HIGH COURT OF GUJARAT

LARSEN AND TOUBRO KAMDAR UNION, HAZIRA
Versus
STATE OF GUJARAT AND LARSEN & TOUBRO LIMITED

Date of Decision: 21 March 2014

Citation: 2014 LawSuit(Guj) 374

Hon'ble Judges: Paresh Upadhyay

Eq. Citations: 2014 2 CLR 64, 2014 141 FLR 836

Case Type: Special Civil Application

Case No: 18610 of 2013

Subject: Labour and Industrial

Acts Referred:
Industrial Disputes Act, 1947 Sec 22, Sec 2(n)(VI), Sec 10(3), Sec 23, Sec 10(1)(d), Sec 10A(4A), Sec 24

Advocates: Shirish Joshi, Sachin D Vasavada, Prakash Jani, K S Nanavati, Nanavati Associates

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Paresh Upadhyay, J.

[1] Challenge in this petition is made to the Notifications dated 16.12.2013 and 19.12.2013 issued by the Respondent No.1- State of Gujarat. The Notification dated 16.12.2013 was issued by the Government in exercise of powers under Section 2(n)(vi) of the Industrial Disputes Act, 1947, ('the Act' for short), declaring the services of the workers of the respondent No.2- Larsen & Toubro Limited, Hazira Project, Surat, as an essential service, for a period of six months. By the subsequent notification dated 19.12.2013, the Government, in exercise of powers under Section 10(1)(d) of the Act, referred the industrial dispute, pertaining to certain demands of the workers of the respondent No.2- Company to the Industrial Tribunal, Surat for adjudication. By the said notification itself, Government has, in exercise of its powers under Section 10(3) of the Act, prohibited the workers of respondent No.2- Company from continuing the strike, which they had started from 16.12.2013.

[2] Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that, the matter requires consideration. Rule.

[3] 1 Learned advocates are heard at length on the question of interim relief.

3.2 The case of the petitioner Union is mainly founded on the allegation that, the bargaining capacity of the workers as against the Management of respondent No.2 Industry would be a no match, but even then, the Authorities of the Government in exercise of the powers have taken the side of the Management, under the pretext of industrial peace and adjudication of the industrial dispute. It is submitted that if the chronology of events as emerging from record is seen, it leaves no room but to conclude that the exercise of powers by the Government in the present case is not bonafide. Learned advocate for the petitioner Union has placed reliance on the decision of Hon'ble the Supreme Court of India in the case of Delhi Administration, Delhi versus Workmen of Edward Keventers, 1978 AIR(SC) 976 to contend that, only nine out of eleven demands are referred to for adjudication and thus the prohibitory orders would not apply to the petitioner Union since the strike in question can be termed as for those two demands also. It is further submitted that under the pretext of the strike being illegal, the Management has already started taking actions in very high-handed manner and the very cure is turning out to be worse than the disease itself which is pretended to be cured by the Government. It is submitted that the impugned Notifications be stayed.

3.3 On the other hand, learned Government Pleader as well as learned Senior Advocate for the respondent no.2, both have vehemently contended that, both the Notifications of the Government i.e. dated 16.12.2013 and 19.12.2013 were within the competence of the Government, the circumstances demanded exercise of that power and it was necessary in the public interest to do so. It is submitted that under these circumstances, no interference be made by this Court. It is also submitted that, when the Government has issued notification, presumption is always in favour of it being bonafide. Learned advocate for the respondent No.2 has taken this Court through the scheme of the Industrial Disputes Act, 1947. To make this point good, reliance is placed on the following decisions.

(i) The Life Insurance Corpo9ration of India versus D.J. Bahadur, 1980 LabIC 1218

(ii) Corporation of the City of Bangalore versus Kesoram Industries and Cotton Mills Ltd. Dunlop India Ltd, 1989 Supp2 SCC 753

(iii) Vishala versus State of Gujarat, 1999 2 GCD 892

(iv) Empire Industries Limited versus State of Maharashtra, 2010 4 SCC 272

3.4 It is also contended on behalf of the State as well as respondent No.2 both that, grant of interim relief at this stage in favour of the petitioner workers, even against the further implementation of the Notification dated 19.12.2013 would amount to allowing the petition at this stage, and it is a settled position of law that interim relief should not be granted which ultimately results in allowing the petition. In support of this contention, the following decisions of Hon'ble the Supreme Court of India are relied by him.

(i) Dayanand Vedic Vidyala Sanchalak Samiti versus Education Inspector, Greater Bombay, 2007 15 SCC 192

(ii) Secretary, U.P.S.C. versus S.Krishna Chaitanya, 2011 AIR(SC) 3101

(iii) Vinod Kumar versus State of Haryana, 2014 AIR(SC) 33

[4] Having heard learned advocates for the respective parties and having gone through the material on record, and also the additional material which was made available to this Court by the learned Government Pleader during the course of hearing, this Court finds that the petitioner workers are entitled to interim protection during the pendency of this petition. The circumstances and the factors which have weighed with this Court, to come to this conclusion, are as under. Further, the arguments of learned advocates, for and against grant of interim relief, and the factors which have weighed with this Court, are interwoven and therefore, they are recorded together as under. It is recorded that, there can not be any dispute with regard to the proposition of law or the submission of learned advocate for the respondents, however in the facts and circumstances, which are narrated hereinafter, this Court finds that, refusal to grant interim relief in favour of the petitioner workers would result into miscarriage of justice and therefore, interim protection is required to be granted.

[5] At the outset, it is recorded that, the impugned Notification dated 16.12.2013 is cancelled ab-initio by the Government, vide Notification dated 19.03.2014. The circumstances leading to it and effect thereof is recorded hereinafter.

[6] The principal challenge is to the Notifications dated 16.12.2013 (now withdrawn) and 19.12.2013, as referred above. As noted, the Notification dated 16.12.2013 was issued by the Government in exercise of powers under Section 2(n) (vi) of the Act, declaring the services of the workers of the respondent No.2, as an essential service, for a period of six months. By the subsequent Notification dated 19.12.2013, the Government, in exercise of powers under Section 10(1)(d) of the Act, referred the industrial dispute, pertaining to nine, out of eleven demands of the workers of the

respondent No.2- Company to the Industrial Tribunal, Surat for adjudication. By the selfsame Notification, Government has, in exercise of its powers under Section 10(3) of the Act, prohibited the workers of respondent No.2- Company from continuing the strike, which they had started from 16.12.2013. Since the said Notification dated 16.12.2013 is withdrawn by the Government now, it is only the notification dated 19.12.2013, the legality, propriety and sustainability of which need to be gone into.

Though, the Notification dated 16.12.2013 is withdrawn, and therefore its legality is no more required to be gone into, the merits thereof would still be required to be referred to, to the limited extent of examining the effect of withdrawal of Notification dated 16.12.2013 vide notification dated 19.03.2014, while examining the legality, propriety and sustainability of the Notification 19.12.2013.

[7] This matter was heard at length on different dates, lastly on 18, 19 and 20th day of March, 2014. While defending the action of the Government, reference was made to the two affidavits filed on behalf of the Government, being affidavit in reply dated 22.01.2014 and 03.03.2014. When the State has filed affidavit, it is presumed that correct and complete facts are placed before the Court, and not only there is no concealment of material fact, but the reply is not misleading either. This is expected from any litigant, and the Court would be very sure of atleast this, when the said litigant is the State. Unfortunately, however, atleast the present one is not such a case. Since the circumstances pointed out by learned advocates for the respective parties did not coincide with the circumstances emerging from the above referred two affidavits in reply, learned Government Pleader was requested to make available the files for perusal of the Court, on which the decisions leading to the issuance of the impugned Notifications dated 16.12.2013 and 19.12.2013 were taken, if the Government otherwise does not have any objection to do so, and it is recorded with due appreciation that with all fairness, learned Government Pleader, without any hesitation, had made available those files for the perusal of the Court. The facts revealed from the files were startling.

[8] On perusal of the said files (on 19.03.2014), this Court found that, not only the contents of the affidavits filed on behalf of the Government were inconsistent with its record, there was concealment of material - very material fact from this Court. Briefly stated, it is this. So far the Notification dated 16.12.2013 is concerned, the thrust of the Respondent No.2 was that, it had already requested the Government vide representation dated 21.06.2013 that the respondent No.2 - Unit be declared as essential service. In support of this say, even a copy of the said representation dated 21.06.2013 which was addressed to the Hon'ble Minister of the Labour and Employment Department of the Government of Gujarat, is also placed on record (at Page 102), along with its affidavit dated 08.01.2014. A copy of the said affidavit in

reply of respondent No.2 is served to all the parties, including to the Government on 08.01.2014 as is evident from the endorsement on the said affidavit in reply (Page 87). Much thereafter, the first affidavit in reply on behalf of the Government came to be filed on 22.01.2014. Para 9 of the said affidavit in reply deals with the circumstances leading to the issuance of Notification dated 16.12.2013. In the said reply, nowhere it is stated that, the request of the respondent No.2 as contained in its representation dated 21.06.2013 was already considered by the Government and was rejected vide decision dated 16.08.2013 and even formal order to that effect was also passed by the Government on 16.08.2013 itself. This aspect is neither pointed out by respondent No.2, nor by the Government in their affidavits. Thus, the request of the respondent No.2, to treat it as essential service and thereby the services of its workmen as an essential service, pursuant to its representation to the Government dated 21.06.2013, which is claimed to have been culminated in the decision leading to issuance of Notification dated 16.12.2013, was, as a matter of fact, already considered and rejected by the Government vide its decision dated 16.08.2013, and it was so communicated also by a written order of the Government dated 16.08.2013 to the Commissioner of Labour, Gujarat State. It is this aspect which was concealed from this Court, even while filing affidavits dated 22.01.2014 and 03.03.2014, till the original record could be seen by the Court. The consequences were inevitable. At that juncture, it was thought prudent to permit the Government to reconsider the entire issue, if it was so advised, to enable it to handle the situation in more delicate manner and prudent way, more particularly when the matter pertains to labour situation and industrial peace in an important industrial Unit of the State. Keeping this object in view, the hearing of the petition was deferred till next day i.e. 20.03.2014. The Government responded it by saying that it has withdrawn the Notification dated 16.12.2013 (but not Notification dated 19.12.2013), by issuing Notification dated 19.03.2014, which is placed on record along with affidavit dated 20.03.2014. It is under these circumstances, that the legality of the impugned Notification dated 16.12.2013 and any stay against operation thereof, need not be considered, except to the extent of the over all effect thereof on the Notification dated 19.12.2013, the legality, propriety and sustainability of which, during pendency of this petition, is being considered by this Court.

[9] 1 Coming to the legality, propriety and sustainability of the impugned Notification dated 19.12.2013, and the question as to whether any stay against operation thereof should be granted by this Court during pendency of this petition, the factors which have weighed with this Court are these. Firstly there is huge gap between the reasons and objects of issuing and maintaining the said Notification, as projected by the Government, and what is found by this Court. Secondly, even otherwise, the said decision, if not malafide, atleast is tainted with lack of bonafide. Further, even

independent of the suppression of material fact by the Government, as recorded in detail hereinabove, permitting the Notification dated 19.12.2013 to continue to hold the field, would not only not serve the purpose which is pretended to be achieved, but it would yield the converse result. The details in this regard are as under.

9.2 The petitioner - Union raised certain demands before respondent No.2 - Management, which in the perception of the Management are not reasonable demands. It is recorded that the reasonableness or otherwise of the demands of the Union, or the adamance in the stand of the respondent No.2 Management is not the subject matter of this petition, though to an extent, guidance can be taken from the affidavit of the Government that both have taken adamant stand. Further, the relevant part of Paras 11 and 12 of the affidavit of the Government dated 22.01.2014, reads as under.

"11. ...Both the parties have started discussion but at the end of more than 20 months, no settlement was arrived between the parties and to press for the charter of demands, the petitioner union has given strike notice dated 18.11.2013 which stated that if their demand will not be fulfilled by management, unionized members will go on strike from 16.12.2013 except the workers of essential services. I humbly say and submit that the respondent No.2 has informed to the Deputy Commissioner of Labour, Surat to call both the parties for primary discussion by enclosing afore said strike notice. The Assistant Commissioner of Labour, Surat has treated the said strike notice as intervention letter and personally visited the company and discussed with both the parties and advised to the union for not to go on strike.

12. I humbly say and submit that after receiving the strike notice, the Assistant Labour Commissioner, Surat intervened in the matter on 26.11.2013 and series of meeting held on 02.12.2013, 09.12.2013, 16.12.2013 and 17.12.2013 to conciliate the dispute, however dispute could not be resolved due to adamancy on the part of the petitioner and the respondent No.2.

Then after Deputy Commissioner of Labour, Surat has tried for amicable settlement by arranging meeting dated 18.12.2013 but not succeeded. Accordingly, Deputy Commissioner of Labour Surat, sent proposal for prohibition of strike vide letter dated 18.12.2013, as no amicable settlement was arrived between the parties. The same is forwarded to respondent No.1 Labour and Employment Department by Commissioner of Labour Gujarat state for prohibition of strike. In view of the above all facts and circumstances respondent No.1 prohibited the strike. The copies of the proceedings of the same are enclosed collectively here with as Annexure 4 to the reply. "

9.3 As taken cognisance of, even by the Government, the notice of the Union dated 18.11.2013 specifically referred that if their demands are not fulfilled, unionized members will go on strike from 16.12.2013 except the workers of essential services. Thus even on the date of notice of strike dated 18.11.2013, not only there was no notification of the Government treating the services of the workers of the respondent No.2 Unit as essential service, there was specific refusal by the Government to declare it as such vide order dated 16.08.2013, it is this approach of the Union which stated that they will go on strike, except the workers of essential service departments. It was this bargaining power of the workers Union on one hand, and the power of the Management not to budge on the other hand, with which the Authorities of the Government were faced with. From the perusal of record, an unmistakable picture has emerged where, at that stage, the Government has thrown its weight in favour of the Management in the name of industrial peace. The ultimate goal as evident from above, was not to permit even the workers of non-essential service departments of respondent No.2, to go on strike. The first move in that direction was to declare the entire Unit of respondent No.2 as essential service. It is not that Government did not have power to do so, but the said power was already refused to be exercised by the Government on 16.08.2013, which is concealed from this Court, and Notification claimed to have been issued on 16.12.2013 is projected to have been issued, pursuant to the representation dated 21.06.2013. It is the say of the petitioner Union that though strike as per notice dated 18.11.2013 had commenced from 00.00 hours of 16.12.2013, there was no notification at that stage, nor even during the course of the day, which is claimed to have been issued on 16.12.2013. Even the affidavit of the Government quoted above would give the same impression. This Court has gone through the original file of the Government and it is found that the consideration is projected to have been started by the Government on 16.12.2013 without any proposal from any Field Officer of the Labour Department. The file only records that it is submitted as per the instructions of the Government. The initiation of noting was at the level of the concerned Joint Secretary and there is apparent overwriting of date which is claimed to be 16.12.2013. Since all senior officers have also signed and put date as 16.12.2013, it would be unfair to conclude that, that exercise was back dated, so as to coincide it with the date of commencement of the strike, still it is note worthy that 14.12.2013 and 15.12.2013 were public holidays being second Saturday and Sunday. Without deliberating much on that aspect, it is undisputed that, when the strike had commenced on 00.00 hours of 16.12.2013, even no consideration process had started on the file of the Government, as is evident from the record, and the Notification is issued claiming it to be of 16.12.2013. Be that as it may, let us see what would be the effect of that Notification dated 16.12.2013, accepting it to be of 16.12.2013. By the said

Notification, the Government, in exercise of powers under Section 2(n)(vi) of the Act, declared the services of the workers of the respondent No.2 - Unit as an essential service, for a period of six months. What was envisaged was, the consequential application of Section 22 of the Act, and treating the said strike as illegal strike, with the consequence thereof to follow. The said Section reads as under.

"Section 22. Prohibition of Strikes and Lockouts.

(1) No person employed in a public utility service shall go on strike in breach of contract:

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock out any of his workmen;

(a) without giving them notice of lockout as hereinafter provided, within six weeks before lockingout; or

(b) within fourteen days of giving such notice;l or

(c) before the expiry of the date of lockout specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lockout or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lockout in existence a strike or, as the case may be, lockout in the public utility service, but the employer shall send intimation of such lockout or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in subsection (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lockout referred to in subsection (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in subsection (1) or gives to any persons employed by him any such notices as are referred to in subsection (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices receive or given on that day."

9.4 However, immediately it was realised that, what was required was not only prohibition of strike, but prohibition of continuance of strike which had already commenced, and that is how now even Section 24 of the Act would also come in play, and also in the way. The said Section reads as under.

"Section 24. Illegal strikes and lockouts. (1) A strike or a lockout shall be illegal if

(i) It is commenced or declared in contravention of section 22 or section 23; or

(ii) it is continued in contravention of an order made under subsection (3) of section 10 [or subsection (4A) of section 10A].

(2) Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a board, [an arbitrator,] [Labour Court, Tribunal or National Tribunal], the continuance of such strike or lockout shall not be deemed to be illegal, provided that such strike or lockout was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under subsection (3) of Section 10 [or sub section (4A) of section 10A]

(3) A lockout declared in consequence of an illegal strike or a strike declared in consequence of an illegal lockout shall not be deemed to be illegal. "

9.5 Thus, the conjoint effect of above was that, the desired result of rendering the strike in question, to be an illegal strike, even after issuance of Notification dated 16.12.2013, was still not a sure shot for the Government, but then Plan-B was ready. With the aid of Section 10(3) of the Act, still that could have been done, but to resort to Section 10(3) of the Act, the condition precedent was that the dispute must have been referred for adjudication, in the present case, to the Industrial Tribunal. Relevant part of the said Section reads as under.

"Section 10 :

(1) Where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time,] by order in writing

(a) XXX XXX XXX

(b) XXX XXX XXX

(c) XXX XXX XXX

[(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication;

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) :]

[Provided further that] where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this subsection notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

[Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.]

(2) XXX XXX XXX

(2A) XXX XXX XXX

(3) Where an industrial dispute has been referred to a Board, [Labour Court, Tribunal or National Tribunal] under this section, the appropriate Government may by order prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on the date of the reference.

(4) XXX XXX XXX ...."

9.6 On 19.12.2013, Notification was issued invoking powers under Section 10(3) of the Act. It was necessary, since Notification 16.12.2013 had already turned out, or was likely to be turned out redundant, in the circumstances recorded above, unless the aid of Section 10(3) of the Act was taken. Further, if Section 10(3) was to be resorted to, the Notification dated 16.12.2013 was not required also. But then, the way to reach to the stage of Section 10(3), was via Section 10(1)(d) of the Act only. Further, even exercise of powers under Section 10(1) (d) of the Act, presupposed conciliation proceedings, failure thereof, communication thereof by the Surat Field Office to the Commissioner of Labour at Gandhinagar, and in turn by the Commissioner of Labour to the Government of Gujarat in Labour and Employment Department, due application of mind in that regard at different levels of the Government, and final decision thereon and actual issuance of the Notification in that regard. Only then the stage of exercise of discretion by the Government as envisaged under Section 10(3) of the Act could have been reached. I have gone through the file. Everything, all these stages are over on 18.12.2013 and 19.12.2013. The promptness of the Government though appreciable, which is pretended to be for industrial peace, was more the damage control of unsuccessful Plan-A as recorded above. At this juncture, it is recorded that, withdrawal of Notification dated 16.12.2013 in these circumstances is not the grace shown by the Government, since exercise of powers under Section 10(3) of the Act would have even otherwise rendered the strike illegal, even if respondent No.2 was not declared to be essential service as was done by issuing Notification dated 16.12.2013. Interestingly, the Notification dated 19.12.2013 says both the things together, that the Reference is made to the Industrial Tribunal for nine out of eleven demands, and since Reference is already made now to the Industrial Tribunal, powers under Section 10(3) of the Act, which are discretionary, are invoked by the Government and the effect thereof is that further continuance of strike is prohibited and if continued, it would be illegal. As noted, this is certainly not without authority of law, but the circumstances which are recorded hereinabove, clearly demonstrate that the sole object was to be on the side of the Management, at whatever cost, even at the cost of concealment of the material facts from this Court. It is not that the Reference is made and then the discretion is exercised. The correct reading of the sequence would be that without Reference having been made, the discretion under Section 10(3) of the Act could not have been exercised and it is these two components, which are reflected in the Notification dated 19.12.2013.

9.7 The chronology of events shows that the Reference made by the Government though projected to be for adjudication of industrial dispute and maintain industrial peace, is less for the reasons projected, more as fulfillment of condition precedent

of exercise of powers under Section 10(3) of the Act. It is this exercise of power, which is impugned before this Court. At this juncture, it is recorded that, any action which is without authority of law, even if is taken with good intention, will be illegal, but converse need not be true, that any action which is with the authority of law, even if lacks bonafide, has to be upheld, only on the ground that it is not without authority of law. Though the scope of judicial scrutiny of administrative decisions of the Government may be limited, but it can certainly not be clerical, that look at the Section, look at the action, and if it is within competence, the scrutiny must stop there. Whether the action under scrutiny is tainted with arbitrariness, or lacks bonafide, or what is the nexus of it with the object sought to be achieved, would still be relevant consideration, while examining the validity and propriety of the action under scrutiny, more particularly when the Court is not only, not assisted by full disclosure of material aspects, but there is inescapable suppression of material fact from the Court, coupled with absolute misleading affidavit by a litigant none else than the State Authority. These are the factors, which though may weigh less in favour of the petitioner workers, certainly weigh against the Government, whose Notification is being defended by it. As recorded above, the point for consideration before this Court is not, as to who, the Union or the Management is right. The point for consideration is whether the exercise of powers by the Government was legal and bonafide, or is tainted with the consideration, which is incapable of being classified as legal, and in these circumstances, the conscience of this Court arrives at the judgment that permitting the impugned Notification dated 19.12.2013 to hold the field, would more result in miscarriage of justice, than to uphold the industrial peace. Refusal by this Court to exercise discretion to stay the said Notification dated 19.12.2013 would also amount to turning eyes blind by this Court to the glaring aspects noted above and under these circumstances, the further implementation and operation of the Notification dated 19.12.2013 needs to be stayed. While doing so, this Court is conscious of the legal proposition that, under normal circumstances, grant of interim relief should not amount to allowing the petition, number of authorities are also cited by learned advocates for the respondents, but there can not be any dispute with regard to that, however equally true is the proposition of law that, even when the Court finds that it is not only illegality but gross illegality and ingenuity of a litigant, more particularly that of the State, which is sought to be defended with these arguments, the application of law can not be mechanical. The grant of interim relief should not result in allowing the petition, but at the same time, refusal to grant interim relief should also not result in making the petition infructuous though the petitioners have strong case in their favour and further that, atleast the Government has disentitled itself from claiming any protection from suffering any discretionary prohibitory order that may be passed by this Court, on

the face of concealment of material fact from this Court. It is recorded that, even independent of the concealment of material fact aspect, this Court has found that permitting the impugned notification dated 19.12.2013 to continue to hold the field will endorse the intention of the Government of appeasement of respondent no.2 with the mask of industrial peace. Further, refusal to exercise discretion by this Court in such gross facts, to say the least, would in effect be refusal to discharge the obligation cast upon this Court, for which I do not want to be blamed, least by my own conscience.

9.8 It is noted that, learned advocate for the petitioner Union has placed reliance on the decision of Hon'ble the Supreme Court of India in the case of Delhi Administration, Delhi to contend that, only nine out of eleven demands are referred to for adjudication and thus the prohibitory orders would not apply to the petitioner Union since the strike in question can be termed as for those two demands also, however that aspect is not gone into in detail at this stage by this Court, since independent of it also, this Court has found strong case against the sustainability of the impugned Notification dated 19.12.2013.

9.9 It is also recorded that refusal of any interim protection in favour of the workers would create irreversible situation for them. Reference in this regard can be made to the initiation of departmental inquiry, culminating into termination or likely termination of the workers, including the office bearer of the petitioner Union inter alia on the alleged misconduct of boycotting of canteen lunch on various dates. Reference in that regard can be made to the charge-sheet dated 25.12.2013 issued to one Mr.A.J.Jalu, who is referred as President of the petitioner Union. This is only one specimen, to trace balance of convenience. Further, irreparable loss would be caused to the workers if interim protection is not granted, under these circumstances, and no prejudice would be caused to the respondent No.2 Unit, except that they will not have the weight of the Government on their side.

[10] Considering the totality, this Court finds that, the petitioner workmen have strong prima facie case in their favour, balance of convenience is also in their favour, and there would be irreparable loss to them if interim relief is not granted. Further, atleast the respondent Government has disentitled itself from claiming any protection against suffering the discretionary prohibitory order that is being passed by this Court, on the face of concealment of material fact from this Court, as noted above. Further, independent of the concealment of material fact aspect also, this Court has even otherwise found that, permitting the impugned notification dated 19.12.2013 to continue to hold the field will endorse the intention of the Government of appeasement of respondent no.2 with the mask of industrial peace. Further, refusal to exercise discretion by this Court in such gross facts, to say the least, would amount to refusal to

discharge the obligation cast upon this Court. For all these reasons, it is ordered that, during pendency of this petition, the further implementation, operation and effect of the impugned Notification dated 19.12.2013 issued by the respondent No.1 shall remain stayed. It is open to the parties to move this Court for early hearing of this petition.

[11] At this stage, on behalf of both the respondents, request is made that the present order be suspended for some time. In the circumstances recorded above, this request is rejected.