

(1988) 03 BOM CK 0048**Bombay High Court****Case No:** Writ Petition No's. 131 and 727 of 1984

Balmer Lawrie and Co. Ltd.,
Bombay

APPELLANT

Vs

Balmer Lawrie Employees"
Union and another

RESPONDENT

Date of Decision: March 16, 1988**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 23, 24
- Trade Unions Act, 1926 - Section 12, 22, 23, 24

Citation: (1988) 3 BomCR 230 : (1989) 58 FLR 91 : (1989) 2 LLJ 97 : (1988) MhLJ 716**Hon'ble Judges:** Sujata V. Manohar, J**Bench:** Single Bench**Judgement**

1. Writ Petition No. 131 of 1984 is filed by Balmer Lawrie & Co. Ltd. which is a public sector undertaking in respect of an award dated 7th October 1983 given by the Industrial Tribunal, Maharashtra, Bombay, in reference (IT) No. 307 of 1981. The reference was in respect of wages claimed by the workmen of this company during the strike period namely 18th October 1978 to 17th May 1979, both days inclusive. The Industrial Tribunal declared the strike to be illegal under the provisions of the Industrial Disputes Act, 1947. It, however, awarded to the workmen 35% of their wages during this period. Writ Petition No. 131 of 1984 challenges this award.

2. Writ Petition No. 727 of 1984 is filed by Balmer Lawrie Employees" Union, Bombay challenging the same award, in so far as it holds that the strike was illegal. It seeks a declaration that the strike was legal and justified and prays that full wages for the strike period should be given to the workmen.

3. In or about August 1975 the workmen terminated an earlier settlement dated 2nd November 1972 which was operative up to 30th September, 1975, and submitted a fresh charter of demands. In December 1975 the demands of the workmen were

admitted in conciliation. After the failure report the demands were referred to the Industrial Tribunal for adjudication on 15th October 1977 under Reference (IT) No. 304 of 1977. During pendency of this reference a draft settlement was arrived at between the Company and the workmen on 19th May 1978. The settlement was signed by both the parties. According to the Company however, since it was a public sector undertaking it required the approval of the Bureau of Public Enterprises for the settlement terms. Clause 24 of the draft settlement therefore sets out that the Company had appraised the Union workmen that the final acceptance of these terms by the concerned authorities will be notified to the Union as early as possible and thereafter if there is final acceptance of the terms the settlement will be executed. The draft settlement was arrived at on 19th May 1978. No approval as contemplated was, however, forthcoming. In July 1978 therefore the Union made an application in the reference for giving effect to the draft settlement. This application, however, was rejected.

4. On 20th September 1978 the Union gave a notice u/s 24 sub-section (1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "MRTU and PULP Act") for a strike commencing from any date after 10th October 1978. In the annexure to the strike notice a statement of reasons for the strike was annexed setting out eight demands for the workmen. None of these eight demands was the subject matter of the reference (IT) 304 of 1977 though some of these demands were a part of the draft settlement. Out of the eight demands which were the subject matter of the strike notice the demands at times 1, 2, 3, 4 and 8 of the annexure to the strike notice were, thereafter, admitted in conciliation at the instance of the company as per a letter dated 9th October 1978 issued by the Assistant Commissioner of Labour. In view of the admission of these demands in conciliation the Union issued a notice to the company dated 12th October 1978 deleting these items from strike notice, and stated that the strike notice of 20th September 1978 stood accordingly modified. The strike commenced on 18th October 1978. In May 1979 the Union was informed by the Company that the settlement was approved in principle by the Bureau of Public Enterprises. On receipt of this information the strike was terminated on 17th May 1979. Thereafter a settlement was signed between the Company and its workmen on 8th August 1987. This settlement covers the same period as the draft settlement and the terms remain substantially the same though there are some minor modification.

5. There was a dispute between the parties relating to the payment of wages to the workmen during the strike period. As a result ultimately a reference was made to the Industrial Tribunal which gave its award dated 7th October 1983. This award is the subject matter of the present writ petitions.

6. It is the contention of the Union that the strike was legal under the provisions of Section 24 of the MRTU and PULP Act, 1971. It further contends that this Act prevails

over the relevant provisions of the Industrial Disputes Act, 1947. Hence the Tribunal was in error in coming to a conclusion that the strike was illegal.

7. The relevant parts of Section 24 of the MRTU and PULP Act. 1971 are as under :-

"Section 24. Illegal strike and lock-out -

In this Act, unless the context requires otherwise, -

(1) "Illegal strike" means strike which is commenced or continued -

(a) xx xx

(b) xx xx

(c) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of matters covered by the notice of strike :

(d) xx xx

(e) xx xx

(f) xx xx

(g) xx xx

(h) in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by notice of strike :"

The strike was during the pendency of reference (IT) 304 of 1977 under Industrial Disputes Act. u/s 24(1)(h), however of the MRTU and PULP Act a strike during the pendency of proceedings before the Industrial Court under the Industrial Disputes Act would be illegal if such proceeding is in respect of strike. Similarly u/s 24(1)(c) a strike during the pendency of a conciliation proceeding, *inter alia*, under the Industrial Disputes Act and seven days after the conclusion of such proceedings would be illegal if the notice of strike is in respect of disputes which are the subject matter of conciliation proceeding. In the present case the Union has been at pains to exclude from the strike notice demands which were the subject matter of the pending reference or conciliation proceedings. They also amended their strike notice to exclude demands which were thereafter admitted to conciliation. The strike, therefore, was not illegal under the provisions of the MRTU and PULP Act, 1971.

8. u/s 24, however, of the Industrial Disputes Act, 1947 a strike, *inter alia*, shall be illegal if it is commenced or declared in contravention of Section 22 or Section 23.

u/s 23 of the Industrial Disputes Act it is provided as follows :

"Section 23. No workman who is employed in any Industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out -

- a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- b) during the pendency of proceedings before the Labour Court. Tribunal of National Tribunal and two months after the conclusion of such proceedings;
- c) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings where a notification has been issued under sub-section (3A) of Section 10A : or
- d) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

This Section, therefore, prohibits strikes during the pendency of proceedings, *inter alia*, before a labour tribunal. This Section does not limit illegality only to strikes which cover demands which are the subject matter of the pending proceedings. Under the Industrial Disputes Act, therefore, a strike which is called during the pendency of conciliation proceeding or a reference is illegal, although it is in respect demands which are not covered by the conciliation proceedings or the reference. u/s 24 of the Industrial Disputes Act, 1947, therefore, the strike was illegal.

9. It is urged by Mr. Shastry learned counel for the Union, that the provisions of Section of the M.R.T.U. and P.U.L.P. Act prevail over the provisions of the Industrial Disputes Act, 1947. To the extent of the repugnancy between these two provisions, the provision of the M.R.T.U. and P.U.L.P. Act must be considered as paramount. He relied upon Article 254(2) of the Constitution of India. It provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contain any provision repugnant to all provisions of an earlier law made by Parliament or an exists law with respect to that matter, then, the law made by the Legislature of such State shall, if it has been reserved for the consideration of President and has received his assent, prevail in that State. The subject matter of both Acts is in the Concurrent List. Mr. Shastry submits that M.R.T.U. and P.U.L.P. which is the later state Act must, therefore, prevail over the Industrial Disputes Act, 1947. This submission would have been valid had there been any repugnancy between the M.R.T.U. and P.U.L.P. Act and the Industrial Disputes Act. Both the Acts undoubtedly deal, *inter alia*, with declaring certain and lock-outs as illegal. There are, however, clear indications in the Maharashtra Act that this Act was not meant to replace the relevant provisions of the Industrial Disputes Act. For example, in various sections of the Maharashtra Act there is a reference to a strike or lock being illegal "under this Act" - thereby clearly indicating that the provisions

relating to legality or otherwise of such strikes or lock-outs under any other law are not affected u/s 12 sub-section (6) of the M.R.T.U. and P.U.L.P. Act it is provided as follows :

"Section 12 : xx xx xx

6. The Industrial Court shall not recognise any union, if at any time, within six months immediately preceding the date of the application for recognition, the union has instigated, aided or assisted the commencement or continuation of a strike which is demanded to be illegal under this Act."

Similarly u/s 13(1)(v) of the M.R.T.U. and P.U.L.P. Act there is a reference to a union instigating, aiding or assisting the commencement or continuation of "strike which is deemed to be illegal under this Act". There is a similar provision under Schedule II, Item 6 of the M.R.T.U. and P.U.L.P. Act which deal with a lock-out "deemed to be illegal under this Act" and under Schedule III, Item I which deals with a strike "deemed to be illegal under this Act." In contrast, when provision of the Industrial Disputes Act are thought be altered by M.R.T.U. and P.U.L.P. Act, there is an express provision to that effect. Thus Section 20 sub-section (2) of the M.R.T.U. and P.U.L.P. Act provides as follows :

"..... accordingly, the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947 shall stand amended in the manner and to the extent specified in Schedule I".

Schedule I sets out the amendments to the Industrial Disputes Act. In the absence of such an express provision relating to amendment of sections of the Industrial Disputes Act dealing with illegal strikes and lock-outs, it would not be correct to hold that the provision of the M.R.T.U. and P.U.L.P. Act in that behalf replace the relevant provisions of the Industrial Disputes Act, 1947.

10. In the case of Industrial Tubes Manufacturing Company Ltd. v. Shri S. R. Samant, Judge, Industrial Court, reported in 980 II LLJ 444 a Division Bench of the Bombay High Court, inter alia, considered the same question. In paragraph 22 of the Judgment the Court has observed as under (pp. 449-450) :

"22. Dr. Kulkarni contends that this Act is a special enactment and has the effect of repealing the provisions of the Industrial Disputes Act impliedly. We are unable to see any basis for this contention. Schedule I of the Act, to which Dr. Kulkarni drew our attention, only indicates to what extent Industrial Disputes Act stands amended. Plain implication is that the provisions of the Industrial Disputes Act remain intact and effective excepting to the extent to which it is amended, under "Schedule I. There is nothing in the said amendment to modify Section 23 or Section 24 of the Industrial Disputes Act under which also this strike is found to have been illegal. Dr. Kulkarni also contends that the assent of the President to this enactment, has the effect of repealing the Industrial Disputes Act because of Article 254 of the

Constitution. The question of attracting Article 254 of the Constitution cannot arise unless conditions indicated in the Article are shown to have been fulfilled. We are unable to see the relevance of Article 254 in this case."

11. Mr. Shastry sought to rely upon a decision of the Supreme Court in the case of [The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others,](#) . In that case the Supreme Court considered the jurisdiction of a Civil Court as against the jurisdiction of a Special Tribunal created under the Industrial Disputes Act. It inter alia held that if the industrial dispute relates to the enforcement of a right or an obligation created under the Industrial Disputes Act the then only remedy available to the suitor to get an adjudication under the Act. This judgment is of no assistance in the present case. The contention of the Union that the provisions of Section 24 of the M.R.T.U. and P.U.L.P. Act, 1971 prevail over Sections 23 and 24 of the Industrial Disputes Act, 1947 must be negated.

12. It is submitted by Mr. Damania learned counsel for the company that as the strike was illegal it could not be said to be justified. Hence the employees should not have been granted any wages during the strike period. In support he relied upon the observations of the Supreme Court in the case of [The Management of Chandramalai Estate, Ernakulam Vs. Its Workmen and Another,](#) and [Management of Fertilizer Corporation of India Vs. The Workmen,](#) . In both the cases the Supreme Court held that on facts the strike was unjustified. There demands were not of such urgent or serious nature as would justify a resort to strike. Such is not the present case. The workmen had entered into a draft settlement with the management. It was on account of an unduly delay on the part of the management in finalising the settlement that further demands were made and strike was resorted to.

13. In a case before the Supreme Court of [The Statesman Ltd. Vs. Their Workmen,](#) the workers went on an illegal strike from 20th September 1966. The Management thereupon declared a lock-out from the midnight of 20th September 1966. The lockout was, therefore, legal. On the question of wages being paid to the workmen during the period of the strike which was illegal and lockout which was legal, the Supreme Court has observed at paragraph 17 as follows :

"17. If the strike is illegal, wages during the period will ordinarily be negated unless considerate circumstances constrain a different course. Likewise, if the lockout is illegal full wages for the closure period have to be "forked out", if one may use that expression. But, in between lies a gray area of twilit law. Strictly speaking, the whole field is left to the judicious discretion of the Tribunal. Where the strike is illegal and the sequel of a lockout legal, we have to view the whole course of developments and not stop with examining the initial legitimacy. If one side or other behaves unreasonably or the overall interests of good industrial relations warrant the Tribunal making such directions regarding strike period wages as will meet with justice, fairplay and pragmatic wisdom, there is no error in doing so. His power is flexible."

In view of these observations of the Supreme Court, irrespective of the illegality of the strike, the Tribunal has a discretion to pass such order regarding wages during the strike period "justice, fairplay and pragmatic wisdom" dictate. This decision was of a Bench of that judges.

14. In a later decision in the case of [Crompton Greaves Ltd. Vs. Its Workmen](#), a Bench of two judge of the Supreme Court, without referring to its judgment in the case of the Statesman has observed that in order to enable the workmen to get wages for the period of the strike, the strike should be legal as well as justified. Krishna Iyer J. was a party to both the decisions. Yet no attempt has been made in the later case to explain the earlier observations.

15. The Tribunal has relied upon the observations of the earlier but larger Bench. It is gone at length into the conduct of both the sides. It has commented adversely upon the delay to over one year and three months in finalising of settlement after a draft settlement was arrived at. There has been no explanation for the delay at all. The Company has merely put the blame on the Bureau of Public Enterprise. On the workmen, however, such delay was bought to have an adverse effect. Mr. Damanaria has pointed out that ultimately the workers have not been prejudiced in any manner because the final settlement covered the same period which was covered by the draft settlement. But in the interregnum of over a year the union or the workers had no assurance that this would be so. The strike notice undoubtedly dealt with demands which were not the subject matter of the pending reference. This was because the union was at pains to ensure that the strike would not be considered as illegal under the M.R.T.U. And P.U.L.P. Act, 1971. There was, however, a clear link between the strike and the unreasonable delay in finalising the settlement. The strike was peaceful and non-violent throughout. It was called off immediately on intimation being received of the approval to the draft settlement, without every waiting for the finalisation of the settlement. Looking to the conduct of both parties the Industrial Tribunal has, in the exercise of its discretion, granted to the workmen 35% of the full wages. I do not see any reason why I should interfere with the exercise of this discretion by the Industrial Tribunal.

16. In the premises both the petitions are dismissed and rule is discharged with no order as to costs.

17. Under the consent terms filed in Appeal No. 240 of 84 in Writ Petition No. 131 of 1984 amounts payable to the workmen as per the directions given by the Industrial Tribunal have been deposited in Court in respect of those workmen who have either left the Company or have retired.

18. By consent the amount due and payable to each of such workman shall be paid by the company to such workman directly. The Company through its counsel Mr. Damanaria under takes to do so.

19. By consent the company is therefore, at liberty to withdraw the amounts deposited by the company in this Court under the consent terms on their undertaking to pay the concerned amounts to each of the concerned work man directly.