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

WRIT PETITION NO.856 OF 1991

Bombay Forgings Pvt.Ltd.
a Company incorporated under the
Companies Act, 1956, having its
registered office and factory at
Vidyanagari Marg, Kalina
Bombay 400 098. .. Petitioner

V/s

1. Association of Engineering Workers
   a Trade Union registered under
   the Trade Unions Act, 1926
   having its office at 252,
   Janata Colony, Ram Narayan
   Narkar Marg, Ghatkopar (East),
   Bombay 400 077.

2. First Labour Court
   having its office at Arun Chambers,
   6th Floor, Tardeo,
   Bombay 400 034.

3. S.M.Limaye,
   Member, Industrial Court,
   Maharashtra at Bombay,
   having his office at 7th floor,
   Arun Chambers, Tardeo,
   Bombay. .. Respondents

Mr.C.U.Siongh with Mr.S.R.Pandey for the Petitioner.
Mr.N.M.Ganguli for the Respondents.

CORAM: S.RADHAKRISHNAN &
S.A.BOBDE, JJ.
DATE : 29.10.2004.

JUDGMENT: (Per S.Radhakrishnan, J.)

1. By this Petition, the Petitioner Employer is challenging the order dated 26th December, 1986 passed by the Labour Court in the Reference, as well as the order dated 30th November, 1989 passed by the Industrial Court in a Revision Application.

2. The brief facts are that the Petitioner Company is engaged in manufacturing Iron and Steel forgings for the use in automobile Industry and has a factory at Santacruz, Mumbai. It appears that in the year 1980 the workmen of the Petitioner Company who were earlier members of the Bombay Forgings Employees' Union joined the Respondent No.1 Union known as Association of Engineering Workers Union led by Dr.Datta Samant. Right from 1981, it is the case of the Petitioner Company that the Respondent No.1 Union instigated a continuous go slow which lasted for about 8 months bringing the production down substantially. It is the contention of the Petitioner Company that in 1982, despite precarious condition of the Petitioner Company, the 1st Respondent Union instigated and launched repeated agitations thereby bringing the production down to 40% of capacity. It appears that in November, 1982, there were extreme violence attack on senior officers and staff members of the Petitioner Company including the incidents of throwing steel billets, forgings and stones. It is the contention of the Petitioner Company that during the years 1982 to 1984 the Petitioner Company suffered heavy losses due to the attitude of the workers/members of the Respondent No.1 Union. On 10th April, 1984 it appears that the 1st Respondent Union had instigated an illegal flash strike and brought all work in the Petitioner's factory to a grinding halt. The Petitioner Company had moved the Labour Court by way of a Reference, and on 31st May, 1984 the Labour Court declared the said strike to be illegal and

ultimately all the workers had rejoined the work on the same day. It appears that in June 1984 all the workers had given in writing on their own volition that they have left the 1st Respondent Union and had rejoined the Bombay Forgings Employees Union, and had requested the Petitioner Company to negotiate and settle all the matters with the Bombay Forgings Employees Union only. Thereafter, suddenly on 10th July, 1984 the 1st Respondent Union and its president Dr.Datta Samant initiated another strike and that too without notice. On 11th July, 1984 the Petitioner Company had put up a notice calling upon all the workers to rejoin the duties as the said strike was illegal and again on 13th July, 1984 the Petitioner Company had put up another notice asking thereby all the workers to rejoin the duties. However, on 14th July, 1984 the Petitioner Company received a back dated notice bearing the date of 10th July, 1984 from the 1st Respondent Union stating therein that the workers were suspending the work with effect from 10th July, 1984 and would proceed on strike with effect from 27th July, 1984. It is the contention of the Petitioner Company that before going on strike, the existing settlement was not terminated and there was no fresh Charter of Demands. It is the contention of the Petitioner Employer that till date the strike notice has not been withdrawn by the 1st Respondent Union. It is the contention of the Petitioner Employer that during the period from September, 1984 to December, 1984 there were several incidents of atttacks, stone throwing etc.by the members of the 1st Respondent Union. During the said period various senior officers as well as loyal &

non-striking employees of the Petitioner Company were attacked and grievously injured by the striking workmen/members of the 1st Respondent Union.

3. On 25th February, 1984 the Petitioner Company had made a Reference (ULP) No.67 of 1984 to the Labour Court under the MRTU & PULP Act, seeking a declaration that the aforesaid strike initiated on 10th July, 1984 and continued thereafter was illegal. The Labour Court by its Judgment and Order dated 26th December, 1986 came to the finding that the strike commenced by the 1st Respondent Union on 10th July, 1984 and which continued till 27th July, 1984 was illegal. However, the Labour Court refused to hold the strike continued after 27th July, 1984 to be illegal on the logic that prior to 27th July, 1984 the notice of strike dated 10th July, 1984 was duly served on the Petitioner Company as it was mentioned in the said notice that the employees who were members of the 1st Respondent Union were proposing to go on strike from 27th July, 1984. that the strike commenced on 10th July, 1984 was illegal but it remained illegal only from 10th July, 1984 till 27th July, 1984. The Labour Court relied upon the Judgment of this Court in the case of **Premier Automobiles Limited and Others V/s.G.R.Sapre and Others - 1981 LAB. I.C.221,** wherein this Court has clearly held that the Employer, during the illegal continuance of Lock-out (which was commenced illegally without notice to employees) can serve the notice even without resuming the work, and can cure the illegality.

4. Aggrieved by the order of the Labour Court refusing to hold the strike continued after 27th July, 1984 to be illegal, the Petitioner Employer had preferred a Revision Application (ULP) No.4 of 1987 before the Industrial Court, and the Industrial Court by its Judgment and Order dated 30th November, 1989 upheld the order of the Labour Court holding that the members of the 1st Respondent Union had proceeded on illegal strike for the period from 10th July, 1984 to 27th July, 1984. The strike continued after 27th July, 1984 was held to be not illegal on the ground that the 1st Respondent Union had duly served the notice dated 10th July, 1984 that they were proposing to go on strike from 27th July, 1984.

5. Mr.Singh, the learned Counsel for the Petitioner Company has brought to our notice the provisions of Section 24 of the MRTU & PULP Act, which reads as under:-

> Section 24 : Illegal Strike and Lock-outs:-
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> In this Act, unless the context requires otherwise, -
>
> (1) " illegal strike " means a strike which is commenced or continued - (a) without giving to the employer notice of strike in the prescribed form, or within fourteen days of the giving of such notice "

6. It is the contention of Mr.Singh, the learned Counsel for the Petitioner Company that the word "or" appearing in the above section should be given correct meaning because the strike which commences illegal remains to be illegal till it terminates. To put it in other words, once the strike commenced as illegal, it cannot be cured as legal by any notice given by the Union on behalf of the workmen. In this context, it is relevant to note that on similar circumstances, while dealing with the illegal lock-out in the case of **Premier Aotomobiles Ltd. V/s.G.R.Sapre & Ors. - 1981 Lab.I.C.221,** (referred to above), this Court in no uncertain words has held that, in case the lock-out is commenced illegally, during its such illegal continuance, its illigality can be cured by serving the notice. (even without resuming the work). In this context, it is relevant to refer to Paragraph Nos 24 to 28 of the said Judgment, which read as under:

> 24. But such an illegality can be brought to an end by discontinuing the lock-out, so commenced illegally and resuming the operations. The same result would follow after the expiry of 14 days of the notice, if notice is given, in compliance with Section 24(2) (a), either at the commencement of such illegal lock-out, or during the pendency thereof with a view to get rid of such illegality. There is nothing in Section 24 or any other provision militating against this.
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> 25. We are unable to see any reason why condition as to notice of 14 days cannot be complied with, even at such commencement or during the period of the continuance of illegal strike. Any lock-out so commenced illegally without notice, would cease to be so illegal, from the day on which 14 days period expire. 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 this

period exposes him such as paying compensation to workers even when they had not worked for no fault of theirs. Illegal commencement of a lock-out can take place under variety of circumstances, including the ignorance of the legal position or doubtfulness of its being a 'lock-out' and, not necessarily out of vindictiveness, obstinacy or deliberate intention to flout the law. It is never too late to be wiser 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.

26. Mr.Deshmukh and Mr.Kamerkar contended that abrupt resort to lockout without notice, itself is coercive enough. Its cumulative effect on its continuance from day-to-day is bound to have still worse effect. To permit the employer to make such illegal lock-out legal, without first resuming the operations would amount to permitting him to reap the fruits of the illegality brought out by him deliberately in disregard of the statute. This contention is undoubtedly impressive at the first blush. However it cannot stand scrutiny. Firstly, no one can be prevented from purging himself of the illegality after doing later what he should have done earlier without avoiding the consequences of the earlier illegality. Our attention is not drawn to any provision in the Act or any principle or authority to the contrary. Secondly, the employer too has as much right to resort to 'lock-out' to compel the workmen to see his point of view in any dispute, as the employees have a right to resort to strike for the same. Each one of them really exercises his fundamental rights while resorting to it by way of a weapon. Section 24, far from preventing one of them from exercising this right, merely seeks to regulate it by requiring each one of the sides to give notice of any such move in advance to avoid abrupt dislocation and hardship to the other side. Non-compliance by either of them of this notice provision, does cause some dislocation and hardship to both of them. But this can never be a one-sided suffering. The employer also cannot indulge in such illegality and cause hardship to the workmen without causing dislocation and damage to himself. Some inconvenience and hardship, however, is simply inevitable in this process. Even the legal 'lock-out' commenced after the notice and expiry of 14 days cannot but cause it.

27. The act merely aims at minimising such inconvenience and hardship, as far as it is possible, not only to the employer and the employees, but also to the consumer public at large who is equally interested in industrial peace and production. This inconvenience involved in abrupt lock-out is sought to be mitigated, if not prevented, by requiring the employer to pay compensation under Section 30(1) without getting work from the employees during this period of illegal lock-out and, the employees are enabled to enforce its

recovery as arrears of land revenue under Section 50 of the Act. Section 28 empowers the Industrial Court not only to decide complaints on this count but also make efforts to secure settlement of the dispute through the investigator appointed by it. Section 30 empowers the Court even to direct the employer to lift the lock-out by way of interim relief, if the facts of a given case warrant, it having been left to the judicial discretion of the Courts.

28. The Act does not expressly require the employer to resume work after commencement of illegal lock-out, merely to commence it again on its being legal after notice and expiry of 14 days thereof. The Act indeed is silent. Belligerency generated on commencement of the illegal lock-out may make the atmosphere tense and pregnant with risks to the property and lives. It may give rise to more problems than solving any. An employer may entertain genuine apprehension on this score and may not be able to prove it in a court of law. The Legislature may have such realities of the situation in mind while not making any express provision for such resumption of operations merely to stop the same after complying with the statutory provision under Section 24 (2). Its remaining contents with providing, for compensation and machinery for the enforcement thereof, and leaving a direction to lift the lock-out to the judicial discretion of the Court appears to be deliberate and not an accidental omission. Some such indication of the Legislative intent on this point also can be traced in making commencement of lock-out, without notice merely illegal, but not penal, though some other acts and omissions are made penal. The assumptions of Mr.Deshmukh and Mr.Kamerkar thus are ill-founded.

7. Another Division Bench of this Court in the case of **Maharashtra General Kamgar Union & Ors V/s.Balkrishna Pen Private Limited & Ors (Writ Petition No.1255 of 1982), (1987 II CLR 374)** has followed the above reasoning and held that if a particular strike is illegal for certain period and subsequent thereof, the same can be legal by issuing a proper & prescribed notice. Paragraph No.15 of the said Judgment is relevant, which reads as under:-

"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 on December 26, 1980 and the strike commenced at 1.00 p.m. on 9th January, 1981. Mr.Deshmukh, no doubt, contended that if it is held that the employer had received the notice before 1.00 p.m. on 26th December, 1980, then 14 days had expired before 1.00 p.m. on 9th January, 1980. 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 1.00 p.m. on December, 26th 1980. The second and obvious difficulty is that according to the General Clauses Act, the day is computed from '0' 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 to be 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 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 expire, after the notice which can be given even during the continuance of the lock-out."

8. Mr.Ganguli, the learned Counsel for the 1st Respondent Union has strongly supported the judgment of the Labour Court as well as the Industrial Court contending that both the judgments of the Court below are in consonance with the

above referred two judgments of this Court.

9. Having heard the learned Counsel for the parties and having perused the judgment and order of the Labour Court as well as of the Industrial Court, we find that there is no illegality or perversity in the same and there is no error apparent on the face of the record. Both the Courts below have rightly held that the strike commenced illegally can be made legal by issuing a prescribed notice. The position of law is very clear in view of the above-referred two judgments of this Court, wherein, in no uncertain terms it is held that once the strike commenced illegally, one cannot say that the same can never be cured by issuing the prescribed notice, otherwise it would lead to a very unfair and unreasonable situation. Under the aforesaid facts and circumstances, we find no ground for interference. Petition is devoid of merits and hence Rule stands discharged.

(S.RADHAKRISHNAN,J.)

(S.A.BOBDE,J.)