of Section 53 which empowers the State Government to make any

addition or alteration in any of the Schedules II, III or IV or to delete any item therefrom, after obtaining the opinion of the Industrial Court and after considering the objections and suggestions to the same received from any person.

9. Schedule II of the Act lists, as its heading shows, Unfair Labour Practices on the part of employers; whereas Schedule III lists Unfair Labour Practices on the part of Trade Unions, Schedule IV lists General Unfair Labour Practices on the part of employers.

10. Against the background of these provisions of the Act, we have to answer the two questions, viz., whether the Industrial Court can by itself decide whether the strike is deemed to be illegal under the Act as it has done in the present case, and whether in fact the strike in the present case, was deemed to be illegal under the Act. We have pointed out that sub-section (1) of Section 25 gives power to the Labour Court to declare that the strike or lock-out is illegal. That declaration is to be made in open Court as required by sub-section (2) of that section. By virtue of sub-section (5) of the section, a strike (or lock-out) is not deemed to be illegal under the Act if it is withdrawn within 48 hours of such declaration. In the present case, the employer

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had filed a complaint before the Industrial Court under Section 30 of the Act for declaration that the respondents had committed unfair labour practice, among others, under item 1 of Schedule III which is couched in the following language :

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

The Industrial Court also granted such a declaration, after recording a finding, firstly, that the strike was illegal and, secondly, that the respondents (which included the Union, its President, some of the employees and one nonemployee) had committed unfair labour practice. With the second declaration, as stated earlier, we are not now concerned in this petition. The contention advanced on behalf of the petitioners is that the Industrial Court while acting under Section 30 does not have powers to entertain a reference for a declaration that the strike is illegal. That power is vested under Section 25 exclusively in the Labour Court. Secondly, it is urged that the strike would be deemed to be illegal under the Act only if it is first declared to be illegal by the Labour Court under Section 25 (3) and is not withdrawn within 48 hours in such declaration. Since,

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admittedly, in the present case there was no declaration by the Labour Court that the strike was illegal, the strike could not have deemed to be illegal under the Act as held by the Industrial Court. In support of this contention, Mr.Deshmukh, learned Counsel appearing for the petitioners, took us through the provisions of the Act to which we have already made a reference and tried to impress upon us that the legislature had a definite scheme in its mind; that the functions of the Labour Court and of the Industrial Court were placed in water-tight compartments and the functions of one were not be usurped by the other. He also relied on two decisions of learned Single Judges of this Court, one directly and the other indirectly, in his favour. The first decision, which is directly in his favour, is reported in (1986-II-LLJ-430) *Ajay Rao Sambhaji Bhagat V. Y. A. Khatke and ors.* In this case the question which arose for consideration was whether the interim relief granted by the Labour Court pending decision on a petition challenging validity of the lock-out was proper or not. The learned Judge held that no such relief can be given unless first there is a declaration by the Labour Court under Section 25 (3) of the Act that the lock-out is illegal and it is not withdrawn within 48 hours of such declaration. It is only then that it

will fall in the category of item 6 of Schedule II of the Act as an unfair labour practice. The learned Judge also held that even in that case a complaint will have to be presented before the Industrial Court by virtue of Section 5 (d) of the Act which vests the power to decide such complaints in that Court. Thus, according to the learned Judge, in any event, the Labour Court, during the pendency of the Reference under Section 25 (2) of the Act, could not grant interim or ad interim relief. The second decision relied upon by Mr.Deshmukh and from which he sought to derive an indirect support to his contention is reported in **(1985) 2 Current Labour Reports** at page 378, *Engineering and Metal Workers Union v. M/s. Sah and Sanghi and anr.* This was a case where the legality of an interim order passed by the Industrial Court restraining employees from participating in an "apparently illegal strike" prior to the stage of making a declaration about the alleged illegality of the strike under Section 25 was challenged. While dealing with the said question, the learned Single Judge has observed in paragraph 20 of the judgment that the provisions contained in sub-section (5) of Section 25 of the Act providing for 48 hours *locus penitentiae* is a fiction specifically enacted by the Legislature and hence even in a case of a clear apparently illegal strike,

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granting of ad interim injunction or limited interim injunction without providing the said *locus penitentiae* would not be proper. Relying on these observations, Mr.Deshmukh contended that even in this case the learned Judge should be deemed to have come to the conclusion that declaration that a strike is illegal cannot be given by the Industrial Court unless first there is a declaration by the Labour Court under Section 25 and a period of 48 hours has elapsed from such declaration. As against these decisions, Mr.Damania, learned Counsel appearing for the employer, relied upon two decisions of learned Single Judges and one decision of a Division Bench of this Court. The first decision of a learned Single Judge is reported in (1983) Lab. I.C. 777 *Mafatlal Engineering Industries Ltd. V. Association of Engineering Workers and anr.* This was a case where the employees had approached the Industrial Court under Section 30 of the Act for a declaration that the employer had declared an illegal lock-out and had thus committed an unfair labour practice as described in item 6 of Schedule II. The same argument which is advanced on behalf of the employees before us was advanced on behalf of the employer there, viz., that unless there was a declaration by the Labour Court under Section 25 (3) that the lock-out was illegal, and the

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lock-out was not withdrawn within 48 hours under Section 25 (5) of the Act, the Industrial Court would not be competent to hold that the lock-out was deemed to be illegal under the Act which the Court in that case had done. Negating this contention, the learned Judge held that such an interpretation will not advance the intention of the legislature because in many cases it would not be possible for the employees to complain about the unfair labour practice since the declaration by the Labour Court under Section 25 takes a considerable time and would bar the remedy of filing the complaint within the stipulated period from the date of the occurrence which is 90 days. In **1983 Mh.L.J. 572 Billion Plastics Pvt. Ltd. v. O. & C Wor. Union** another learned Single Judge of this Court grappled with the true intention of the legislature in using the phrase "deemed to be illegal" in items 6 of Schedule II and item 1 of Schedule III with which we are concerned. According to the learned Judge the word "deemed" is advisedly used in the said items so that for entertaining an application under Section 30 or granting the necessary relief, the Court need not wait for a declaration under Section 25. The Court can deal with the matter if it is shown that the strike resorted to is "treated" or regarded as being" or "shall be taken to be" an illegal

lock-out (strike) under Section 24 of the Act. We have then more or less a direct unreported decision of a Division Bench of this Court in Special Civil Application No.1503 of 1978 decided on 14th August 1978.

In this case, an application for recognition was made by the Union which was resisted by the employer on grounds, among others, that the union had indulged in an illegal strike within six months immediately preceding the said application. While dealing with this allegation, the Division Bench had an occasion to consider whether the Labour Court had an exclusive jurisdiction to decide that the strike was illegal or not or whether the Industrial Court, even while dealing with the application for recognition, could try the said issue and answer it itself. The Court after considering the provisions of sub-section (5) of Section 25, held that the Industrial Court while trying the application for recognition had jurisdiction to decide the issue of illegality as well, and that the Labour Court had no exclusive jurisdiction to answer the said issue. Though the decision is under another provision of the Act, namely Section 11, we are of the view that the view taken there will equally apply to the case such as the present one, where the Industrial

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Court while trying an application under Section 30 has to decide whether an unfair labour practice has been committed by a party. Mr.Deshmukh did contend that the Division Bench had given no reasons for coming to the said conclusion and that the conclusion arrived at there is a mere *ipse dixit* and, therefore, this Court can take a different view of the matter on the basis of the contentions advanced by him.

11. There is no other precedent cited before us. We are of the view that to answer the issue whether the Industrial Court while trying an application under Section 30 of the Act has jurisdiction to record its findings on whether the strike (and for that matter lock-out) is deemed to be illegal under the Act, it is not necessary either to resort to semantics or rhetorics. The provisions of the Act are clear on the point. Section 5, as pointed out earlier, deals with the duties of the Industrial Court. Sub-clause (d) thereof enumerates one such duty in the following language :

"(d) to decide complaints relating to unfair labour practices except unfair practices falling in item 1 of Schedule IV";

Item 1 of Schedule IV relates to unfair labour

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practices on the part of employers in discharging or dismissing employees, and the Labour Court is given the power under Section 7 of the Act to decide complaints relating to the said practice and hence it is excluded from the purview of the Industrial Court. 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 Section 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

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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 subsections (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 lock-outs. 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.

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12. That this is the avowed intention of the legislature is further evidenced by the provisions of Section 32 of the Act, which have been reproduced above. The language of this section is crystal clear, and no further and other argument is necessary to vest the Industrial Court with the said incidental power. What is latent is made explicit by the aforesaid provision. The section begins with the *non obstante* clause and thus first negates the argument of the so-called exclusive jurisdiction of the Courts and proceeds to vest in them the power to decide all matters arising out of any application or complaints referred to it for decision under any of the provisions of the Act.

13. Although Mr. Deshmukh fails in his submission on the aforesaid point, he has a right to succeed on the facts of the present case by virtue of the very conclusion to which we have arrived. Admittedly, the Industrial Court had not made a declaration that the strike was illegal as required by the provisions of Section 25 (3) and given 48 hours' time thereafter for withdrawal of the strike as ordained by Section 25 (5). In other words, there was no opportunity afforded to the strikers to withdraw the strike after the declaration. Hence there could not have been a

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finding that the strike was "deemed to be illegal under the Act" which is necessary before any one could be held guilty of the unfair labour practice under item 1 of Schedule III. The Industrial Court in its impugned order has merely stated that "the strike commenced and continued from 9th January, 1981 is declared to be illegal". This being the position, the fining will have to be set aside. It is also for this reason that it would not have become necessary to go into the question whether the Union or any of the respondents and advised or actively supported or instigated the strike.

14. Since we are informed that in view of the conflicting judgments of this Court, the Courts below are experiencing difficulties in dealing with such complaints under Section 25 of the Act, we feel it necessary to outline broadly the procedure the Courts should follow in such cases. If there is an application for interim relief the Court will have to dispose of it 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

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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 is 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 case of 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.

15. With this finding it is not necessary to go into the other two questions. However the question whether the strike was illegal because it had commenced 11 hours before the expiration of the strike notice is of general importance and is likely to crop up in other proceedings as well. At the request of both the parties, we have decided to record our findings on the same. The facts reveal that the strike notice was received by the employer

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on December 26, 1980 and the strike commenced at 1.0 p.m. on 9th January, 1981. Mr. Deshmukh, no doubt, contended that if it is held that the employer had received the notice before 1.0 p.m. on 26th December, 1980, then 14 days had expired before 1.0 p.m. on 9th January, 1981. This argument has two flaws in it. The first difficulty is that there is nothing on record to show that the employer had received the notice before 1.0 p.m. on December 26, 1980. The second and obvious difficulty is that according to the General Clauses Act, the day is computed from 'o' hour to 12.00 p.m. and what is more, the day on which the notice is received is to be excluded for the purpose of the computation of the requisite period. This being the case, 14 days in the present case could not have expired according to law, prior to 12.00 p.m. on January 9, 1981. Admittedly, therefore, the strike which had commenced at 1.00 p.m. on 9th January, 1981 was 11 hours prior to the expiry of 14 days. The question, however, still remains as to whether it is only that period of strike, viz. 11 hours which should be held to be illegal or whether the strike should be held illegal for its entire duration. Mr. Deshmukh relied and according to us rightly, on a decision of a Division Bench of this Court reported in **(1981) 14 Lab. I.C. 221**. The

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Premier Automobiles Ltd. v. G. R. Sapre and ors., in support of his contention that the strike would be illegal only for the first 11 hours and not for its entire duration. It was a case where a lock-out was declared without giving the prescribed notice. The issue before the Court was whether the lock-out should be declared to be illegal for its entire duration or whether the illegality could be cured by giving a notice subsequently which was done. The Court held that it is never too late to be wise and to make amends. No one can claim vested interest in compelling a man to continue the illegality even when he is keen to remove it by complying with the law. The Court further held that any lock-out commenced illegally without notice would cease to be illegal from the day on which 14 days' period expires after the notice which can be given even during the continuance of the lock-out. Illegality committed till that day may have its full effect and subsequent legality thereof may not relieve the employer of financial liabilities to which the illegality of that period exposes him such as paying compensation to workers etc. It was, therefore, held in that case that the lock-out was illegal only till the date of the expiry of 14 days of the lock-out notice which was given subsequent to the commencement of the

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lock-out. According to us, there is no reason why this reasoning should not apply in a case where the notice is given prior to the commencement of strike or lock-out and the strike or the lock-out commences before the expiry of the period of notice. The object of giving the notice is to enable the other party to make amends or to come to terms or redress the grievance or to approach the authorities concerned to intervene and to stop, if it is possible, the threatened action. Commencement of the action, whether strike or lock-out, earlier to the expiry of the period of notice does not prevent the other party from responding to the requisitions in the notice during the remaining period of notice. Hence the illegality should attach only to that period which remained to expire before the commencement of the action. Since admittedly in the present case the strike had commenced 11 hours before the expiry of the strike notice, the strike was illegal only for the said period of 11 hours. The strike would be legal for the rest of its duration."

14] As such, it is settled law that the Industrial Court can deal with the aspect of legality of a strike / lock out under Schedule III of the 1971 Act. The

dismissal of the complaint vide judgment dated 10.8.2007 by the Industrial Court was not called in question before this Court.

15] It is not in dispute that the respondents invoked Items 9 and 10 of Schedule IV of the 1971 Act before the Industrial Court in their complaints filed for challenging the order of punishment dated 4.5.2011. Items 9 and 10 of Schedule IV read as under:-

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

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

16] From the pleadings of the parties and the evidence analyzed by the Industrial Court, I do not find any evidence to support the invoking of Item 10 of Schedule IV. An act of force or violence at the behest of the employer is neither pleaded nor proved. Yet the Industrial Court has declared that the petitioner is guilty of Item 10 of Schedule IV. These conclusions are apparently unsustainable and hence perverse. I, therefore, set aside the said conclusions.

17] Insofar as Item 9 of Schedule IV is concerned, the

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contention of the respondents was that the punishment awarded is disproportionate to the gravity and seriousness of the misconducts proved against them. The issue of whether the enquiry is vitiated or not and as to whether the findings of the Enquiry Officer are perverse or not, was not addressed to the Industrial Court for adjudication. This, therefore, leads to an inescapable conclusion that the fairness of the enquiry and the findings of the Enquiry Officer were not at issue and hence the charges stood proved.

18] The only issue that was left open for adjudication of the Industrial Court was as to whether the punishment could be termed as being shockingly disproportionate. It is trite law that merely because a punishment may appear to be disproportionate, would not entitle a Court to invoke its jurisdiction and interfere with the quantum of punishment. Unless the punishment appears to be 'Shockingly disproportionate', no interference is called for.

19] Insofar as the issue as to whether there was any agreement, settlement or award purportedly dated 28.11.2000 is concerned, there is no dispute that there was no settlement as understood u/s 2(p) r/w Section 18 of the Industrial Disputes Act signed between the petitioner – Corporation and the union

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representing the respondents, which could be termed as being a settlement applicable and binding upon the parties.

20] The contention of one of the respondents and that too after the conclusion of the enquiry, is that there was an agreement in the form of minutes of discussions dated 28.11.2000 by which the Divisional Controller assured the striking workers that no disciplinary action would be initiated against the striking workers. It is not in dispute that the said purported minutes of discussions were not before the Enquiry Officer in the enquiries.

21] The Industrial Court has considered that an application was moved under the Right to Information Act by one of the employees seeking a copy of the document dated 28.11.2000. The Information Officer is said to have informed the employees that whatever documents are in the custody of the petitioner, they would be produced before the Industrial Court. The Industrial Court further concluded that application (Exh.U-12) moved by one of the respondents for seeking production of the minutes of discussions was allowed by the Industrial Court and the same has not been produced on record. The Industrial Court, therefore, has drawn an adverse inference and on the basis of which the complaints have been

allowed and the punishment has been interfered with.

22] I am unable to concur with the conclusions of the Industrial Court for reasons more than one. Firstly, no respondent had taken a defence in response to the charge-sheet or in their oral evidence in the enquiry that the enquiry itself could not be commenced since the employer has unequivocally pardoned the respondent – employees for their participation in the illegal strike. One of the respondents alone namely Shivaji Rajaram Mule has taken a stand, but in response to the second show cause notice by which punishment was proposed, that the enquiry could not have been conducted. As such, a factor, which was not a part of the record and proceedings of the domestic enquiry, could not have been considered by the Industrial Court.

23] Secondly, the contention of Shivaji Rajaram Mule was that a Divisional Controller of the MSRTC namely Mr.Rathod had agreed not to initiate any disciplinary action against the respondents for having indulged in acts of illegal strike. Neither was this defence taken in the enquiry nor did the respondents produce Mr.Rathod as their witness in the enquiry. The Industrial Court could not have looked into the enquiry on the basis of documents, which were foreign / alien to the

record and proceedings of the enquiry.

24] Thirdly, the Industrial Court should have appreciated that unless a document amounts to a settlement u/s 2(p) or is an agreement or is an award u/s 2(b) of the Industrial Disputes Act, 1947, no sanctity can be attributed to such a document. Item 9 of Schedule IV, though has a large compass for looking into the contentions of the complainants, cannot appreciate a document, which is not a settlement, an agreement or an award. Even on this count, the Industrial Court could not have considered the minutes of discussions and its purported non-production as a ground for drawing adverse inference.

25] Fourthly, the Industrial Court has lost sight of the fact that though the act of indulging in an illegal strike is considered to be a grave and serious act in catena of judgments, the punishment awarded to the respondents was only reduction of basic pay by one stage. By no stretch of imagination could the said punishment be termed as being shockingly disproportionate to the gravity and seriousness of the mis-conduct.

26] In the light of the above, these petitions are

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allowed. The impugned judgments dated 8.7.2015 delivered by the Industrial Court, Latur, are quashed and set aside. The Complaint (ULP) Nos. 180/2011, 175/2011, 179/2011, 177/2011, 178/2011 and 176/2011 are, therefore, dismissed.

27] Rule is made absolute in the above terms. There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.)