

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.11.2018	DELIVERED ON: 06.12.2018
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CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P.No.23427 of 2018
and
W.M.P.No.27342 of 2018

The Management of SNY Autotech Pvt Ltd.,
Rep. by its Director,
Survey No.297, 300, 301,
Sugamtharumpedu Village Road,
Irrungattukotai,
Sriperumbudur Taluk - 602 117. ... Petitioner

Vs.

1.The Inspector of Police,
C1 Police Station,
Sriperumbudur - 602 105.

2.United Labour Federation,
149, Thambu Chetty Street,
C.J.Complex, 4th Floor,
Chennai - 600 001. ... Respondents

PRAYER: To issue a Writ of Mandamus directing the 1st respondent to provide adequate police protection to the petitioner to enable the willing workmen, contract workmen, staff, officers and other managerial personnel and customers to enter and exit the factory premises, to enable the petitioner to send materials to its customers, to receive the materials including raw materials for process work inside the petitioner factory premises, (ingress and egress of men and materials), and ensure that the striking workmen are 500 meters away from the main gate of the factory premises and to maintain law and order and peace in and around the petitioner's factory premises situated at Survey No.297, 300, 301 Sugamtharumpedu Village Road, Irrungattukotai, Sriperumbudur Taluk - 602 117.

For Petitioner : Mr.S.Ravindran, Senior Counsel
for Mr.P.Nehru

For Respondents : Mr.M.Mohamed Riyaz, APP for R1
Mr.V.Prakash, Senior Counsel
for K.Sudalai Kannu for R2

O R D E R

This writ petition has been filed by the Management of SNY Autotech Pvt. Ltd. for a direction to the first respondent police to provide adequate police protection to the petitioner company to enable the willing workmen, staff, officers and other managerial personnel and customers to enter and exit the factory premises, to enable the petitioner to send materials to its customers, to receive the materials including raw materials for process work inside the petitioner factory premises. In short, the petitioner has sought for police protection for free ingress and egress of men and materials.

2.The case of the petitioner is that at the instigation of the second respondent union, the workmen and trainees of the company indulged in a strike from 31.08.2018 onwards. Subsequently, the strike intensified and the striking workmen started sitting right outside the factory premises and they also indulged in switching off CCTV cameras installed in the factory premises and virtually disabled the office staff, executives and other willing workmen to enter into the factory and thereby severely impacted manufacturing activities of the petitioner company. It is the further case of the petitioner that the workmen involved in the strike have also stolen critical components and also programmes relating to high precision machines installed in the factory premises.

3.It is the further case of the petitioner that since the situation was going out of control, the petitioner company lodged a complaint to the first respondent police on 04.09.2018. The minimum police force was deputed to the factory premises. However in view of the overwhelming crowd involved in the strike, the police men deputed were not in a position to take control of the situation. Therefore, it let down to a complete breakdown of law and order and industrial peace in and around the factory premises.

4.Under such circumstances, this writ petition was filed before this Court seeking for the above mentioned relief.

5.The above writ petition came up for admission and hearing on 10.09.2018. Even at the time of admission, the learned counsel representing the second respondent union took notice and the matter was adjourned to 11.09.2018. This Court after hearing the respective counsel, found that the prima facie case has been made out and therefore directed the first respondent police to provide police protection to the petitioner company to ensure free ingress and egress of men and materials and permitted the respondent union to hold their demonstration 200 meters away

from the factory premises. Thereafter the case was adjourned from time to time and the interim order granted by this Court was also extended. In the mean time, the second respondent union filed their counter affidavit and the petitioner also filed a reply affidavit for the counter filed by the second respondent.

6.This Court also directed the first respondent police to file a report regarding the situation that was prevailing near the factory premises before the interim order was passed by this court granting police protection. The first respondent police has also filed a report before this Court.

7.The learned senior counsel Mr.S.Ravindran appearing for the counsel representing the petitioner, made the following submissions:

- The second respondent union had raised certain disputes regarding services of certain trainees, shifting of certain employees and certain charter of demands and the conciliation proceedings are going on before the Deputy Commissioner of Labour, Sriperumbudur, Kanchipuram.
- From 01.09.2018 onwards, 17 trainees abstained from work and from 04.09.2018, the other workmen also joined them and indulged in strike. Therefore according to the learned senior counsel, the illegal strike was called by the workmen on their own, without any provocation on the side of the petitioner and more particularly when the conciliation proceedings were pending.
- The striking workmen unauthorizedly switched off CCTV camera and also removed certain critical tools from the machines and also deleted certain important programmes that were already available in the machines and thereby attempted to completely stall the manufacturing activity of the petitioner company and based on the police complaint given by the petitioner, an F.I.R. was registered and one person was arrested and tools were recovered from him. In this regard, the learned senior counsel submitted that disciplinary proceedings have initiated against 15 workmen and charge memo has already been issued to them.
- Since the strike is illegal and the striking workmen were

virtually posing a threat to the peaceful atmosphere of the factory and attempting to create a law and order problem and forcibly stopping the free ingress and egress of men and materials, the petitioner company had no other alternative except to approach this Court seeking for police protection.

- He further submitted that the second respondent union do not have the right to prevent the willing workers from going to work and this illegal strike cannot be taken advantage of to paralyse the entire manufacturing activity of the petitioner company and the petitioner company cannot be held to a ransom and pressurised to meet the demands of the second respondent union.

- The learned senior counsel also relied upon the following judgments in order to substantiate his arguments.

(a) Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Limited and another reported in (2008) 5 SCC 554

(b) Railway Board, New Delhi and another Vs. Niranjan Singh reported in AIR 1969 Supreme Court 966

(c) AVTEC Limited Power Products Division rep. by its Authorised Signatory and Deputy General Manager (HR) Vs. The Superintendent of Police and others reported in MANU/TN/0402/2008.

(d) Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes and others reported in 2018 (1) LLN 709 (DB) (HP).

(e) Mining and Allied Machinery Corporation, Ltd., Vs. Superintendent of Police, St. Thomas Mount, Madras - 16 reported in 1987 SCC Online Mad 339 : (1987) 2 LLN 294.

8. Per contra, Mr. V. Prakash, learned senior counsel appearing

on behalf of the learned counsel representing the second respondent, made the following submissions:

- The petitioner company had engaged 120 workers to work in the factory, out of which 58 workers are treated as direct workmen and the remaining are treated as contract labour and there is no order of appointment given to the workers and no workmen has been confirmed till date. Therefore a charter of demands was raised by the second respondent union and the same is pending conciliation before the Deputy Commissioner of Labour, Sriperumbudur, Kanchipuram.
- When the workers reported for work on 03.09.2018, nearly 18 workers were stopped at the gate and were refused employment. This act of the petitioner company, according to the learned senior counsel, will amount to an illegal lockout under the Industrial Disputes Act and therefore the strike that was called for by the second respondent union against the illegal lockout, is a legal strike and the same cannot be prevented by using police force, in the strength of obtaining an interim order from this Court.
- The second respondent had strictly complied with the directions given by this Court in its order dated 11.09.2018 by continuing the protest 200 meters away from the petitioner factory. But however taking advantage of the same, the petitioner company has started employing new workers and thereby the petitioner company has mis-used the interim order passed by this Court and has indulged in unfair labour practise.
- The petitioner company with the help of police force is breaking a legal strike and the discretionary remedy of this Court is being mis-used. The learned senior counsel would submit that the second respondent union will continue to comply with the orders of this Court by remaining 200 meters away from the factory premises, provided that the petitioner company gives an assurance that no new workers will be engaged in the factory and if at all, there are willing workmen to attend work, it must be based on the register maintained by the petitioner company, which will contain the list of workers who were employed as on 31.08.2018 and only those workmen whose names are found in the register and are willing to go and

work, should be permitted to enter the factory to work and in the guise of obtaining a police protection, a legal strike should not be prevented, unless there is real law and order problem.

- There is absolutely no averment in the affidavit filed in support of the writ petition to show that the workmen were indulging in violence or are taking law into their own hands and the police complaint that has been given against certain workmen as if they have stolen certain components and deleted certain programmes from the machines which is totally false and such an incident never happened in the factory premises.
- The learned senior counsel also submitted that the right of collective bargaining, to ensure that the workmen are not exploited, cannot be jeopardised by approaching this Court under Article 226 of the Constitution of India and by seeking for police protection and this Court should not as a matter of routine pass orders granting police protection, without being satisfied that there is a real law and order problem situation and there is a volatile atmosphere prevailing on the ground.
- The real dispute is a private dispute between the petitioner company and the second respondent and under normal circumstances a writ petition will not be maintainable. However, by showing the police as a party, writ petitions are being filed before this Court seeking for police protection. This according to the learned senior counsel must be kept in mind while this Court entertains writ petitions of this nature.
- The learned senior counsel categorically stated that the second respondent union will not prevent the management staff or the executives entering into the factory premises. The learned senior counsel also ensured that the ingress and egress of materials will also not be prevented by the second respondent union. He further assures that the willing workmen whose names are found in the register maintained by the petitioner company, as on 31.08.2018, will not be prevented from going to work (However the learned senior counsel added that there was no such willing workmen who are going for work to the factory) and the second respondent union will remain 200 meters away

from the factory premises, provided the petitioner company does not engage the services of any new workmen from outside and thereby break a legal strike and indulge in unfair labour practise. In short, the learned senior counsel submitted that the discretionary order passed by this Court should not be mis-used by the petitioner management with the help of police force.

- The learned senior counsel in order to substantiate his submissions relied upon the following judgments.

(a)United Labour Federation Vs. Government of Tamil Nadu and others reported in 2013 SCC Online Mad 1857.

(b)W.A.No.1429 of 2018 and M.P.No.1 of 2013 dated 20.08.2013 of this Court.

9.This Court has carefully bestowed its attention to the elaborate submissions made by the learned senior counsel appearing on either side and also the pleadings and materials placed before this Court in the above writ petition.

10.An Industrial strike injures not only the party against whom it is directed but the society as a whole. The larger the number of workers involved the longer the duration of strike and the more essential a commodity or service is the more widespread will be the effects of strike. Industrial strikes entail both economic as well as non-economic costs for the employer. The economic losses caused by a strike may be serious. The financial loss of a project is only one among its various losses. When the production stops and the sales go down, the market is captured by rival concerns and the concern's goodwill may be lost. Besides additional expenditure incurred in protecting the plant and taking other steps to deal with the effects of strike. A lot of money is wasted in the efforts made by both the labour and management in projecting their respective images. Industrial workers too have to undergo severe hardship due to loss of wages. The union funds get exhausted and it may become difficult for the workers to make their both ends meet. The employer forfeits his profit during the strike period. Although strikes are based on genuine grievances, they have partially paralyzed administration and disturbed the pace of planning and development. India can ill-afford such breaks and situation which retard the plan process and over all development. To weigh up the gains and

losses of a strike is like weighing up the gains and losses of any other kind of warfare. On the employers side the immediate losses are idle capital, loss of profits, the delaying of orders and loss of goodwill as well as the possible incurring of insurance or strike breaking expenses while on the workers side there is loss of wages, the contracting of debts and all the personal hardships that may be involved. The strike weapon penalizes every one of the workers more than the employer at whom it is aimed. Apart from their effects on the particular workers and employer concerned, strikes have an appreciable effect upon the economy in general.

11.Unfair Practices in Collective Bargaining are sometimes resorted to both by employers and trade unions. They are liable to hamper the development of collective bargaining and embitter negotiations so much by the suspicion and distrust they cause as to make agreements difficult to reach. It cannot be sufficiently emphasized that only in an atmosphere of mutual recognition and respect device Collective Bargaining have a reasonable chance of success.

12.The commonly used terms of strike are (1) legal strike (2) illegal strikes that are prohibited under sections 22, 23 of the Industrial Disputes Act of 1947. A particular strike may have more than one classification a strike may be legal yet unjustified or it may be illegal but justified. A strike, legal or illegal, justified or unjustified does not dissolve the employer-employee relationship. The right for strikes are in no way abridged by temporary replacements and they are entitled to wages for the strike period, if the strike is a justified one. Workers going on strike always regard the justification of their demands as supreme. Therefore it is left to the courts to search for its justifiability or un-justifiability. For once their strike succeeds no flow of consequences legal or otherwise. It is only from unsuccessful strikes that consequences flow.

13.Unfortunately in this Country, the available legislations, has not kept pace with the change in times. The concept of a person working in a particular establishment or a company permanently, is no more in existence. Right from the highest executives to the lowest level of workmen, they keep change in their jobs from one establishment to another always looking for greener pastures. That apart, the technology keeps changing at a rapid pace and unless a person upgrades himself consistently at some stage he may become irrelevant and soon become a dead wood. Due to the prevailing laws, many employers do not want to have a permanent work force and are resorting to contract labour. The foreign investors who wants to set-up business / factories in India, are not in a position to understand how the Industrial Laws work in this Country and he feels that the prevailing laws do not in any way help Industrial

growth. For instance, Section 9A of the Industrial Disputes Act, provides that no employer, who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the 4th Schedule, shall effect such change without the consent of the workmen. The list provided under Schedule 4 is so exhaustive that virtually for bringing about any change or withdrawing any allowances / concessions, can never be done without the consent of the workmen. The question is how will a provision of this nature suit the present day scenario where every other day, the technology changes and consequently the demand and supply position also changes.

14. In short, the Industrial laws available in this Country has become archaic and unfortunately it has not changed with the fast changing environment in the industry. The law which does not meet the needs of the change in times and remains static, will prove to be more a hindrance than be of any help both to the employer and the employee. We have already reached such a stage. Unfortunately the legislature, in spite of being aware of the situation, has not chosen to re-vamp the Industrial laws and for reasons best known to them, continue to cling to the out dated, absolute and out moded Industrial laws.

15. All the above discussions, may look beyond the scope of this writ petition. However, this Court took the pain of expressing its mind on the prevailing Industrial laws, since the dispute involved in the present case, could have been easily handled, with an updated Industrial legislation. This case is only a sample for the over all situation that is prevailing in various Industrial establishments, throughout India. If the law could have given a speedy solution to the pending dispute between the petitioner management and the second respondent union, one way or the other, the present situation would not have arisen.

16. Conciliation proceedings are pending before the concerned Deputy Commissioner of Labour, Sriperumbudur, Kanchipuram for more than five months without a solution and no one is in a position to raise the dispute. In view of the requirement under Industrial Disputes Act that there must be a failure report sent to the appropriate Government and thereafter the appropriate Government has to make a reference under Section 10 to the concerned Labour Court and only thereafter the dispute goes to an Adjudicatory body. In the mean time, the misunderstanding and mistrust between the parties keep growing and results in a situation, as we find in this case. On the one hand, the management is complaining that the striking workmen are bringing the entire manufacturing process to a stand still and are armtwisting the management to meet their demands. On the other hand, the union is complaining stating that there is a illegal lockout and therefore there is a legal strike and the management

is trying to break the strike with the use of police force and is also complaining that the orders of this Court are mis-used and new workmen are brought in to the factory in the place of the striking workmen, by taking advantage of the orders passed by this Court, wherein this Court had directed the police to ensure that the striking workmen are kept 200 meters away from the factory.

17. It is a settled principle of law that this Court cannot go into the disputed questions of fact while exercising its Jurisdiction under Article 226 of the Constitution of India, unless the facts are apparent on the face of the record. Strictly speaking all the contentions raised by the competing parties, are factual in nature. This Court in exercise of its Jurisdiction under Article 226 of the Constitution of India cannot give any finding regarding the issues raised by both the parties with regard to the lockout, strike, whether they are legal or illegal, whether there is unfair labour practise, whether new workers are brought in, in the place of the striking workers, etc., and these are all issues beyond the scope of this writ petition. In fact, these are inter se disputes between the petitioner and the second respondent, which cannot be resolved in this writ petition. Therefore, this Court is not going to render any finding on these issues and it is left open to the parties to adjudicate the same before the concerned Authority / Court.

18. The only issue into which this Court can go into in this writ petition, is to see whether the petitioner company requires a police protection, on the given facts and circumstances of the case. It will therefore be useful to refer to the following judgments:

(i) The Hon'ble Supreme Court in the judgment in Railway Board, New Delhi and another Vs. Niranjan Singh reported in AIR 1969 SCC 966 has held as follows:

"...13. It is true that the freedoms guaranteed under our Constitution are very valuable freedoms and this Court would resist abridging the ambit of those freedoms except to the extent permitted by the Constitution. The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form- associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the 'right of some- one else to hold his property intervenes. Such a limitation is inherent in the exercise of those 'rights. The validity of that

limitation is not to be judged by the tests prescribed by Sub-Arts. (2) and (3) of Art. 19. In other words the contents of the freedoms guaranteed under cls.(a), (b) and (c), the only freedoms with which we are concerned in this appeal, do not include the right to exercise them in the properties belonging to others. If Mr. Garg is right in his contentions then a citizen of this country in the exercise of his right under cls. (d) and (e) of Art. 19(1) could move about freely in a public-office or even reside there unless there exists some law imposing reasonable restrictions on the exercise of those rights.

(ii) This Court in AVTEC Limited Power Products Division rep. by its Authorised Signatory and Deputy General Manager (HR) Vs. The Superintendent of Police and others reported in MANU/TN/0402/2008 has held as follows:

"...15. Even assuming that the strike resorted to by the members of the 4th respondent Union is valid in law, it does not mean that the 4th respondent and its members can indulge in any violent activities. If it is the grievance of the 4th respondent and its members that there is breach of any agreement, it is always open to them to raise a dispute under the Industrial Disputes Act and the right to strike is not to increase pressure on the employer by violent means. The concept of collective bargain even though enables the workmen to take concerted act for achieving their demands through legal means, the same can never be permitted to enable the workers to indulge in violent activities. A reference to various complaints and counter complaints given by both sides as submitted by the learned Government Advocate shows that all is not well with the 4th respondent and its Union members. The collective bargain is not to show strength by violence but the same has to be shown by legal means alone.

17. Even under the Trade Unions Act, 1926, the members of the Union are certainly not permitted to involve in violent activities. In such circumstances, giving police protection to factory by this Court in exercising its jurisdiction

under Article 226 of the Constitution of India is not unknown. It was in K.C.P.Ltd., vs. Inspector of Police, Tiruvottiyur & Others (1993 (1) L.L.J. 365), in similar circumstance, when the employer has obtained an injunction order from the civil Court, the question arose as to whether this Court can issue Writ of Mandamus for police protection by exercising jurisdiction under Article 226 of the Constitution of India. This Court (K.S.Bakthavatsalam,J.) while considering large number of case laws on the issue, including a Division Bench judgement of this Court in Coimbatore Periyar District Motor Transport Munnetra Sangam (by President) vs. Sivakumar Transports, Tiruppur and others (99 Law Weekly 409) and Mining and Allied Machinery Corporation Ltd., (by its Law Officer and Constituted, Attorney N.K. Mandal) vs. Superintendent of Police, St.Thomas Mount, Madras (1987 II LLN 294) and rejecting the claim of the learned counsel for the Union therein that no Mandamus can be issued for police protection, held as follows:

"11. Considering the issue in this case, I am of the view that with regard to the order of Sri Lanka Sugar Corporation of Colombo, the non-despatch of the Articles would affect the interest of the nation, especially the international market. So also, with regard to the despatch of the Articles to the Challapalli Sugars Ltd., at Lakshmipuram unit, (I am of the view) the interest of the nation and industrial growth are more important than the interest of handful of workers. Taking the view that the request made in this case would come within the reasoning of the Division Bench of this Court, cited supra, I am of the opinion that the police protection should be ordered. "

18.A specific reference was also made on the judgement of Mohan,J.(as he then was) in Mining and Allied Machinery Corporation Ltd., (by its Law Officer and Constituted, Attorney N.K. Mandal) vs. Superintendent of Police, St.Thomas Mount, Madras (1987 II LLN 294), wherein it was held that a negative approach of lawful agitation by the working class cannot be justified by resorting to

law and order problem in the industrial sector, which is as follows:

"Strikes, lock-outs, satyagrahas and demonstrations are nothing new in our country. Promotion of social justice over the past few decades was, to a considerable extent, due to militant and agitational approach of the workmen and not, to any appreciable degree, due to condescension by the management. It is but true that in the process of securing to the workmen more amenities and privileges and better conditions of service, the Industrial Tribunals, Labour Courts, and the Courts of this Country have played a vital role. A negative approach to lawful agitation by the working class to secure higher wages and better living conditions cannot be justified by resort to the plea of maintaining law and order in the industrial sector."

19. The jurisdiction of this Court in granting a Writ of Mandamus by directing the police to give protection to the management to carry on lawful trade was again reiterated by the Division Bench of Kerala High Court in *Midland Rubber & Produce Co.Ltd., Cochin vs. Superintendent of Police, Pathanamthitta & Others* (1999 (1) L.L.J. 385), wherein AR.Lakshmanan, J. (as he then was) while presiding over the Bench, has held as follows:

"8. Just as the workers are entitled to protection of their legal rights by Courts of law, the employers are also equally entitled to protection of their fundamental right to carry on their lawful trade or business. In our opinion it is not open to the respondents-Unions to take the law in their own hands and obstruct the Permanent workers of the appellant from discharging their duties or prevent the appellant from doing the rain guarding work. Sufficient safeguards are provided under the Industrial Disputes Act to prevent exploitation of workers by employers. It is strange to find that one set of workers claimed right to get employment on the basis of some practice and preventing the employer from engaging labour of their choice. If the claim of the labour is allowed, then a day will come when a citizen of this Country has to seek his employment in his own village, taluk or district. Such a claim would run counter to the rights guaranteed under the

Constitution of India. Therefore, the right now claimed by the respondents on the basis of some practice cannot be countenanced at all."

20. In view of the above settled position of law, I do not think that the facts of this case will be covered under Section 18 of the Trade Unions Act, 1926. Section 18(1) of the Trade Unions Act, 1926 certainly prohibits the employer from breaking the contract of employment and it gives immunity to an office bearer in respect of the act done by him. When the employer attempts to divide the striking workers, which is lawful, it is certainly open to the 4th respondent Union and its members to approach the Inspector of Factories or raise an industrial dispute by treating the same as unfair labour practice, etc. and the immunity granted under Section 18(1) of the Act cannot mean to say that the Union must be permitted to achieve its object by resorting to the method which are not permitted in law.

(iii) The High Court of Himachal Pradesh in the judgment of the Division Bench in Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes and others reported in 2018 (1) LLN 709 (DB) (HP) has held as follows:

"...7. Ordinarily, the Members of Trade Unions and Industrial Workers covered by the provisions of Industrial Disputes Act, 1947, Industrial Employees Standing Orders, 1946, Trade Union Act, 1926 and host of other legislations can resort to strike as one of the modes of recognized form of expression. However, the strikers must obey civilized norms in the battle and not be vulgar or violent hoodlums.

9. That apart, the right to strike is not absolute under the Industrial jurisprudence and restrictions have been placed on it, by virtue of Sections 10(3), 10-A(4-A), 22, 23 and 24 of the Act, as was observed by the Hon'ble Supreme Court in B.R. Singh Vs. Union of India, 1989 4 SCC 710 in the following terms:-

"15. Counsel for TFAI also strongly contended that since the strike was illegal, the workers

are not entitled to any relief. We see no merit in this submission. The right to form associations or unions is a fundamental right under Article 19(1)(c) of the Constitution. Section 8 of the Trade Unions Act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognized obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour.

Trade unionists act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the managements. This bargaining power would be considerably reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-slow, sit-in, work-to-rule, absenteeism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. These are to be found in Sections 10(3), 10-A(4-A), 22 and 23 of the Industrial Disputes Act, 1947 ("ID Act" for short). Section 10(3) empowers the appropriate government to prohibit the continuance of a strike if it is in connection with a dispute referred to one of the fora created under the said statute. Section 10-A(4-A) confers similar power on the appropriate government where the industrial dispute which is the cause of the strike is referred to arbitration and a notification in that behalf is issued under Section 10-A(3-A).

These two provisions have no application to the present case since it is nobody's contention that the Union's demands have been referred to any forum under the statute."

10. Thus, it is established that right of strike as part of collective bargaining is recognized in law only so long as it is peaceful. There is no scope for violence. Workmen cannot be permitted to take law into their own hands. The striking employees/workmen etc. must obey the civilized norms in the battle, desist from using vulgar and intimidating language; indulge in violent acts or acts which may subversive to the discipline of the industrial undertaking/company etc.

11. It is equally settled that the right to freedom of speech and expression is guaranteed under the Constitution of India, but the same is subject to reasonable restrictions as enshrined under Article 19 of the Constitution of India. The Trade Unions or their office bearers can resort to demonstration/dharna but that would be subject to the law of land. The same can be carried out only in a peaceful manner and not in a manner that would stop the working of the management. The management has every right to ensure that its working is not obstructed. Therefore, a balance necessarily has to be struck between the competing interests and to ensure that the work of the management is not disturbed and at the same time workmen can also continue with their activities in a peaceful manner.

13. Adverting to the facts, it would be noticed that the specific allegations of the petitioners are that 40 erstwhile workers are creating hindrance in the execution of the work and have paralyzed the entire work and have virtually held the project to ransom which is causing unnecessary delay in the execution of the project of great significance and importance, which is detrimental to the larger public interest. This only goes to show that these workers have no or scant respect for the

rule of law or else they would have taken resort to legal remedy."

19. By referring to the above judgments, the learned senior counsel appearing for the petitioner would submit that even assuming without admitting that the strike conducted by the second respondent union is legal and valid in law, the second respondent union and its members cannot indulge in violent activities and the concept of collective bargaining should not be extended to the extent of indulging in violent activities. The learned senior counsel further submitted that it is open to the second respondent union to raise an Industrial dispute, if they feel that the act of the petitioner company will amount to a unfair labour practise. However, that cannot mean to say that the second respondent will achieve the said object by resorting to violence. The petitioner company is not attempting to stop or prevent the second respondent from continuing the strike, however that does not give a license to the second respondent union to indulge in violence and stop the free ingress and egress of men and materials. The learned senior counsel by pointing out to the above said judgments, impressed upon this Court that the law is well settled in this regard.

20. This Court will now deal with the judgments relied upon by the learned senior counsel appearing on behalf of the second respondent. The judgment in the case of United Labour Federation Vs. Government of Tamil Nadu reported in 2013 SCC Online Mad 1857, this Court has held as follows:

"...50. In the result, the writ petition is allowed with the following directions to the respondents 1 to 3:

(i) The respondents 1 to 3 shall not interfere in the industrial dispute so long as the strike is peaceful. For any reason, if it becomes violent or it takes the shape of disturbing the law and order situation or at the instance of the management there is likelihood of disturbance to law and order, then, it is for the police authorities to restore peace and to prevent any unlawful activities;

(ii) The respondents 1 to 3 shall not aid the 4th respondent from removing or shifting of

machineries, equipments, materials or dyes, etc., from the factory premises during strike period with a view to break the strike. It is further directed that contrary to the undertaking given by the fourth respondent, if any machinery or equipment or material or dyes are removed or attempted to be removed out of factory premises during strike with a view to break the strike, and in the event, there is any complaint regarding the same by workmen, the respondents 1 to 3 shall prevent the same by swiftly making interference; and

(iii) The respondents 1 to 3 shall not aid the 4th respondent to bring in any person who is not on the Rolls of the Register of Adult Workers maintained under the Factories Act as on 05.12.2012, into the factory to perform the work earlier performed by the workers who are on strike.

21. Aggrieved by the above order of the learned Single Judge, the management went on an appeal. The Division Bench of this Court in W.A.No.1429 of 2013, by order dated 20.08.2013, confirmed the order of the learned Single Judge. The relevant portion of the order is extracted hereunder:

"...54. Though strictly speaking that the appellant/fourth respondent in the writ petition, can induct trainees and unrolled apprentices, utilisation of their services in the place of striking workmen as well as the utilisation of services of managerial staff to operate the machines clearly amount to unfair labour practice. Therefore, Question No.2 is also answered in negative against the appellant/fourth respondent and in favour of the first respondent/writ petitioner.

55. The learned Single Judge on an in-depth analysis of the factual aspects and legal position held that since the Automobile component Manufacturing Industry is not declared as a public Utility Service, the strike by the members of the first respondent/writ petitioner Union, cannot be

termed as illegal and further found that training to the trainees/apprentices. The learned Single Judge further found that utilisation of services of 106 employees in the form of management staff, trainees and apprentices is undoubtedly an unfair labour practice. This Court finds no infirmity in the reasons assigned by the learned Single Judge. The learned Single Judge has also sufficiently protected the interest of the appellant-management in the event of any law and order problem.

56.This Court on a careful scrutiny and appreciation of entire materials placed before it, is of the considered view that there is no error apparent in the impugned order, allowing the writ petition."

22.The management took this case on appeal to the Hon'ble Supreme Court and the Hon'ble Supreme Court by an order dated 03.02.2014, dismissed the SLP as withdrawn.

23.By pointing out to the above judgment, the learned senior counsel would contend that the petitioner management cannot interfere in an Industrial dispute so long as the strike is peaceful and it does not turn violent or disturbs the law and order situation. The learned senior counsel would further contend that any action on the part of the petitioner management, which is attempted to break the strike, will amount to an unfair labour practice. The learned senior counsel also brought to the notice of this Court the direction given by this Court to the police not to aid the management to bring in any person not on the rolls of the register maintained under the Factories Act and impressed upon this Court to give a similar direction in this writ petition and if that is ensured, the learned senior counsel would submit that the second respondent will continue the strike 200 meters away from the factory premises and the second respondent will not prevent the free ingress and egress of the executives, management staff and willing workmen, whose names are found in the rolls of the register, as on 31.08.2018 and materials.

24.The above direction was given by this Court only after satisfying itself that the strike in question was a legal

strike. At paragraph 38 of the order of the learned Single Judge, there is a finding to that effect. The concerned case was filed by the union and on the facts and circumstances of the case, the Court was called upon to decide whether the strike was legal or illegal. The Court held that the strike was legal and consequently, by relying upon the 5th Schedule of the Industrial Disputes Act, held that recruitment of workers in the place of the striking workmen, is an unfair labour practice in terms of entry 12 to 5th Schedule of the Industrial Disputes Act. In view of that said finding, the learned Judge proceeded to give a direction to the police as found in Paragraph 50 (iii) of the order which has been extracted supra.

25. In the present case, this Court is not called upon to decide the nature of the strike conducted by the second respondent. In view of the rival claims made by either of the parties and since it involves disputed questions of fact, this Court has already held here in above that it is not going to go into the said issue. Therefore, this Court does not want to clothe the police with the power of monitoring, whether the workmen going into the factory premises is really a workmen whose name is found in the rolls of the register maintained by the petitioner management. Therefore, the relief claimed by the learned senior counsel appearing for the second respondent, to that effect, is hereby rejected.

26. The only other question that is left to be decided by this Court is whether the police protection given to the petitioner company should continue. For this purpose, apart from the averments made in the affidavit filed in support of the writ petition, it will also be very relevant to take note of the report filed by the first respondent police.

27. The 1st respondent Police in his report has stated as follows:

" On 04.09.2018 2nd shift employees started to strike in front of the said Company, subsequently 1st Shift employees in order join in strike, suddenly all of them came out from the Company without giving production details. When the same was questioned by Production Manager, they abused him in filthy language and also threatened him and strike was conducted in front of entry gate of Company premises. They found accessories & Tools in Housing Pully, Wheel

Cylinder, Bracket Machine were missing. On checking the CCTC Camera, Raghu & Suresh while returned from work at early morning 12.06 hours they switched off CCTV Power and they planned and switched off the power supply to CCTC Camera and looted the tools from the above said machineries. Thus he requested to trace the stolen tools and handover the same to him. Hence, this complaint. Subsequently, the Company decided to start production work with available employees.

I submit that based on the said complaint, CSR was issued on the same day vide CSR No.524/2018 and after conducting due enquiry, he found that the prima facie case is made out in this matter, a case was registered in C1 Sriperumpudur PS Crime No.594/2018 u/s. 147, 294(b), 381, 506(i) & 120(b) IPC dated 22.09.2018 16.00 hours against Raghu, Suresh & 13 others by Tr.D.natarajan, the then Inspector of Police and conducted preliminary investigation and recorded statement from the Tr.Parhiban/defacto complainant.

I submit that after taken a charge as Inspector of Police in C1 Sriperimpudur Police Station, I took up the case for further investigation. I arrested the accused on 28.10.2018 Anbarasanand based on his confession statement, I seized Reamer-3 nos used for CNC & VMC Machineries from the accused under cover of seizure mahazar in the presence of witnesses and thereafter he was remanded to judicial custody.

I submit that on 13.11.2018, I arrested Raghuraman and recorded his confession statement and he was remanded to judicial custody. Remaining 13 accused obtained Anticipatory bail from this Hon'ble Court vide CrI.O.P.No.25438/2018 [2] and CrI.O.P.No.25440/2018 [13] dated 02.11.2018 with certain conditions.

I submit that during the course of pending investigation the petitioner filed this writ petition seeking prayer to give police protection and pass such further orders.

I submit that, from the date of occurrence i.e., on 04.09.2018, I am giving police protection to the said Company to maintain Law and order in and around the places to run the company peacefully.

I submit that the case is under investigation. So far the investigation revealed that

(i) On 04.09.2018, without giving any prior intimation, 90 employees [1st & 2nd shift] participated in the strike in front of

Company gate by demanding (a) to permanent the trainees; (b) trainee staff to be appointed as permanent labour; (c) to recognize their Union by name "ULF" (d) expecting attractive Salary and (d) not to change employees.

(ii) On enquiry conducted with the petitioner/Management, I came to know that there are totally 118 employees are working in the said company [including 90 employees under strike], Presently 28 permanent employees are working, so that production will be decreased, while being so, the petitioner to increase the production by appointing temporary employees [40 persons] from their Vendors Company.

(iii) The Management informed that they will consider about the employment for the 15 accused in the said FIR, after completion of investigation and Enquiry of Dy. Commissioner of Labour at Irrugattukottai.

(iv) Further the Management informed that the employees those who participated in the strike, willing to work in their Company as per their norms, they will ready to accept them to re-join for work.

28. From the above report, it is clear that a normal atmosphere is not prevailing near the factory premises and there is an uneasy tension in the air. Therefore, in order to maintain the law and order and also in order to ensure the free ingress and egress of men and materials, police protection has to be given to the petitioner Company, in order to run their day today activities.

29. In the result, the writ petition is disposed of with the following directions:

a) The 1st respondent Police shall provide Police Protection to the factory premises of the petitioner Company to ensure that there is free ingress and egress of men and materials.

b) The 1st respondent shall ensure that no law and order problem is created near the factory premises and normalcy is maintained.

c) The 2nd respondent can conduct the demonstrations/strike, 200 mts away from the petitioner's Factory premises.

d) It is left open to the parties to agitate their respective rights before the appropriate forum/Court and this order will not have any bearing on the respective rights of parties. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

krk

To
The Inspector of Police,
C1 Police Station,
Sriperumbudur - 602 105.

+1cc to Mr.K.Sudalaikannu, Advocate SR.No.84658

+1cc to Mr.P.Nehru, Advocate SR.No.84321

WEB COPY

W.P.No.23427 of 2018
and
W.M.P.No.27342 of 2018

RR(CO)
GMY(28/12/2018)