

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WP-ASDB-LD-VC-59 / 20

WRIT PETITION (ST.) NO. OF 2020

Premier Employees Union ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

WITH

WP-ASDB-LD-VC-57 / 20

WRIT PETITION (ST.) NO. OF 2020

M/s. Premier Limited and another ... Petitioners
Vs.
Premier Employees Union ... Respondent

Ms. Gayatri Singh, Senior Advocate i/b. Mr. V. G. Sreeram for Petitioner in W.P.LD-VC-59 of 2020 and for Respondent in W.P.LD-VC-57 of 2020.

Mr. Kiran Bapat with Mr. Manish Kelkar for Respondent No.7 in W.P.LD-VC-59 of 2020 and for Petitioners in W.P.LD-VC-57 of 2020.

Mr. P. P. Kakade, GP a/w. Mr. N. K. Rajput, AGP for Respondents-State.

**CORAM : UJJAL BHUYAN &
RIYAZ I. CHAGLA, JJ.**

Reserved on : JUNE 26, 2020

Pronounced on : JULY 13, 2020

P.C. :

This order will dispose off both the writ petitions.

2. Heard Ms. Gayatri Singh, learned senior counsel for the petitioner in Writ Petition LD-VC-59 of 2020 and for the sole respondent in Writ Petition LD-VC-57 of 2020; Mr. Kiran Bapat, learned counsel for respondent No.7 in Writ Petition LD-VC-59 of 2020 and for the petitioners in Writ Petition LD-VC-57 of 2020; also heard Mr. P. P. Kakade, learned Government Pleader for the respondents-State.

3. Premier Employees Union is the petitioner in Writ Petition LD-VC-59 of 2020 whereas M/s. Premier Limited is respondent No.7 therein; Writ Petition LD-VC-57 of 2020 has been filed by M/s. Premier Limited wherein Premier Employees Union is the sole respondent.

4. Premier Employees Union as the petitioner has instituted Writ Petition LD-VC-59 of 2020 before this Court seeking a direction to the State of Maharashtra and Commissioner of Labour to ensure that workers of M/s. Premier Limited are paid wages for the duration of the lockdown in terms of order of Ministry of Home Affairs, Government of India dated 29.03.2020; order of Department of Industries, Energy and Labour, Government of Maharashtra dated 31.03.2020; and order dated 20.03.2020 passed by the Industrial Court, Maharashtra at Pune in Complaint (ULP) No.32 of 2020 (*Premier Employees Union Vs. M/s. Premier Limited*). Further prayer made is for a direction to the District Collector, Pune and Deputy Commissioner of Police, Pimpri-Chinchwad to initiate appropriate proceedings against M/s. Premier Limited under the Disaster Management Act, 2005 for failure to comply with the government orders. On the other hand, Writ Petition LD-VC-57 of 2020 has been filed by M/s. Premier Limited assailing the legality and correctness of the aforesaid order dated 20.03.2020 passed by the Industrial Court, Maharashtra at Pune.

Writ Petition LD-VC-59 of 2020

5. Petitioner Premier Employees Union is a trade union registered under the Trade Unions Act, 1926 representing the interest of about 200 workers of M/s. Premier Limited, a company incorporated under the Companies Act, 1956 having its registered office at Mumbai-Pune Road, Chinchwad in the district of Pune. Premier Employees Union (referred to hereunder as “the union”) is also registered and recognised as the sole union of M/s. Premier Limited (briefly “the company” hereafter) under the Maharashtra Recognition of Trade Unions and Prevention of Unfair

Labour Practices Act, 1971.

6. Members of the union are permanent employees of the company which is engaged in the business of manufacturing heavy machinery. Members of the union (also referred to as “the workmen”) possess specialized skills and are in continuous employment of the company as machine operators, painters, welders, fitters and electricians.

7. It is stated that the union has raised the grievance of unfair labour practice against the company (also referred to hereinafter as “the management”). It is further stated that on complaint raised by the union alleging unfair labour practice by the management, Complaint (ULP) No.238 of 2017 was registered before the Industrial Court, Maharashtra at Pune (briefly “the Industrial Court” hereinafter).

8. Company obtained No Objection Certificate (NOC) from the office of Commissioner of Labour, Maharashtra (respondent No.2) for shifting of its plant from the original site. The NOC was conditional in as much as the company had to give an undertaking that it would make full payment of wages and dues to the workmen and ensure continuity of their employment. In view of the above, the workmen did not oppose shifting of the plant. However, the company defaulted and has not paid wages and dues to the workmen since May, 2019. It is stated that on shifting of the plant, the company sold the land where the original plant was located thereby substantially reducing its debts from the money received from the sale. Notwithstanding the same, wages of the workmen have not been paid.

9. It is stated that workmen have not been paid any wages by the management since May, 2019. Management also did not make any payment towards the legal dues, such as, employers' provident fund contribution, gratuity of retired employees and renewal payment of mediclaim insurance premium. Though the workmen expressed

willingness to work at the relocated plant but they have not been provided any such work by the management. In such circumstances, the union filed Writ Petition No.2789 of 2020 before this Court seeking a direction to the State and Commissioner of Labour for cancellation of the NOC since the company did not comply with the conditions of NOC. Appropriate proceedings have been initiated before the Industrial Court too. Both the matters are pending with no orders passed thereon.

10. In this backdrop, company issued a notice dated 03.03.2020 addressed to all the workmen and staff stating that the management had decided to suspend operations with immediate effect until further notice / orders as per clause 18 of the Model Standing Orders in respect of the workmen and under clause 19A in respect of the staff.

11. Raising the grievance that the aforesaid suspension notice amounted to unfair labour practice, the union filed a complaint before the Industrial Court against the company. Vide order dated 20.03.2020 Industrial Court found that the company did not follow proper procedure while issuing the notice dated 03.03.2020 and arrived at the conclusion that the company had committed unfair labour practice. Consequently the Industrial Court directed the company to pay wages to the workmen w.e.f. 01.03.2020 on or before the tenth day of each month.

12. Despite such an order by the Industrial Court, the company has not made any payment to the workmen.

13. On 11th March, 2020, the World Health Organization (WHO) declared corona virus (COVID-19) as a global pandemic. Government of India also declared COVID-19 as a notified disaster under the Disaster Management Act, 2005 whereafter lockdown was imposed in the entire country including in the State of Maharashtra w.e.f. 24.03.2020.

14. Ministry of Home Affairs, Government of India issued an order dated 29.03.2020 under section 10(2)(i) of the Disaster Management Act, 2005 directing all the states / union territories as well as authorities of the states / union territories to ensure that all the employers, be it in industry or in shops and commercial establishments, shall make payment of wages to their workers at their workplaces and on the due date without any deduction for the period their establishments are under closure during the lockdown. The concerned District Magistrate / Deputy Commissioner and Senior Superintendent of Police / Superintendent of Police / Deputy Commissioner of Police have been made personally liable for implementation of the above direction.

15. Government of Maharashtra in the Industries, Energy and Labour Department issued a government resolution dated 31.03.2020 declaring that all the workers / employees including contractual, temporary and daily wagers working in private establishments, shops (except essential services), factories etc., who had to remain indoors due to outbreak of COVID-19 and the lockdown, shall be deemed to be on duty and shall be paid full salary / wages and allowances.

16. According to the union, the workmen having not received any wages for the month of March, 2020 despite the order of the Industrial Court and the aforementioned directions of the Central and State Governments, petitioned respondent No.2 about the above followed by several reminders but no action was taken by the respondents.

17. Aggrieved by the above, the present writ petition has been filed by the union seeking the reliefs as indicated above.

18. On 22.05.2020, a Division Bench of this Court noted the submissions of learned senior counsel for the union that certain amounts were deposited by the company with the Assistant Commissioner of Labour. It was submitted that the union was ready and willing to furnish

an undertaking if it was allowed to withdraw the amount deposited by the company with the Assistant Commissioner of Labour. On such submission, this court directed the company to file an affidavit.

19. It appears that pursuant to such order the company filed affidavit in reply to which the union has filed rejoinder affidavit. Respondent No.2 i.e., Commissioner of Labour has also filed affidavit through the Deputy Commissioner of Labour, Pune.

20. When the case was taken up on the next date i.e., on 02.06.2020, this Court referred to the order dated 20.03.2020 passed by the Industrial Court and noted that this order has not been stayed by any Court. In such circumstances, this Court disapproved the conduct of the company in not making payment of the wages to the workmen. Accordingly, the company was directed to comply with the order of the Industrial Court dated 20.03.2020 on or before 05.06.2020.

21. In the meanwhile, the company filed a writ petition questioning the legality and validity of the order dated 20.03.2020 passed by the Industrial Court.

22. It further appears that the company had approached the Supreme Court by filing SLP No.7376 of 2020 raising a grievance against the order dated 02.06.2020 passed by this Court. Taking note of the fact that this Court by subsequent order dated 15.06.2020 passed in the case of the company had directed listing of both the cases together on 23.06.2020, Supreme Court vide the order dated 17.06.2020 declined to interfere with the order dated 02.06.2020 passed by this Court.

Writ Petition LD-VC-57 of 2020

23. In this writ petition the company has assailed the legality and validity of the order dated 20.03.2020 passed by the Industrial Court.

24. According to the company it had a plant at Chinchwad, mainly engaged in the manufacturing of heavy engineering products and CNC machines. It earns income from two main business verticals viz., machine tool division and engineering division. However, because of non-cooperation and agitation by the union, certain customers withdrew their orders thereby causing heavy loss of business and earnings of the company. Nature of business is such that only after manufacture of machines and their dispatch, payments are received. This takes time. Therefore to ensure that manufacturing activities are carried on smoothly, company had taken loans from several banks over a period of time amounting to Rs.330 crores. As on March, 2020, company had outstanding dues of Rs.417 crores. That apart, company also owed Rs.95 crores to other creditors and for payment of employee related dues.

25. Ultimately, the loan accounts of the company were declared as non-performing assets (NPA).

26. To overcome the inability to repay its debts, the company started re-structuring its loans with M/s. Edelweiss Asset Reconstruction Company, an asset re-structuring company, for revival of the company. This has been done as per guidelines of the Reserve Bank of India. M/s. Edelweiss Asset Reconstruction Company ("Edelweiss" for short) has framed a long term revival plan of the company.

27. A settlement was entered into between the management and the workmen on 09.02.2017 for re-location of the plant. Accordingly, the plant has been shifted from Chinchwad to Village Sawardari, Taluka Khed in the district of Pune with effect from 01.03.2019. For this purpose the company had to obtain a new licence for its re-located plant under the Factories Act, 1948. Petitioner has alleged that shifting of plant has taken more time than required due to non-cooperation of the union; shifting is not yet fully complete. This has also led to huge

overhead cost.

28. Be that as it may, whatever money is received by the company from the sale proceeds and other sources is automatically deposited in the escrow account maintained by Edelweiss.

29. As part of the revival package involving reducing the debt burden of the company, the land where the plant was earlier located was sold by Edelweiss. Out of Rs.217.5 crores received, Rs.181 crores were used to repay part of the bank dues and other secured creditors. In addition, Rs.23 crores from out of the aforesaid sale proceeds were utilized to pay the salary / wage arrears of the workers and other employees upto May, 2019. Other dues were also partially cleared. It is stated that the payments were so made on the basis of calculations and terms decided by Edelweiss.

30. Company has alleged that the union had adopted an obstructionist approach leading to the company losing many precious orders thereby causing substantial loss. This prevented payment of salary / wages to the employees and workers on regular basis post May, 2019.

31. In such circumstances, a notice dated 03.03.2020 was issued by the management declaring suspension of operations under clause 18 of the Model Standing Orders framed by the State of Maharashtra under the Industrial Employment (Standing Orders) Act, 1946 and the Bombay Industrial Employment (Standing Orders) Rules, 1959. It is stated that the said notice had to be issued due to severe overall economic downturn, financial crisis due to which the banks had withdrawn normal credit facilities and other circumstances beyond the control of the company. This shutdown was not only for the workmen but also for the staff and officers of the company.

32. Aggrieved by the above notice dated 03.03.2020, the union

lodged a complaint before the Industrial Court under section 28(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (briefly “the 1971 Act” hereinafter) read with item numbers 9 and 10 of Schedule IV to the said Act. It is the case of the union that the said notice amounted to permanent closure of the plant, thus attracting the provisions of section 2(cc) and section 25(o) of the Industrial Disputes Act, 1947. In short, contention of the workmen was that management had resorted to unfair labour practice. The complaint has been registered as Complaint (ULP) No.32 of 2020.

33. Union also filed an application under section 30(2) of the 1971 Act seeking interim relief. Company resisted both the complaint and the interim application by filing written statement.

34. After hearing the matter, Industrial Court allowed the interim application of the workmen vide order dated 20.03.2020 directing the management to pay wages to the workmen from 01.03.2020 onwards till final disposal of the complaint. Such payment is to be made on or before the tenth of each month.

35. As pointed earlier, this order is under impugment in WP-LD-VC-57 of 2020.

Submissions

36. Ms. Gayatri Singh, learned senior counsel appearing for the union at the outset supports the order passed by the Industrial Court. She submits that under section 30(2) of the 1971 Act, the Industrial Court has the jurisdiction to pass such interim order as may be deemed fit and proper till disposal of the complaint filed under section 28(1) of the 1971 Act. She submits that Industrial Court rightly held that the notice dated 03.03.2020 was a notice under clause 20 of the Model Standing Orders and not one under clause 18 thereof as claimed by the management. In such circumstances, it was incumbent upon the management to have

granted seven days prior notice which was not done. Therefore, the Industrial Court rightly took the *prima facie* view that the management had indulged in unfair labour practice. Interim order of the Industrial Court directing the management to pay wages to the workmen from 01.03.2020 till disposal of the complaint on or before the tenth day of each month is fully justified and no interference is called for.

36.1. Referring to Government of India order dated 29.03.2020, she submits that such an order has been issued under section 10(2)(i) of the Disaster Management Act, 2005. As per this order, all employers are mandated to make payment of wages to their workmen at their workplace and on the due date without any deduction for the period their establishments are under closure during the lockdown.

36.2. Maharashtra Government in its resolution dated 31.03.2020 has directed that all the workers, be on contract basis or on outsourced employment or on temporary basis or on daily wage basis, working in private organisations, industries, companies, shops except those dealing with essential services etc. who have been confined at home due to COVID-19 shall be deemed to be on duty during closure on account of lockdown and such workers / employees shall be paid full wages / salary and allowances to which they are entitled to.

36.3. According to learned senior counsel a conjoint reading of the Government of India order and the Maharashtra government resolution would make it abundantly clear that during the period when the industrial or commercial establishments are closed on account of the lockdown, the workmen or employees employed in these establishments in whatever capacity shall be deemed to be on duty and they shall be paid their full wages, salaries and allowances to which they are entitled to without any deduction. In such circumstances the company is duty bound to pay the full wages of the workmen during the lockdown period by treating them to be on duty.

36.4. Finally learned senior counsel has referred to the order of this Court dated 02.06.2020 which directed the company to comply with the order of the Industrial Court dated 20.03.2020 as well as the order of the Supreme Court dismissing the SLP filed by the company against this Court's order dated 02.06.2020 and submits that the petition filed by the union may be allowed while dismissing the petition filed by the company.

37. *Per contra*, Mr. Bapat, learned counsel for the company submits that the financial condition of the company is quite precarious and it is in no position to pay the wages of the workmen as directed by the Industrial Court. It was for this reason that the suspension of operations notice was issued by the company on 03.03.2020.

37.1. Referring to the order passed by the Industrial Court on 20.03.2020, he submits that the Industrial Court has granted the final relief sought for in the complaint at the interim stage itself which is impermissible; by way of interim relief final prayers cannot be granted. In any view of the matter, the Industrial Court had clearly exceeded its jurisdiction while passing the interim order dated 20.03.2020 which is therefore, liable to be appropriately interfered with.

37.2. Writ Petition filed by the union for enforcing the order of the Industrial Court dated 20.03.2020 is not maintainable. Writ proceeding cannot be converted into an execution proceeding. 1971 Act provides the procedure for execution of order passed by the Industrial Court.

37.3. In so far as dismissal of the SLP by the Supreme Court is concerned, Mr. Bapat submits that not much should be read into it as the Supreme Court did not interfere with the order dated 02.06.2020 because the matter was pending before this Court along with the independent petition filed by the company challenging the order of the Industrial

Court dated 20.03.2020.

37.4. Further submission of Mr. Bapat is that since the contesting parties are locked in an industrial adjudication for a cause of action which arose much prior to the lockdown, neither the central government order dated 29.03.2020 nor the government resolution dated 31.03.2020 of the Government of Maharashtra would be applicable to the claim of the workmen. Besides, the central government order dated 29.03.2020 was subsequently withdrawn on 17.05.2020. That apart when the order dated 29.03.2020 was challenged, Supreme Court passed an order on 15.05.2020 to the effect that no coercive action should be taken on the basis of the said order.

37.5. He therefore submits that order of the Industrial Court dated 20.03.2020 may be set aside while dismissing the writ petition filed by the union.

38. Learned Government Pleader has supported the government resolution dated 31.03.2020. While submitting that it is an industrial dispute between the workmen and the management, he has placed reliance on the affidavit filed by the Labour Commissioner.

39. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record.

Discussions and analysis

40. We first take up Government of India, Ministry of Home Affairs order dated 29.03.2020 and the government resolution dated 31.03.2020 of the Government of Maharashtra, Industries, Energy and Labour Department. In so far as the central government order is concerned, the same has been issued under section 10(2)(i) of the Disaster Management Act, 2005 to deal with the situation arising out of the lockdown for containment of spread of COVID-19 in the country and for effective

implementation of the lockdown measures as well as to mitigate the economic hardship of the migrant workers. Though several directions have been issued, the direction which is relevant is as follows:-

“All the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages to their workers, at their workplaces, on the due date, without any deduction, for the period their establishments are under closure during the lockdown.”

40.1. In other words what this direction contemplates is that all categories of employers shall ensure that during the period their establishments are closed due to the lockdown wages are paid to their workers at their workplaces and on the due date without any deduction.

41. In consequence to the aforesaid central government order, Government of Maharashtra issued the government resolution dated 31.03.2020. As per the government resolution, all categories of workers, be it contractual, outsourced, temporary or daily wage basis, working in private organisations, industries, companies, shops (except those dealing with essential services) etc. who are confined to their homes due to the lockdown shall be deemed to be on duty and they shall be paid their full salary / wages and allowances to which they are entitled to.

42. WHO has declared corona virus (COVID-19) as a global pandemic. Government of India has invoked the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 notifying corona virus (COVID-19) as a disaster under the aforesaid Acts and to contain the spread of the disease had imposed lockdown in the country including in the State of Maharashtra with effect from 24.03.2020. For effective implementation of the lockdown and to mitigate the hardship of the migrant workers, order dated 29.03.2020 was passed in exercise of powers under section 10(2)(i) of the Disaster Management Act, 2005. Section 10 deals with powers and functions of the National Executive Committee constituted under section 8 of the said Act. As per sub-section (1), the National Executive Committee shall assist the national

authority constituted under section 3 of which the Prime Minister of India is the *ex-officio* chairman in the discharge of its functions and have the responsibility for implementing the policies and plans of the national authority ensuring compliance of directions issued by the Central Government for the purpose of disaster management in the country. Sub-section (2) lays down the things which the National Executive Committee may do without prejudice to the generality of the provisions contained in sub-section (1). As per clause (i), the National Executive Committee may evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or disaster and give directions where necessary for enhancing such preparedness.

43. A conjoint reading of the central government order and the Maharashtra government resolution would go to show that those have been issued to meet the situation arising out of the lockdown. Because of the lockdown, the industrial and commercial establishments were closed. This certainly caused great deal of economic hardship and distress to the workers and employees. This also resulted in the movement of a large number of migrant workers in some parts of the country so as to reach their native places. Such movement resulted in violation of lockdown measures. In such circumstances, to mitigate the hardship of the workers and employees certain directions were issued by the Home Secretary in his capacity as Chairperson of National Executive Committee which have been further clarified by the Maharashtra government resolution. Sum and substance of the related measure is that the employers shall pay full salary / wages to their employees / workers during the period when their establishments were closed because of the lockdown. Such payment shall be made at the workplace and on the due date without any deduction. For this period, the employees / workers shall be deemed to be on duty.

44. Lockdown is an emergency measure which had to be taken

because of the disaster situation. Obviously, during such forced closure of establishments, be it industrial or commercial, the principle of *no work no pay* shall have no application. In fact this position is acknowledged by the Maharashtra government resolution when it says that during the period of such forced closure, the employees / workers shall be deemed to be on duty thereby foreclosing any possibility of layoff or pay cut during the period of forced closure.

45. But the moot question is could the central government order and the Maharashtra government resolution be invoked in a situation where the management and workmen are engaged in an industrial adjudication relating to non-payment of salary / wages and suspension of work much prior to closure of the establishments due to the lockdown? Or where the related cause of action arose prior to the lockdown?

46. Admittedly, the workmen in this case were paid wages upto May, 2019. Since May, 2019 they have not been paid wages. The suspension of operations notice was issued by the management on 03.03.2020 which is under adjudication before the Industrial Court in Complaint (ULP) No.32 of 2020. The lockdown was declared with effect from 24.03.2020. In our view, taking the above aspects into consideration, the claim of the workmen to wages will not be covered by the central government order and the Maharashtra government resolution. The measures introduced by the above two would cover a situation where an employee / worker was in employment as on the day the lockdown was declared and had received salary / wages for the previous month i.e., the month immediately preceding the lockdown. This measure was introduced to ensure maintenance of *status quo* with regard to payment of salary / wages and employment.

47. Let us take a hypothetical case. Say an employee / worker is not in employment, for whatever reason, and has not been paid wages for one year prior to declaration of the lockdown. Can he still avail the

benefit of the above central government order and the Maharashtra government resolution? In our view the answer to this question would have to be in the negative. To be deemed to be on duty one should be on duty on the date when the lockdown was declared. To be entitled to or for continuity of salary / wages during the lockdown, an employee / worker should receive the same till the month which is previous to closure on account of the lockdown. That apart, when there is an ongoing industrial adjudication pertaining to claim of the workmen to wages, the claim to wages would be subject to such adjudication. The central government order and the Maharashtra government resolution cannot be invoked to short circuit an industrial dispute which is being adjudicated upon before the competent forum. Fact that the order dated 29.03.2020 was subsequently withdrawn would have no bearing on the legal issue which we have discussed above.

48. That being the position, the union is not entitled to the benefit of the central government order dated 29.03.2020 and the Maharashtra government resolution dated 31.03.2020.

49. We may now proceed to deal with the order dated 20.03.2020 passed by the Industrial Court. But before that a brief reference may be made to those provisions of the 1971 Act which have relevance to the present case.

50. The 1971 Act has been enacted to provide for recognition of trade unions to facilitate collective bargaining in certain undertakings; to state their rights and obligations; to confer certain powers on unrecognized unions; to provide for declaring certain strikes and lockouts as illegal strikes and lockouts; to define and provide for the prevention of certain unfair labour practices; to constitute courts as independent machinery for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair labour practices.

51. Section 3 is the definition clause. Sub-section (4) of section 3 defines “court” for the purposes of Chapter VI and VII to mean the Industrial Court or as the case may be the Labour Court. Chapter VI deals with unfair labour practices whereas Chapter VII deals with powers of courts.

52. While unfair labour practice is defined in section 26, Schedule IV to the 1971 Act mentions general unfair labour practices on the part of employers which includes failure to implement award, settlement or agreement; and to indulge in act of force or violence as mentioned at item numbers 9 and 10 thereof.

53. Section 28 which is placed in Chapter VI lays down the procedure for dealing with complaints relating to unfair labour practices. As per sub-section (1), where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any investigating officer may file a complaint before the court competent to deal with such complaint i.e., the Industrial Court or the Labour Court as the case may be. Such complaint may be filed within 90 days of the occurrence of such unfair labour practice. However, as per the proviso the court may entertain a complaint even beyond the stipulated period if good and sufficient reasons are shown by the complainant for late filing of the complaint. Sub-section (2) says that the court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint. Other provisions of this section are not relevant for the present deliberation.

54. Section 30 which is placed in Chapter VII deals with powers of Industrial and Labour Courts. As per sub-section (2), in any proceeding before it under the 1971 Act the court i.e. Industrial Court or Labour Court as the case may be, may pass such interim order including any temporary relief or restraining order as it deems just and proper. Such

interim order may include directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding, pending final decision. Proviso to sub-section (2) empowers the court to review any interim order passed by it on an application made on that behalf.

55. Section 50 of the 1971 Act deals with recovery of money due from an employer. It says that where any money is due to an employee from an employer in view of an order passed by the court under Chapter VI, the employee himself or any authorised person may make an application to the court for recovery of money due to him and on satisfaction the court shall issue a certificate for that amount to the Collector who shall proceed to recover the same as an arrear of land revenue. Though such application is required to be filed within one year from the date when the money became due, on sufficient cause being shown, such application may be entertained even after the stipulated period. The procedure laid down in section 50 for recovery of money is without prejudice to any other mode of recovery.

56. Having noticed the relevant legal provisions, we may now advert to the proceedings before the Industrial Court leading to passing of the order dated 20.03.2020.

57. We have already noticed that the management had issued suspension of operations notice on 03.03.2020. This has been challenged by the union before the Industrial Court by filing a complaint under section 28(1) read with item numbers 9 and 10 of Schedule IV to the 1971 Act. Prayer made is to declare that the management has indulged in unfair labour practices; to direct them to desist from such practices; to declare the notice dated 03.03.2020 as illegal and void *ab initio*; and for a direction to the management to pay full wages to the workmen from 03.03.2020 onwards on regular basis before the tenth day of each month till final disposal of the complaint. It is further seen that the union also

filed an application under section 30(2) seeking interim relief to the effect that the management be directed to pay wages to the workmen till final disposal of the complaint.

58. After hearing arguments on the interim prayer, the Industrial Court passed the order dated 20.03.2020. Industrial Court took the view that in a case of suspension of operations on the ground of economic crisis and shortage of orders from the customers, clause 20 of the Model Standing Orders would be applicable and not clause 18 as claimed by the management. When it is a case under clause 20, seven days prior notice has to be given which was not done in the present case. Thus Industrial Court held that proper procedure was not followed while issuing the notice dated 03.03.2020. Coupled with the fact that management has not paid wages to the workmen, Industrial Court *prima facie* held that the management has committed unfair labour practice by not following the provisions of law as contemplated in item 9 of Schedule IV to the 1971 Act.

59. Pausing here for a moment, it is evident that the above findings of the Industrial Court that the notice dated 03.03.2020 was actually one under clause 20 and not under clause 18 and consequently the procedure prescribed in clause 20 has not been followed; and that management has committed unfair labour practice, are all tentative findings for the purpose of deciding the interim application filed by the union. These are *prima facie* findings and cannot be construed as final conclusions.

59.1. It is clarified accordingly.

60. Further, Court is of the view that at the interlocutory stage it may not be necessary to delve into the legality and correctness of such *prima facie* findings. This is more so because management had the remedy of filing an application for review of the interim order as per the proviso to sub-section (2) of section 30 which it did not avail. Be that as it may,

these issues are all open ended to be decided finally at the time of adjudication of the complaint.

61. Industrial Court noted that a *prima facie* case for interim relief was made out by the union. It was further observed that if the management was not directed to pay wages, members of the union would suffer hardship and inconvenience. On the contention of the management that the interim relief was one of the main reliefs sought for in the complaint and that final relief cannot be granted at the interim stage, Industrial Court held that though it is a settled legal proposition that final relief cannot be granted at interim stage but in appropriate cases court can grant such relief on proof of *prima facie* case. Since according to the Industrial Court, complainant had made out a strong *prima facie* case, interim direction was issued to the management to pay wages to the workmen from 01.03.2020 onwards till final disposal of the complaint; the payment to be made on or before the tenth day of each month.

62. We find the above view of the Industrial Court to be contradictory. It is a settled proposition of law that ordinarily the final relief may not be granted by way of an interim order. Power to grant interim relief is discretionary. Such discretion has to be exercised on well established principles. Since a *prima facie* view has been taken that the management has committed unfair labour practice, certainly an interim order is called for. But what should be the nature of the interim order? It is an admitted position that the workmen have not been paid wages post May, 2019. Since their employment has not been disturbed because even as per the management the notice dated 03.03.2020 has only declared suspension of operations, the workmen cannot be left in the lurch. At the same time the financial condition of the company cannot also be overlooked at the time of granting interim relief. In the interest of industrial peace a balance has to be struck between the competing claims. Survival of the industry is equally important not only for the management but also for

the workmen. Therefore, in the interest of justice it would be just and proper if a direction is issued to the management to pay 50% of the full monthly wages to the workmen with effect from 01.03.2020 till disposal of Complaint (ULP) No.32 of 2020. Such payment shall be made on or before the tenth day of each month. To the above extent the order dated 20.03.2020 would stand modified.

63. In so far Complaint (ULP) No.32 of 2020 is concerned, as per the statutory mandate expressed in sub-section (2) of section 28 of the 1971 Act, Industrial Court is directed to complete the adjudication process within a period of six months from the date of receipt of a copy of this order.

64. Though this Court on 02.06.2020 had directed the company to comply with the order dated 20.03.2020 passed by the Industrial Court on or before 05.06.2020 after making certain adverse observations, the same was an interim direction. When the said order was challenged before the Supreme Court by filing SLP No.7376 of 2020, Supreme Court vide the order dated 17.06.2020 declined to entertain the same. This was for the reason that by subsequent order passed on 15.06.2020 this Court had directed listing of both the cases on 23.06.2020. In that context Supreme Court directed that both the petitions be listed on 23.06.2020 before the High Court. Accordingly both the cases were heard on 23.06.2020 and are being disposed off by this common judgment. An interim order or direction by its very nature is subject to the final order that may be passed. In other words, an interim order or direction merges with the final order or direction. In view of the final orders which we propose to pass by way of this judgment, it is the final orders / directions which will hold the field.

65. Pursuant to the order of this Court dated 22.05.2020, company has filed affidavit wherein it is stated that an amount of Rs.4,02,98,825.00 has been deposited with the Assistant Commissioner of Labour. The

breakup of the deposit has been given which primarily includes gratuity, leave wages, interest, bonus (disputed), 12 days wages (disputed) etc. It is further stated that as per information received the said amount has been disbursed to the respective workers as per their entitlement. Labour Commissioner in his affidavit has admitted receipt of the said amount and that most of the claims of the workmen were settled through the said amount. Disputes pertaining to wages for the year 2018 and bonus difference have remained in respect of which references have been made under the Industrial Disputes Act, 1947.

66. On the contention of Mr. Bapat, learned counsel appearing for the company that the writ petition filed by the union is not maintainable because it seeks enforcement of an order passed by the Industrial Court thus converting the writ proceeding into an execution proceeding, we are of the view that jurisdiction under Article 226 of the Constitution of India is plenary and width of such power cannot be restricted merely because there is an alternative remedy by way of section 50 of the 1971 Act. Article 226 being a constitutional provision, no limit or restriction can be imposed on the exercise of that power by the High Court. Of course in a given case, the High Court may decline to invoke its jurisdiction under Article 226 in view of availability of alternative remedy but that is not the same thing as saying that the writ petition is not maintainable.

Conclusions

67. Summing up the deliberations and on due consideration, we pass the following orders:-

1. Government of India, Ministry of Home Affairs order dated 29.03.2020 and the Maharashtra government resolution dated 31.03.2020 would not be applicable in the case of the workmen represented by the union;
2. Order dated 20.03.2020 passed by the Industrial Court

would stand modified to the extent that the workmen represented by the union shall be paid 50% of their full wages on or before the tenth day of each month effective from 01.03.2020 till disposal of Complaint (ULP) No.32 of 2020;

3. Industrial Court shall dispose of Complaint (ULP) No.32 of 2020 within a period of 6 months from the date of receipt of a copy of the present order;

68. Both the writ petitions are accordingly disposed off in the above terms. However, there shall be no order as to costs.

69. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(RIYAZ I. CHAGLA, J.)

(UJJAL BHUYAN, J.)

Minal Parab