

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5221 OF 2017

Engineering Workers Association	...Petitioner
Vs.	
Radium Creation Ltd. & Ors.	...Respondents

Ms.Nayana Buch with Mr.S.D. Rawool I/b. Mr.Shailesh K. More for
Petitioner.

Mr.Sudhir Talsania, Senior Advocate, with Mr.P.N. Anaokar & Mr.Rahul D.
Oak & Mr.Siddhesh S. Shetye for Respondent No.1.

CORAM : S.C. GUPTE, J.

DATE : 17 JULY 2018

ORAL JUDGMENT :

1 This petition challenges an order passed by the Industrial Court at Thane on a complaint of unfair labour practice. The complaint was in respect of Item 6 of Schedule II of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, i.e. against a lock-out proposed and continued by the management, deemed to be illegal under that Act.

2 The Respondent company issued the lock-out notice on 5 July 2014 and declared the lock-out effective from 20 July 2014. Immediately after the notice was issued, the Petitioner union filed the present complaint, alleging an illegal lock-out and claiming a perpetual injunction. The union applied for an interim order, which was declined by the Industrial Court. That order was confirmed by this court in a writ petition filed by the union. The union thereafter carried the matter to the Supreme

Court. The Supreme Court, by an interim order, directed the Respondent employer to deposit in court wages of workmen corresponding to the period of lock-out and till the date of its interim order. In pursuance of this order, a sum of Rs.1.40 crores was deposited by the Respondent employer in court. The lock-out was thereafter lifted by the employer on 22 July 2015. The complaint thereafter came for final disposal before the Industrial Court. The court held the lock-out to be legal and directed the amount deposited by the Respondent employer to be refunded. This order has been challenged by the union in the present petition.

3 Learned Counsel for the Petitioner union submits that what the Industrial Court had to decide in this case was not merely the legality of the lock-out but also its justifiability. Learned Counsel submits that though this lock-out may have been legal at the inception, its continuance for an indefinite period, by way of a subsequent act on the part of the employer, amounts to an unjustified lock-out. Learned Counsel relies on a judgment of the Supreme Court in the case of **Statesman Limited vs. Their Workmen**¹ as well as the case of **Maharashtra General Kamgar Union vs. Balkrishna Pen Pvt.Ltd.**² decided by a Division Bench of our court in support of her submission. Learned Counsel also relies on the observations made by the Supreme Court whilst disposing of the special leave petition after ordering deposit of wages during the lock-out period. Learned Counsel submits that the Supreme Court accepted the submission advanced before it that the entitlement of workmen to these benefits would depend upon whether the lock-out was legally valid and justified. The court noted that this finding was yet to be recorded by the Industrial Court. The court directed the amount deposited before the Industrial Court to be utilized for

1 **1976 AIR SC 758**

2 **1987-II-CLR-374(Bom)**

disbursement in favour of the workmen subject to the condition that each one of them filed before the Industrial Court an undertaking to the effect that in case the court *“records a finding that the lock-out was legal or justified and that finding is finally upheld by the appellate/revisional authorities the amount so received shall be refunded back to the company”*. Learned Counsel submits that in the present case, despite these specific directions of the Supreme Court, the Industrial Court desisted from framing any issue of justifiability. Learned Counsel submits that in fact the Industrial Court expressly declined to consider the question of justifiability as part of its judicial exercise whilst disposing of the complaint.

4 As for the law on the point, it is important to note that Item 6 of Schedule II of the MRTU and PULP Act refers to a lock out “deemed to be illegal under this Act”. The concept of “deemed illegality” is to be found in Section 25 of that Act. Section 24 of the Act defines 'illegal strike' as also 'illegal lock-out'. Sub-section (2) defines an 'illegal lock-out' to be a lock-out which is commenced or continued in the manner provided in clauses (a) to (g) thereof. Section 25 then provides for a reference to a Labour Court for a declaration that the strike or lock-out is illegal. Where the employer of any undertaking proposes or commences 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 that such lock-out is illegal. Under Sub-section (5) of Section 25, where any lock-out declared to be illegal under this section is withdrawn within forty-eight hours of such declaration, such lock-out is not deemed to be illegal under the Act. If not so withdrawn, it would be deemed to be illegal and a complaint of unfair labour practice can be entertained in respect of it. In other words, the provisions of MRTU

and PULP Act require the Industrial Court to entertain a complaint only when the court declares a lock-out to be illegal under that Act and within forty-eight hours of such declaration, such lock-out is not withdrawn by the employer.

5 In this scheme of things, the court under the MRTU and PULP Act merely considers the aspect of legality of a lock-out with reference to clauses (a) to (g) of Sub-section (2) of Section 24 thereof. It does not consider the other and wider aspect of justifiability of the lock-out. That wider question may fall for consideration before a labour court or an industrial tribunal in a reference made to it under the Industrial Disputes Act. It may declare the lock-out to be illegal, if it is for any reason unjustified. The leading authority on the jurisdiction of the Court under the MRTU and PULP Act to consider justifiability of a lock-out is the case of **Modistone Limited vs. Modistone Employees Union**³. The Division Bench of our court in that case clearly held that the question of justifiability of reasons can be gone into only in an industrial adjudication by seeking a reference under Section 10 of the Industrial Disputes Act, and not in a complaint under the MRTU and PULP Act. The employees have an option to either seek a reference under Section 10 of the Industrial Disputes Act or to go under the MRTU and PULP Act. If, however, they choose to go under the latter Act, the Court deciding their complaint of unfair labour practice can only decide whether the lock-out is legal or illegal, i.e. whether it is in accordance with the provisions of MRTU and PULP Act. As part of this exercise, the court may even decide whether the reasons stated in the notice of lock-out are non-existent or sham or irrelevant, i.e. non-germane to the employer-employee relationship. However, it cannot go into the

3 **2001-I-CLR-1009**

question of sufficiency or adequacy of the reasons and in that sense decide generally the question of justifiability.

6 The judgment of **Statesman Limited** (supra) cited by learned Counsel for the Petitioner does consider justifiability of a lock-out. It does hold that a lock-out may be justified at its commencement, but its continuance beyond a certain period may be unreasonable and therefore, unjustifiable. It is, however, important to note that that case was decided under the provisions of the Industrial Disputes Act and, as this court has explained in **Modistone** case (supra), that question, it cannot be gainsaid, can always be considered by an Industrial adjudicator on a reference under Section 10 of the Industrial Disputes Act.

7 What the case of **Balkrishna Pen Pvt.Ltd.** (supra) decides is that there is no need for a Labour Court to declare illegality of a lock-out on a reference under Section 25(2) of the MRTU and PULP Act for the lock-out to be treated as 'deemed to be illegal' upon it not being withdrawn within forty-eight hours of such declaration; the Court whilst entertaining a complaint of unfair labour practice itself, while deciding the case of deemed illegality, may first decide illegality of such lock-out and thereafter give forty-eight hours' time to the employer to withdraw the lock-out and if it is not so withdrawn within forty-eight hours, declare the lock out to be "deemed illegal" and give relief on the workmen's complaint. The case is no authority for the proposition canvassed by the Petitioner union, namely, that in a complaint of unfair labour practice under Item 6 of Schedule II of the MRTU and PULP Act, the court can go into the aspect of justifiability of the lock-out.

8 It is true that the Supreme Court, whilst disposing of the special leave petition, expected the Industrial Court to decide whether the lock-out was “legally valid or justified”. It is, however, clear, to my mind, that the word “justified” used by the court, in the present context, would imply a legal justification, as may be permissible for the court to consider in a complaint of unfair labour practice filed under Section 28 read with Item 6 of Schedule II of the MRTU and PULP Act and not any and every justification, which may be gone into in a reference of an industrial dispute.

9 Accordingly, there is no merit in the petition. The petition is dismissed.

10 At the request of learned Counsel for the Petitioner, learned Counsel for the first Respondent states that the first Respondent shall not apply for refund of the amount deposited by it before the Industrial Court for a period of six weeks from today. The statement is accepted.

(S.C. GUPTE, J.)