PETITIONER:
M/S SAVITA CHEMICALS (PVT) LTD.

Vs.

RESPONDENT:
DYES & CHEMICAL WORKERS UNION & ANR.

DATE OF JUDGMENT: 11/12/1998

BENCH:
S.B.MAJMUDAR, M. JAGANNADHA RAO.

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT

S.B. Majmudar, J.

The appellant company, on grant of leave to appeal under Article 136 of the Constitution of India, has brought in challenge the judgment and order of the learned Single Judge of the High Court allowed Writ Petition filed by Respondent No.1 Union under Article 227 of the Constitution of India and quashed the decision of the Presiding Officer, First Labour Court, Thane. By the said decision, the First Labour Court, Thane, took the view on an application moved by the appellant company that Respondent No.1 union had gone on an illegal strike from 30th March, 1983 pursuant to the strike notice dated 14th March, 1983. In the impugned judgment, learned Single Judge of the High Court took the contrary view and held that the appellant had failed to establish that the strike in question was illegal.

In order to appreciate the grievances of the appellant against the decision of the High Court, it will be necessary to have a glance at the background facts.

Introductory Facts:

The appellant is a company registered under the Companies Act, 1956 and is carrying on the business of chemicals at Thane in the State of Maharashtra since more than 38 years. Respondent No.1 is a workers union registered under the Trade Unions Act, 1926. Respondent No.1 union had submitted a charter of demand to the appellant no 1st April, 1981. During negotiations a settlement was arrived at before the Conciliation Officer between the parties on 8th March, 1982. The said settlement was valid up to December 1984. The settlement, inter alia, amongst others, covered the following two demands; i) Demand No.14 - Privilege Leave; ii) Demand No.26 Medical Check-up; It is the case of the appellant company that during the subsistence of the aforesaid settlement, Respondent No.1 union sent a letter of demand to the Factory Manager of the appellant company on 14th March, 1983. As per the said letter, various demands were raised and it was submitted by Respondent No.1 union

that it would go on strike on the expiry of 14 days from the date of service of the notice. According to Respondent No.1, the said notice was to be considered as notice for going on strike. The Factory Manager of the appellant company sent a reply to the notice of Respondent No.1 on 23rd March, 1983. Respondent No.1 union, having gone on strike from 30th March, 1983, sent a replication on 2nd April, 1983.

The appellant company which is governed by the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the 'Maharashtra Act') filed an application under Section 25 of the Maharashtra Act before the Labour Court, Thane, seeking a declaration that Respondent No.1, union had gone on an illegal strike. In the said application, the appellant's case was that the said strike was illegal under Section 24(1)(i)(a) and (i) of the Maharashtra Act. The said application was moved as per the provisions of Section 24(1) read with Section 25(1) of the Maharashtra Act.

The Labour Court, after hearing the parties, by its order dated 20th May, 1983 came to the conclusion that the letter dated 14th March, 1983 was not a strike notice as required by law and was also contrary to the provisions of Section 24(1)(i) of the Maharashtra Act. It, therefore, declared that the strike resorted to by the workmen and the staff members with effect from 30th March, 1983 was illegal. Respondent No.1 challenged the said order of the Labour Court in the aforesaid writ petition which was registered as Writ Petition No.2171 of 1983 in the High Court. As noted earlier, learned single Judge of the High Court, by his order allowed the said writ petition and set aside the order of the Labour Court and held that the strike was not illegal. The said decision was rendered on 27th November, 1992. It is this decision, which is brought on the anvil of scrutiny of this Court in this appeal.

RIVAL CONTENTIONS:

Shri M.C. Bhandare, learned senior counsel for the appellant contended that the Labour Court was perfectly justified in taking the view that the impugned notice dated 14th March, 11983 was not legal and valid as it violated provisions of Section 24(1)(a) of the Maharashtra Act as the said notice of strike was not in the prescribed form. He also submitted that the said notice was contrary to Rules 50 and 51 of the Labour Courts (Practice & Procedure) Rules, 1975. That the notice did not recite that Respondent No.1 union, being a recognised union, obtained vote of majority of the members in favour of the strike before serving the notice as required under Clause (b) of sub-section (1) of Section 24 of the Maharashtra Act. Consequently, according to the learned senior counsel for the appellant, strike would become illegal also as per Section 24(1)(b) of the Maharashtra Act. He next contended that the impugned strike was also hit by Section 24(1)(i) of the Maharashtra Act as it was resorted to pursuant to the said notice, during the period in which settlement of 8th March, 1982 was in operation and the notice amongst others was based also in respect of two matters covered by the settlement, namely, Demand No.14 - Privilege Leave and Demand No. 26 - Medical Check-up, both of which were settled pursuant to the aforesaid settlement. It was also contended that once the Labour Court had come to the conclusion on facts on the relevant issue in the light of the evidence laid before it and appreciated by it, it was not open to the High Court under Article 227 to set aside the findings of fact when

there was no patent error reflected in the judgment of the Labour Court. He also tried to submit that the High Court should not have entertained the writ petition as Respondent No.1 had a remedy of going in revision in the Industrial Court under Section 44 of Maharashtra Act though ultimately the said contention was not seriously pressed. Learned senior counsel for the appellant contended that in any case the impugned strike was clearly violative of the requisite provisions of Section 24 of the Maharashtra Act and it was wrongly held by the High Court as not to have resulted in an illegal strike. It was, therefore, contended that the decision of the learned Single Judge is required to be set aside and the decision rendered by the Labour Court deserves to be upheld.

Ms. Anita Shenoy, learned counsel for the Respondent, on the other hand, submitted that the appellant company had filed the application under Section 24 read with Section 25 of the Maharashtra Act only on the ground that the strike in question was allegedly illegal as per the provisions of Section 24(1)(a) meaning thereby it was alleged that the notice was not in the prescribed form and also on the ground of violative of Section 24(1)*i); that no case was even alleged for voiding the notice and the ultimate strike on the ground that provisions of Section 24(1)(b) were violated. It was also submitted by her that the main requirements of the prescribed notice as per Form-I read with Rule 22 of the Rules under the Act were complied with by the said notice. That the notice was addressed to the authority of the company in charge of the management of the factory at the relevant time; that it was clearly mentioned that there were grounds indicated therein which were compelling Respondent No.1 union to go on strike. Even the time for going on strike was also mentioned as 14 days' after the service of the notice' that clause-2 of the prescribed Form-1 could not have applied as it was not the case of the appellant company itself before the Labour Court that Respondent No.1 was a recognised union as per the Maharashtra Act. Therefore, the asterisk placed against clause 2 of Form-1 which permitted the striking off of clause 2 when not applicable gets squarely applied to the facts of the present case. She submitted that in order to be a recognised union. certificate was to be issued in favour of Respondent No.1 union, as seen from the definition of Section 3(13) of the Maharashtra Act. That it was not the case of the appellant that provisions of Chapter III, especially, Sections 10 to 12 were ever complied with by Respondent No.1 union so as to be treated as a recognised union under the Maharashtra Act. Consequently, paragraph 2 of the prescribed Form-I of the notice did not apply to Respondent No.1 union. Therefore, there was no occasion for Respondent No.1 union to even whisper about obtaining vote of majority of the members in the said notice as tried to be submitted by learned senior counsel for the appellant. It was contended that the notice in question substantially complied with the requirements of the said prescribed form of the notice. Consequently, the Labour Court was in patent error when it took the view that Respondent No.1 had not given strike notice in the prescribeed form and on that score Section 24(1)(a) got attracted on the facts of the present case. Such a patent error was rightly set aside by the High Court under Article 227 of the Constitution of India. She next contended that as the appellant company did not invoke alleged violation of Section 24(1)(b) before the Labour Court, there was no question of examining the said ground either by the Labour Court or by the High Court. She

submitted that the very fact that the said sub-clause (b) was not pressed in service by the appellant company shows that it neverr treated Respondent No.1 as a recognised union. So far as the applicability of Section 24(1)(i) is concerned, she submitted that the strike notice was not given during the currency of the settlement with respect to any of the matters covered by the settlement. It was submitted that Demand No.14 regarding the privilege leave as found in the settlement only granted crystalisation of the right of the workmen represented by Respondent No.1 union for getting privilege leave of 12 days for each completed 240 days of work per year and further privilege leave of one day for every additional 12 days of work as provided therein. That the dispute raised in the strike notice did not seek, in any way, to change the basis of the said grant of privilege leave but the grievance was entirely different as it pertained to the proper computation of the privilege leave as per the terms of the settlement. In a way it amounted to calling for correct and proper implementation of the settlement for which Respondent No.1 union could have filed a complaint under Section 28 of the Act pertaining to unfair labour practice on the part of the employer as found in Schedule IV Item 9 of the Maharashtra Act. But that did not take away the additional right of strike available to Respondent No.1 union on behalf of its workmen. It was also submitted that the very fact that failure to implement the award was made by the legislature a subbject matter of the complaint, showed that such implementation would not be covered by the settlement. It is for the simple reason that if it had already been covered by the settlement, even the more drastic remedy of strike for getting the settlement implemented would have stood barred under Section 24(1)(i). In other words, it was contended that matters covered by the settlement as per Section 24(1)(i) would be only those matters which were expressly referred to in the settlement. Computation of the benefit as per the agreed terms in tthe settlement was not a matter which was covered by the settlement but was a matter even if arising out of the settlement was one which was consequent upon the settlement. It was an independent matter for which there was no express provision in the settlement. It was posterior to the settlement and not embeedded therein. Consequently, Section 24(1)(i) also was not applicable to the facts of the present case and as the Labour Court had committed a patent error in this connection it was rightly corrected by the High Court. Similar was her contention regarding Demand No.26 about Medical Check-up. It was submitted that the said settlement had nothing to do witth the prevention of discase as Demand No.26 referred to medical treatment for the disease which was already suffered by the workmen due to occupational hazards. Prevention of such disease which was the subject matter of impugned notice was anterior to the question of medical check-up and was not covered by the terms of the settlement. Even on that ground Section 24(1)(i) did not get attracted. That the High Court rightly corrected the patent error of the Labour Court in this connection. It was, therefore, contended that the High Court, in exercise of its powers under Article 227, was justified in interfering with the order of the Labour Court and in setting aside the patently erroneous order of the said court. It was, therefore, submitted that the appeal deserves to be dismissed. She contended that 40 workmen who were out of job since more than 15 years have suffered immensely and that their services have been illegally terminated by the appellant company. This part of the

grievance, in our view, cannot form subject matter of the present proceedings and, therefore, whatever practice on the part of the employer as found in Schedule IV Item 9 of the Maharashtra Act. But that did not take away the additional right of strike available to Respondent No.1 union on behalf of its workmen. It was also submitted hat the very fact that failure to implement the award was made by the legislature a subject matter of the complaint, showed that such implementation would not be covereed by the settlement. It is for the simple reason that if it had already been covered by the settlement, even the more drastic remedy of strike for getting the settlement implemented would have stood barred under Seection 24(1)(i). In other words, it was contended that matters covered by the settlement as per Section 24(1)(i) would be only those matters which were expressly referred to in the settlement. Computation of the benefit as per the agreed terms in the settlement was not a matter which was covered by the settlement but was a matter even if arising out of the settlement was one which was consequent upon the settlement. It was an independent matter for which there was no express provision in the settlement. It was posterior to the settlement and not embedded therein. Consequently, Section 24(1)(i) also was not applicable to the facts of the present case and as the Labour Court had committed a patent error in this connection it was rightly corrected by the High Court. Similar was her contention regarding Demand No.26 about Medical Check-up. It was submitted that the said settlement had nothing to do with the prevention of discase as Demand No.26 referred to medical treatment for the disease which was already suffered by the workmen due to occupational hazards. Prevention of such disease which was the subject matter of impugned notice was anterior to the question of medical check-up and was not covered by the terms of the settlement. Even on that ground Section 24(1)(i) did not get attracted. That the High Court rightly corrected the patent error of the Labour Court in this connection. It was, therefore, contended that the High Court, in exercise of its powers under Article 227, was justified in interfering with the order of the Labour Court and in setting aside the patently erroneous order of the said court. It was, therefore, submitted that the appeal deserves to be dismissed. She contended that 40 workmen who were out of job since more than 15 years have suffered immensely and that their services have been illegally terminated by the appellant company. This part of the grievance, in our view, cannot form subject matter of the present proceedings and, therefore, whatever remedies may be available to the concerned workmen, in this connection, may be open to them in accordance with law. It will be equally open to the appellant company to resist the said future proceedings in accordance with law if at all that occasion arises. We do not express any opinion about the same. In this case, we are concerned with the short question whether the High Court was justified in setting aside the Labour Court's order declaring the strike of the workmen from 30th March, 1983 illegal as per provisions of Section 24(1)(i) and Section 24(1)(i) of the Maharashtra Act.

Aforesaid rival contentions give rise to the following points for our consideration:

i) Whether the impugned strike notice of 14th March, 1983 given by Respondent No.1 union on behalf of its members was violative of Section 24(1)(a) of the Maharashtra Act;

ii) Whethever the impugned strike notice is violative of provision of Section 24(1)(b) of the Maharashtra Act;

iii) Whether the impugned strike notice was hit by

Section 24(1)(i) of the Maharashtra Act;
iv) Whether the High Court, in exercise of its jurisdiction under Article 227 of the Constitution of India, was justified in interfering with the findings reached by the Labour Court; and
v) What final order?
Before taking up the consideration of these aforesaid points, it will be necessary to have a look at the relevant statutory scheme in the light of which the controversies between the parties will have to be resolved.
STATUTORY SCHEME:

The Maharashtra Act is enacted, amongst others, for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations; to confer certain powers on unrecognised unions and to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs, to define and provide for the prevention of certain unfair labour practices and to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions.
Section 3, sub-section (13) defines a recognised union Chapter III deals with recognition of unions and lays down that the provisions of this chapter will apply to every undertaking, wherein fifty or more employees are employed, or were employed on any day of the preceding twelve months; Section 12 lays down the procedure to be followed by the Industrial Court while granting certificate of recognition to the applicant union. Chapter V deals with illegal strikes and lock-outs. Section 24 covers these topics. The relevant provisions of Section 24 read as under:

> "24. Illegal strike and lock-out:- In this Act, unless the context requires otherwise:-
> (1) "illegal strike" means a strike which is commenced or continued.
> (a) without giving to the employer notice of strike in the prescribed form, or within fourteen days of the giving of such notice;
> (b) where there is a recognised union, without obtaining the vote of the majority of the members of the union, in favour of the strike before the notice of the strike is given:
> (c) xxxxxx xxxxx xxxx
> (d) xxxxxx xxxxx xxxx
> (e) xxxxxx xxxxx xxxx
> (f) xxxxxx xxxxx xxxx
> (g) xxxxxx xxxxx xxxx
> (h) xxxxxx xxxxx xxxx
> (i) during any period in which any settlement or award in in operation, in respect of any of the matters covered by the settlement or award."
>
> (Emphasis supplied)

Section 25 deals with procedure to be followed for getting the declaration whether strike or lock-out is illegal. Sub-section (1) thereof which is relevant for our purpose provides that:

> "Where the employees in any undertaking have proposed to go on strike or have commenced a strike, the State Government or the employeer of the undertaking may make a reference to the Labour Court for a declaration that such strike is illegal."

Sub-section (5) of Section 25 lays down that:

> "Where any strike or lock-out declared to be illegal under this section is withdrawn within forty-eight

hours of such declaration, such strike or lock-out shall not, for the purposes of this Act, be deemed to be illegal under this Act."

Chapter IV deals with Unfair Labour Practices. Section 26 thereof which is the first section in that Chapter lays down that:

"unless the context requires otherwise, 'unfair labour practices' mean any of the practices listed in Schedules II, III and IV."

Section 28 prescribes the procedure for dealing with complaints relating to unfair labour practices. Sub-section (1) thereof provides :

"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, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may be, under section 7, of this Act:"

Schedulee IV, which is relevant for our purpose, deals with General Unfair Labour Practices on the part of employers. Item 9 thereof deals with failure to implement award, settlement or agreement on the part of the employer which would be treated as general unfair labour practice on the part of the employers. It is in the background of the aforesaid statutory scheme that we have to consider the points which arise for our determination.

Point No.1:

The factual matrix relevant for consideration of this point indicates, as noted earlier, that there was settlement arrived at between the appellant company and Respondent No.1 union on 8th March, 1982 which, amongst others, settled demand nos. 14 and 26 regarding privilege leave and medical check-up. We will have occasion to deal with the terms of settlement regarding these demands a little later when we will deal with point no.3. It is sufficient for the present to mention that the aforesaid settlement was for three years valid up to December, 1984. It is during the subsistence of the aforesaid settlement that Respondent No.1 union sent a letter of demand to the Factory Manager of the appellant company on 14th March, 1983, as noted earlier. It will be relevant at this stage to refer to the exact wording of the said letterr. It read as underr:

"Ref.No.DCWU/146/1983_

Hand Delivery Dated 14-3-1983.

The Factory Manager,
Savita Chemicals P. Ltd.,
Plot No.17A, Belapur Road,
Thane.

Sir,

We find that one Shri U.V. Sinkar and Shri Durga Prasad P.S.R.K., working as chemists in your company have been under the pretext of retrenchment and/or slackness of work, removed by you. The ground advanced is a cloak though factually the work under no circumstances was reduced and there were junior most persons continued in the employment in the similar category.

We may also bring to your notice that ever since the staff members have enrolled themselves as members of our union, your management has started harassing

them and you have been demanding their resignations from the primary membership of the union. Threats were openly held that the union will be liquidated by the management.

We also find that the workmen are subjected to harassment and the workmen who have been appointed as probationers are continued as probationers despite the fact that the law of the land namely Employment Standing Orders Act 1946 which becomes applicable to your establishment does not permit continuance of such employees as probationers for an indifinite period. "Similarly there have been illegal changes brought about in the matter of computing the privilege leave." There have been instances where the workmen under fabulous allegations charge-sheeted and removed, and many more are awaiting the charge-sheets. This has become the order of the day, and the lives of the workmen in the company also have become introlerable.

(Emphasis supplied)

There are also difficulties and hazards emanating from the operations and no effective steps have been taken by your management to prevent such hazards. It is very difficult to understand how the management has been continuing its operations in a crude fashion and exposing the workmen to serious types of hazards. The process of sulphonation is positively causing dangerous effects on the lives of the workmen and no steps of any manner have been taken either to modify and/or cure the processes whereby the ingredients or hazards are reduced and the lives become tolerable. Similarly operation containing Polyneuclear Aromatics and Alkylate is capable of causing cancer to the workmen. It is rather tragic that no steps have been taken to prevent such processes where large majority of the workmen not only in your company but those working surround your company who are susceptible to such after effects are given any assurance by way of rectifying the method and taking away the dangerous hazards involved. Lives of the workmen are often becoming dangerous and under no circumstances, it is possible for the workmen, considering the total indifference on the part of the management to continue operation in the circumstances in which the management wants to continue it. The workmen, therefore, have resolved that the total attitude of the management towards resolution of the industrial dispute and other relevant circumstances as stated hereinabove, which are making the lives of the workmen very dangerous and are exposing them to the dangers and therefore, the workmen in order to prevent the after effects and such dangers and also shabby treatment meted out to the workmen and also the physical attacks lodged against the workmen through anti-social elements employment by the company, to protect themselves and their rights and on that account, the workmen have decided to proceed on strike and that being so, this notice is given to you. The workmen therefore, want you to treat this letter to be treated as notice of strike and it may be noted that after the expiry of 14 days from the date of receipt of this letter hereof, the workmen will proceed on strike and the consequence in such circumstances flowing there-from shall be your

responsibility which please note.

Thanking you,

Yours faithfully

Sd/ -

General Secretary

The said letter was addressed by Respondent No.1 union to the Factory Manager of the appellant company. As seen from this letter, the following averments 1 to 8 contained therein had nothing to do with Section 24(1)(i) of the Act. (1) Firstly it was mentioned that one Shri U.V.Sinkar and shri Durga Prasad P.S.R.K., working as chemists were wrongly retrenched. (2) Secondly the grievance of Respondent No.1 union was that the management had started harassing the staff members who were enrolled as members of the union and their resignations were subjected to harassment and the workmen who had been appointed as probationers were continued as probationers despite the fact that the law of the land, namely, Employment Standing Orders Act, 1946 did not permit such continuance. Then followed the recitals which have been strongly pressed in service by the learned senior counsel for the appellant, in support of his submission, which in his view made the proposed strike illegal under the relevant provisions of Section 24. It will, therefore, be profitable to extract the recitals in extenso. It has been mentioned i second part of paragraph three of the notice as under:

"Similarly there have been illegal changess brought about in the matter of computing the privilege leave."

(4) The rest of the paragraph dealt with different grievances, namely, that workmen under frivolous allegations were charge-sheeted and removed and many more were awaiting charge-sheets. (5) Then followed the fourth grievance regarding the difficulties and hazards emanating from the operation of the factory and that no effective steps had been taken by the management to prevent such hazards. It was recited that the management had been continuing its operations in a crude fashion and exposing the workmen to serious types of hazards. (6) It was then mentioned that the process of sulphonation was positively causing dangerous effects on the lives of the workmen and no steps of any manner had been taken either to modify and/or cure the processes whereby the ingredients or hazards were reduced and the lives became tolerable. (7) Similarly, operation containing Polynuclear Aromatics and Alkylate was capable of causing cancer to the workmen. (8) Then the grievance was made that no steps had been taken to prevent such processes where large majority of the workmen not only in the company but those working in the surroundings of the company who were susceptible to such after effects were not given any assurance by way of rectifying the method and taking away the dangerous hazards involved. It was then recited that the lives of the workmen were often becoming dangerous and under no circumstances, it was possible for the workmen, considering the total indiffierence on the part of the management to continue operation in the circumstances in which the management wanted to continue the work. It was then recited that the workmen, therefore, had resolved that considering the total attitude of the management regarding resolution of the industrial dispute and other relevant circumstances as stated herein, they had decided to proceed on strike and that being so this notice was given to the addressee. It was then mentioned in the notice that the workmen wanted the addressee to treat this letter as notice of strike and it was to be noted that after the expiry of 14

days from the date of receipt of the letter, the workmen would proceed on strike. The said letter was replied to on behalf of the company by its Factory Manager on 23rd March, 1983 refuting the allegations made in the strike notice and calling the representatives of the union for discussion and settlement of the matter amicably. It is thereafter that the members of respondent No.1 union went on strike from 30th March, 1983 and then sent the replication through the union on 2nd April, 1983 refuting the contents of the reply of the managementt dated 23rd March, 1983.

In the light of the aforesaid factual matrix, first question arises whether the impugned notice of 14th March, 1983 fell foul on the touch-stone of Section 24(1)(a) of thee Maharashtra Act. Learned senior counsel for the appellant submitted that the said notice was not in the prescribed form. For supporting this contention, he relied upon Rule 22 framed by the State Government undr Section 61(1) of the Act which lays down that:

> "the State Government may, by notification, in the Official Gazette, and subject to the condition of previous publication, make rules for carrying out the purposes of this Act".

The relevant rule is found in the Maharashtra recognition of Trade Unions & Prevention of Unfair Labour Practices Rules, 1975. Rule 22 is found in Chapter V of the said rules. It lays down as follows:

> "22. Notice of strike :- The notice of strike under clause (a) of sub-section (1) of section 24 shall be in the Form I and shall be sent by registered post."

When we turn to Form No.1, we find the prescribed form as under:

FORM - I
(See Rule 22)

Name of the Trade Union:
Name of 5 elected representatives of the workmen, where no Trade Union exists :
Address...
Dated the... day of .... 19 ,
To,
(Here mention name of the employer and full address of the undertaking)
Dear Sir(s)/Madam,

In accordance with the provisions contained in sub-section (1) of section 24 of the Maharashtra Recognition of Trade Unions and Prevention of unfair Labour Practices Act, 1971, I/We.
(Here insert name of the person(s))
hereby give you Notice that I/we propose to call a strike of the workmen employed in your undertaking propose to go on strike along with the other workmen employed in yourr undertaking form the .....day of ..... 19 ..... for the reason(s) explained in the Annexure attached hereto.

2. * This Union being a recognised Union in your undertaking has obtained the vote of majority of the memberrs in your undertaking in favour of the strike, before serving this notice on you, under clause (b) of sub-section (2) of section 24 of the Act.

Yours faitfully
Signature
Place..... General Secretary/Secretary,
....
(Here insert name of the Union)

*Strike of whichever is not applicable

Annexure
Statement of Reasons

Copy to:
(1) The Investigating Officer ......
(Here enter office address of the Investigating Officer, for the area concerned)
(2) The Registrar, Industrial Court,
Maharashtra, Bombay.
(3) The Judge, Labour Court ....
(Here enter address of the Labour Court,
of the area concerned).
(4) The Commissioner of Labour, Bombay.

The learned senior counsel for the appellant relied upon Rules 50 & 51 of the Labour Courts (Practice & Procedure) Rules, 1975. So far as these rules are concerned, they are framed by the Industrial Court of maharashtra in exercise of its powers conferred under Section 44 of the Maharashtra Act. When we turn to Section 44, we find that it deals with powers of Industrial Court in connection with exercise of superintendence over all Labour Courts. It lays down as follows:

"The Industrial Court shall have superintendence over all Labour Courts and may.
(a) call for returns;
(b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act, and in particular, for securing the expeditious disposal of the cases;
(c) prescribe form in which books, entries and accounts shall be kept by officers of any Courts; and
(d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court."

It, therefore, becomes obvious that the Labour Courts (Practice & procedure) Rules, 1975 are for guidance of the Labour Courts and for regulating the practice and procedure of these courts. Thus, Rules 50 and 51 which are part and parcel of these rules, cannot have anything to do with the format of the notice of strike which a union has to give to the management as per Section 24(1)(a). Prescribed format for the purpose of the said provision will necessarily be as per Form-I as was laid down by Rule 22 of the Rules framed by the State Govt. Rules, 1975 are, therefore, totally redundant and irrelevant for resolving this controversy. We, therefore, do not dilate on the same. however, Shri Bhandare, learned senior counsel for the appellant, contends that at least prescribed Form-I as per Rule 22 of the Rules framed by the State of Maharashtra is relevant for deciding this controversy. To that extent he is right. Now, a mere look at the said Form-I shows that the notice must contain, amongst others, thee following basic requirement:

i) The name of the Trade Union giving notice, its address and the date of the notice;
ii) The name of the employer and full address of the undertaking for which the notice is meant;
iii) Clear indication in the notice about the call for strike of the workmen employed in the undertaking and the date from which the strike is to be resorted to;
iv) and the reasons for the proposed strike.

It is easy to visualise that if all the aforesaid four requirements are fulfilled, in substance, the basic requirements of Form-I would get satisfied. It is not as if that the notice must be typed in the samee sequence in which

Form-I is drafted or that it must mention Section 24(1). The latter are mere formal requirements. In substance, the notice must fulfil the aforesaid basic requirements of the prescribed form. If they are fulfilled, which section of the Act applies to such notice can be easily found out by reference to the Act. Similarly, whether notice is given by registered post or by hand delivery is also not a basic requirement. It refers to mode of service. In the present case, it is not in dispute that notice was duly served on the management. Sending of copies of notice to mentioneed persons is also not a part of the basic requirement of the notice. When we examine the impugned strike notice, we find that all these four basic requirements of Form-I have been complied with in the present case. the name and address of the Trade Union which served the notice are clearly mentioned, the date of the notice is also indicated, the nature of the addressee of the notice and his address are also mentioned, namely, it has been addressed to the Factory Manager of the company who was in-charge of the company at the relevant time and under whom the workmen proposing to go on strike were actually working. It is also clearly mentioneed as to forrm which date the strike is proposed to be resorted to, as it is mentioned that the strike would be resorted to on the expiry of 14 days from the date of the receipt of the letter cum notice. It is also clearly mentioned that the letter will be treated as notice for going on proposed strike. Then follows the heart of the notice, namely, reasons why the proposed strike has to be resorted. Thus, all the basic requirements of Form-I have been satisfied. even the Labour Court took the view that the substance of the notice had to be seen and not its form. Still, however, it persuaded itself to hold that the notice was not in the prescribeed fform. The said finding of the Labour Court was patently illegal and was rightly reversed by tthe High Court in the impugned judgment, Learned senior counsel for the appellant, Shri Bhandare, however, submitted that requirement of paragraph 2 of the said Form-I was not complied with in the present case. It is not mentioned in the notice that the Union beeing a recognised union has obtained the vote of majority of the members to go on strike. It must be kept in view that this clause 2 of Form-I being an asterisk which says that any portion which is not applicable has to be struck off when not applicable. It was not the case of the appellannt at any time that Respondent no.1 Union was recognised union under the Act having followed the equirements and had obtained the certificate of a recognised union under Section 12 of the Act. On the contrary, when we turn to the application filed by the appellant before the Labour Court, we find that it was the case of the appellant itsef before the Labour Court that the Union was a registered Union and claimed to represent the employees employed by the applicant in the said factory. It was not the case of the appellant before the Labour Court in the application Under Section 25 that respondent No.1 Union was a recognised union under the Act. Not only that, the application sought to invoke only Section 24(1)(a) and Section 24(1)(i) of the Maharashtra Act and did not invoke Section 24(1)(b) of the Act which deals with a recognised union. It is also the case of Respondent no.1 that it is not a recognised union under the Act, Thus, it was almost an admitted position on the record before the Labour Court that Respondent no.1 Union was not a recognised union under the Act. Once that conclusion is reached, it becomes obvious that paragraph 2 of the form-I did not apply to the facts of the present case and had to be treated to

have been struck-off for the purpose of issuing strike notice by Respondent no.1 Union to the appellant company. Consequently, the finding of the Labour Court that the impugned notice was not in a prescribed form and therefore, would result in the strike of 30th March, 1983 onwards becoming an illegal strike being contrary to Section 24(1)(a) of the Maharashtra Act must be held to be patently erroneous and was rightly sett aside by the High COurt in writ jurisdication. In fact, on this aspect, two views are not possible at all and only one view which appealed to the High Court is the only possible and permissible view. The view taken by the Labour COurt was clearly contrary to evidence on record and had to be treated as perverse and patently illegal. It must, therefore, be held that the impugned notice of strike was not violative of the provisions of Section 24(1)(a) of the Maharashtra Act. It must be held that the said notice was a perfectly valid strike notice as required by the said provision read with Rule 22 and Form-I of the relevant M.R.T. and P.U.I.P., Rules, 1975. The first point is, therefore, answered in negative, in favour of Respondent no.1 Union and against the appellant company.

Point No.2:

This takes us to the consideration of Point No.2, It is obvious that it was not the case of the appellant company before the Labour Court that the impugned strike was contrary to the provisions of Section 24(1)(b) of the Act, In fact, as seen earlier, it was not the case of the appellant company that Respondent no.1 Union, was a recognised union under the Act at the relevant time when it gave the impugned notice. COnsequently, the appellant's case before the Labour Court for getting the strike declared illegal was based only on the violation of Section 24(1)(a) of the Act. The Labour Court has also treated the proceedings accordingly and the ultimate decision rendered by the Labour Court is also to the effect that the strike notice of 14th March, 1983 was no notice in law and violative of provisions of Section 24(1)(i). In substance, the Labour Court had no occasion to consider the question whether it was violative also of Section 24(1)(b) of the Act. It is also, in this connection, perttinent to note the prayer in the application moved by the appellant before the Labour Court under Section 25 of the Act. the said prayer reads as under:

> "The Applicant prays that the Hon'ble Court may be pleased to declare:
> (i) That the strike resorted to by the workmen as well as by the staff members employed in the Applicant's factory commencing from 30-3-83 at their respective shift schedule timings and continued thereafter every day in all the shifts and which is still continuing in an illegal strike under Sec.24(1)(a) & (i) of the MRTU & PULP Act, 1971."

It, therefore, becomes obvious that it is not open to learned senior counsel for the appellant - Shri Bhandare to submit that the impugned strike notice was violative of the provision of Section 24(1)(b) of the Act. Consequently, this point does not arise for our consideration and must be held to be redundant and is not applicable to the facts of the present case. It must, therefore, be held while answering this point that the impougned strike notice cannot be said to be violative of the provision of Section 24(1)(b) of the Act for the aforesaid reasons.

Point No.3:

So far as this point is concerned, it requires a more closer scrutiny. As we have seen earlier, there was also a bunding settlement between the parties in connection with demand nos. 14 and 26. We shall first deal with settlement on demand no.14 regarding Privilege Leave.

So far as this demand is concerned, the settlement reads as under:

"Demand No.14 : PRIVILEGE LEAVE:

The existing practice of 12 days leave for the first 240 days worked and 1 day for every 12 days worked beyond 240 days shall continue and in all other respect the privisions of Factory Act and existing rules shall apply."

A mere look at the settlement on this Item shows that it was agreed between the parties that the then existing practice of granting 12 days privilege leave for each completed 240 days work per year and one day more for every additional 12 days of work beyond 240 days was to continue and in all other respects thee provisions of Factory Act and existing rules were to apply. Now, the question is whether any part of this settlement on privilege leave was sought to be by-passed or challenged in the impugned notice so as to get voided on the touchstone of Section 24(1)(i) of the Act, The said provision lays down that "Illegal strike" means a strike which is commenced or continued during any period in which any settlement or award is in operation, in respect of any of the matters covered by the settlement or award. The question is whether the proposed strike, amongst others, was concerning the grievances in connection with any matter "covered" by the settlement. A conjoint reading of relevant clauses of settlement on demand No.14 regarding Privilege Leave shows that it was settled between the parties that during the continuation of the settlement, a workman would be entitled to claim only 12 days for 240 days of work and 1 day for every additional 12 days of work beyond 240 days thereafter in a given year. It was not the case of Respondent No.1 Union in the impugned notice of strike that they wanted any more days of privilege leave after 240 days of work in a year by way of grant of privilege leave vis-avis the number of days worked during the year. The impugned strike notice, as noted earlier, recited an entirly different grievance, namely, that there were illegal changes brought about in the matter of computing privilege leave. Actual and correct computation of privilege leave on the basis of actual days worked in a year for concerned workers was not covereed by the terms of the settlement. This grievance pertained to non-implementation of the agreed settlement regarding privilege leave and had nothing to do with the claim for any extra privilege leave in addition to that which was agreed to between the parties. To take an analogy, the rights crystalised in the decree stand on an entirely different ffooting as compared to the grievance in execution proceedings regarding non-implementation of the settled rights under the decree. The grievance made in the impugned strike notice did not pertain to any modification of the crystalised rights regarding privilege leave granted to the workmen under the settlement but it pertained to an entirely different grievance based on a situation which was posterior to settlement of rights and obligations regarding privilege leave between the parties. Thus, as seen earlier, this grievance about non-implementation of the crystallised terms of settlement cannot be said to be a matter "covered" by the settlement for purposes of the difinition of "Illegal

strike" referred to above. It can be said to be amounting to a grievance in connection with non-implementation of the settlement in its true and correct perspective. That, of course, would also amount to allegation of unfair labour practice on the part of the employer as reflected by a conjoint reading of section 26 and Schedule IV Item 9 of the Act, as noted earlier. But the allegation of unfair labour practice on the part of the management has nothing to do with the question whether it also amounts to going behind the settlement. Thus, the strike notice referred to a claim which arose subsequent to the settlement in connection with non-implementation of the main terms of the settlement. The Labour Court was patently in error when it took the view that because of the alternative remedy available to the workmen of filing a complaint about alleged unfair labour practice on the part of the management, they could not have resorted to a more drastic remedy of strike under the provisions of the Maharashtra Act. Nothing in this Act could be relied upon to show that if any grievance of the workmen is covered by unfair labour practice alleged against the employer, they cannot resort to strike. However learned senior counsel for the appellant Shri Bhandare, rightly submitted that such a more drastic remedy was of the last resort. He was also right when he submitted that when a less drastic remedy was available, the workmen should have resorted to the same for maintaining industrial peace and production. However, that would be in the realm of trade union policy. It may be more prudent for a union of workmen, with a view to having industrial peace and continued production as well as for not disrupting continuity of employment of workmen, to resort to negotiations, and that if needed, to go in the Labour Court with complaint under Section 28 on the ground of unfair labour practice by the employer for the alleged non-implementation of the settlement. It may also be an ideal solution of the problems. But what is ideal may not necessarily be filed by a more militant body of workmen. It may in the long run, prove to be a more drastic remedy for the workmen as they would suffer pangs of unemployment and starvation not only for themselves but also for the members of their families. But only because such better and more purdent remedy was available, it cannot be said that the extreme step of strike resorted to be the Union by not following such remedy was per se illegal unless it fell within the fore-corners of Section 24(1)(i) of the Maharashtra Act. It is also easy to visualise that the same Maharashtra legislature which enacted Section 24(1)(i) also enacted Schedule IV Item 9 by treating it to be an unfair labour practice on the part of the employer. The Maharashtra Act laid down two separate provisions in connection with illegal strike as well as unfair labour practice by the employer. What is unfair labour practice on the part of the employer cannot be pressed in service by the management to show that workers making grievances regarding the same could not have resorted to the strike in connection with the same unfair labour practice and if they did so the strike only on that score became an illegal strike, especially when it was not contrary to any of the provisions of Section 24(1). In any case, the grievance regarding non-implementation of the settlement is not treated by the legislature to be a matter "covered" by the settlement as both these topics are separately dealt with it by enacting Section 24(1)(i) on the one hand and Schedule IV Item 9 of the Act on the other.

But leaving aside these aspects of the matter, it becomes clear that the intention of the legislature by enacting

24(1)(i) is that during any period in which any settlement is in operation if strike is restorted to by the union or the workmen in connection with any matter "covered" by the settlement the strike would be illegal. Therefore, it must be shown that the strike has been resorted to in connection with any matter covered by the settlement. It therefore necessarily means that the terms of the settlement, when read, must indicate that they encompassed any matter which is made the subject matter of the strike notice. We must see the express terms of settlement with a view to finding out as to which matters are covered by the settlement. This necessarly would connote that the settlement in express terms must refer to a matter which is subsequently made a subject matter of notice of strike. When we turn to the settlement of demand no. 14 regarding privilege leave, we find that how 12 days leave for the first 240 days of work in a year and 1 day for every additional 12 days worked beyond 240 days worked are computed in a given year, is not a mater which is at all indicated or mentioned in the settlement. All that the settlement has guaranteed is the right of the workmen to earn 12 days privilege leave for 240 days worked in a year and additional one day for every 12 days beyond 240 days worked in a year. The question regarding the correct method of computation of the leave under the settlement is not expressly covered by the terms of the said settlement. Any grievance in connection with the same therefore, has to be treated to be outside the compass of the settlement. In this connection, it is profitable to note that the phrase "covered by the settlement" as found in the said clause of Section 24 is not defined by the Act nor it is defined by the Bombay Industrial Relations Act, 1946 or by the Central Act. namely, the Industrial Disputes Act, 1947. Definition section 3 sub-section (18) lays down as under :

> "words and expressions used in this Act and not defined therein, but defined in the Bombay Act shall, in relation to an industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act and in any other case, shall have the meanings assigned to them by the Central Act."

Bombay Act is defined as Bombay Industrial Relations Act by section 3, sub-section (1) and the Central Act means Industrial Disputes Act, 1947 as defined by Section 3, sub-section (2). In any of these Acts the terms "covered" has not been defined. We can, therefore, turn to the general dictionary meaning of the term "covered". When we undertake this exercise, we find the term "cover" defined by Concise Oxford Dictionary, Seventh Edition at page 219 to mean, amongst others "include, comprise, deal with". It is pertinent to note that the legislature in its wisdome has not construed a strike to be illegal if the same is resorted to during any period of settlement which is in operation, in respect of any of the matters "arising out of such settlement". The term "covered" is more restrictive in nature as compared to the term "arising out of" or "referable to". If the phraseology employed in the said provision was to the effect any of the matters "arising out of or "referable to any settlement", learned senior counsel for the appellant would have been right in his contention that implementation of the settlement also would be a matter "arising out of " the settlement or may be "referable to the settlement. But these words are conspicuously absent and only the phrase "matters covered by the settlement" has been employed by the legislature to treat any strike regarding

such covered matters in a settlemtn to amount to an illegal strike. The term "arising from" has also a precise meaning as found at page 46 of the aforesaid Concise Oxford Dictionary which states that the word "arise" menas "originate; be born; come into notice or result (from out of)". Question of implementation of the terms of settlement may be said nto be a matter "arising out of" the settlement or "referable to" the settlement but it is certainly not "covered" by the settlement. Therefore, it is far from being "covered" by the settlement. In Black's Law Dictionary, Fifth Edition, at page 99 the term "arising out of" has been indicated to have a special meaning relating to a decision in the case of Newman V. Bennett (Kansas Reports). It has been mentioned in the said dictionary that the "words "arising out of employment" refer to the origin of the cause of the injury". Thus the term "arising out of employment" in this case was held to refer to a grievance whose origin was found in the employment concerned as noted in this dictionary. Similarly, if the words "arising out of settlement" were employed by the legislature in the aforesaid clause, then it could have been said that any grievance regarding non-implementation of the terms of the settlement would have its origin in the settlement. However, as such a pharaseology is conspicuously absent in the said clause, it must be held that the legislature in its wisdom wanted to incidate a situation where parties to the binding settlement cannot resort to strike or lack out as the case amy be, in connection with these matters which were not expressly so covered and referred to in the settlement and thus matters which were expressly not so covered could be made the subject matter of grievance by the parties concerned during the arriving of such settlement and if a strike is resorted to by the lunion of workmen on that ground, it could not be said that the said strike would be hit ny the provisions of Section 24(1)(i) of the Act. As a result of the aforesaid conclusion, it must be held that the impugned strike notice was not violative of Section 24(1)(i) Act so far as the grievence regarding computation of privilege leave was concerned. The Labour Corut had patently erred in mis-reading the relevant provisions of the Act and the express terms of the settlement while reaching the conclusion that the impugned notice refers to the grievance regarding non-implementation of the settlement terms in concetion with privilege leave and had, therefore, violated the aforesaid provisions of the Act. This patent error was rightly set aside by the High Court in exercise of its jurisdiction under Article 227.

It was further contended by learned senior counsel for the appellant that, in any case, the impugned strike notice was also violative of the aforesaid provisions, in connection with the settlement regarding demand no. 26 providing for medical check-up. It, therefore, becomes necessary to look at the terms of the settlement on the said demand reads as under :

> "Demand No. 26 : MEDICAL CHECK UP
> The Company shall get at its expense all the confirmed workmen medically examined i.e. X-ray, blood and Urine examination and medical check up at the beginning of the year and the reports obtained. If during this check up any workman is found suffering from any dements arising out of the chemicals of gas emanating from the process in the factory the management will bear the medical expenses for his immediate and initial treatment".

So far as this contention is concerned, Shri Bhandare, learned senior counsel for the appellant is on a still weaker footing. The settlement regarding medical check up deals with the rights of the workmen to get medical re-imbursement and the procedure for the medical nomination of the workmen suffering from any ailment or disease. This right would arise under the settlement in connection with those workmen who have already got afflicted by occupational ailments. This has nothing to do with the grievance found in the impugned strike notice regarding the health hazards suffered by the workmen and preventive measures required to be taken by the company in this connection. This grievance found in the notice is based on the dictum "prevention is better than cure". The settlement regarding demand no. 26 pertaining to medical check up deals with the procedure to be followed and the rights available to the workman after he has suffered from occupational diseases. The strike notice referred to an independent grievance in connection with the situation wherein a disease on proper preventive measures could be avoided. It also referred to various health hazards due to the working conditions of the workmen. These grievances are entirely foreign to the terms of the settlement regarding medical check up. We fail to appreciate as to how the Labour Court could persuade itself to hold that the terms of settlement regarding demand no. 26 were also sought to be contravened by the impugned demands in the notice. The said finding of the Labour Court to say least, was totally contrary to the express terms of the settlement of demand no. 26. Such a patently erroneous finding had to be set aside by the High Court in writ proceedings and no fault can be found with the High Court in undertaking such an exercise. The valiant attempt of Shri Bhandare, learned senior counsel for the appellant, for getting the impugned strike declared as illegal on this ground is found to be wholly without any substance. It must, therefore, be held that the impugned strike notice was not violative of provisions of Section 24(1)(i) of the Act and had nothing to do with settlement on demand nos. 14 and 26. The third point for determination is to be answered in negative against the appellant and in favour of Respondent no.1.

Point NO. 4.

So far as this point is concerned, placing reliance on various decisions of this court namely, Harish Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, 1955 (1) SCR 1104, Nagendra Nath Bora & Anr. vs. The Commissioner of Hills Division & Appeals, Assam, and Others 1958 SCR 1240 and Sadhu Ram vs. Delhi Transport Corporation, AIR 1984 SC 1467, learned senior counsel for the appellant submitted that unless there was a patent error committed by the Labour Court, the High Court under Article 227 could not have interfered with the findings of the Labour Court as if it was bearing an appeal. There cannot be any dispute on the said settled legal position. Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law. As we have already discussed earlier while considering point nos. 1 and 3, the findings reached by the Labour Court on the relevant terms were patently erroneous and dehors the factual and legal position on record. The said patently illegal findings could not have been countenanced under Article 227 of the Constitution of Indian by the High court and the High Court would have failed to exercise its

jurisdiction if it had not set aside such patently illegal findings of the Labour Court. Consequently, on this point the appellant has no case. Point No. 4 is, therefore, answered in negative against the appellant and in favour of the respondent.

Point No. 5:

In view of our conclusions on the aforesaid points, the inevitable result is that this appeal fails and is dismissed. In the facts and circumstances of the case, there will be no orders as to costs.