IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JULY, 2026

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BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 8044 OF 2026 (L-RES)

BETWEEN:

BOSCH AUTOMOTIVE ELECTRONICS INDIA PVT LTD.,
BUILDING NO.703, NAGANATHAPURA,
ELECTRONIC CITY POST OFFICE,
BENGALURU - 560 100
COMPANY INCORPORATED UNDER 1956
HAVING ITS REGD OFFICE AT BENGALURU
AND ENGAGED IN MANUFACTURE OF
AUTOMOTIVE ELECTRONICS COMPONENTS REPRESENTED
BY ITS SENIOR GENERAL MANAGER, HR SRI. SRINIVASA
B.A.

…PETITIONER

(BY SRI. C.K. SUBRAMANYA, ADVOCATE FOR
SRI. B.C. PRABHAKAR, ADVOCATE)

AND:

1. ADDL. LABOUR COMMISSIONER,
KARMIKA BHAVANA BANNERGHATTA ROAD,
BENGALURU - 560 029.

2. ROBERT BOSCH AUTOMOTIVE
ELECTRONICS EMPLOYEES UNION,
TRADE UNIONS OFFICE NO.172/2,
GROUND FLOOR, 4TH MAIN, 7TH CROSS, CHAMRAJPET,
BENGALURU - 560018
REPRESENTED BY ITS PRESIDENT
SRI. SOMASHEKARA.A.K.
UNDER INDIAN TRADE UNION ACT 1926.

…RESPONDENTS

(BY SRI. M. RAJAKUMAR, AGA FOR R1 (MA NOT FILED);
SMT. MAITREYI KRISHNAN, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT/DIRECTION QUASHING THE STRIKE NOTICE DATED 23.2.2026 ISSUED BY THE SECOND RESPONDENT AND DIRECTING THE SECOND RESPONDENT TO RESTRAIN FROM GOING ON WITH STRIKE (ANNEXURE-C). II. DIRECTION TO THE SECOND RESPONDENT EITHER BY THEMSELVES

OR THROUGH THEIR AGENTS, SUPPORTERS, ASSOCIATES, PATRONS, MEMBERS AND ACCOMPLICES AGAINST PREVENTING OR OBSTRUCTING THE EMPLOYEES, CONTRACT LABOURERS, AGENTS CUSTOMER, CLIENTS ETC., IN FREE INGRESS TO OR EGRESS TO THE FACTORY PREMISES AND ETC.,.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27TH APRIL, 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

(a) *Whether an industrial establishment, during the pendency of conciliation proceedings, can maintain a writ petition to restrain a strike by the workers' Union on the ground that the proposed strike is prohibited under Section 62(1)(d) and illegal under Section 63 of the Industrial Relations Code, 2020?*

(b) Whether an aggrieved party can approach the Industrial Tribunal under the Industrial Relations Code, 2020, challenging the legality of a proposed strike when conciliation proceedings concerning the industrial dispute are pending?

These two questions arise for consideration in this petition filed by the Company challenging the legality of the intended strike by the workers' Union, during the pendency of conciliation proceedings.

BRIEF FACTS:

The petitioner is a registered Company and engaged in the manufacture and supply of automotive electronic components since 2009. For the purpose of deciding the present petition, it is not necessary to refer to the circumstances leading to the proposed strike. Suffice it to state that a dispute arose between the petitioner-Company and respondent No.2-Union in relation to the charter of demands.

2. The petitioner claims that, despite its best offer to settle the charter of demands, the Union did not accept the same. The Union, submitted a charter of demands dated 23.02.2026 for the period commencing from April 2026 to March 2027, which, according to the petitioner-Company, could not have been submitted. On the same day, i.e., 23.02.2026, the Union issued the impugned strike notice intimating that the strike would commence on or after 09.03.2026.

3. The petitioner submitted a representation to the Deputy Labour Commissioner on 23.02.2026. Acting upon the

representation said to have been submitted by the petitioner, respondent No.1-Conciliation Officer issued a notice directing the parties to appear for conciliation on 03.03.2026.

4. Admittedly, when the writ petition was filed on 09.03.2026, the conciliation proceedings had not concluded. The conciliation proceedings, which commenced on 03.03.2026, were adjourned to 06.03.2026 and thereafter to 10.03.2026. It appears that the Union had decided to proceed with the strike scheduled to commence from 09.03.2026 despite the statutory prohibition against holding a strike during the pendency of conciliation proceedings.

5. In the aforesaid factual background, the present petition is filed contending that the proposed strike is illegal. This Court granted an ex parte interim order restraining the Union from proceeding with the strike.

6. Learned counsel for the petitioner-Company would urge the following contentions:

(a) Section 62(1)(d) of the Industrial Relations Code, 2020 ('Code, 2020') prohibits a strike or lock-out during the pendency of conciliation proceedings and for seven days after the conclusion of such proceedings.

(b) Under Section 63 of the Code, 2020, a strike or lock-out commenced or declared in contravention of Section 62 is illegal.

(c) Since the conciliation proceedings are pending, the petitioner cannot approach the Tribunal under the Code, 2020 and, therefore, the writ petition is the only remedy available to the petitioner.

(d) In the written submissions, it is further urged that the workers' Union is recognised under the Code, 2020 and is bound by the provisions of the Code, 2020. Therefore, a writ petition is maintainable to enforce statutory rights, prevent violation of statutory provisions and enforce statutory duties cast upon the Union.

7. Learned counsel for the petitioner places reliance on the following judgments:

(i) *Bharat Petroleum Corporation Ltd. Vs. Petroleum Employees Union and Others*[1].

(ii) *Tamilnadu Nugrporul Vaniba Kazhaga Anna Thozhir Sangam Vs. Managing Director, Tamil Nadu Civil Supplies Corporation and Others*[2].

(iii) *United Labour Federation Vs. Union of India and Another*[3].

(iv) *Indian Oil Corporation Ltd. Vs. Karnataka Petroleum & Gas Workers Union CITU Office and Others*[4].

(v) *Workers of The Industry Colliery, Dhanbad v. Management of The Industry Colliery*[5].

8. Learned counsel for respondent No.2-Union would urge the following contentions:

(a) A writ of certiorari cannot be issued against a Trade Union, as it is neither a Court, or a Tribunal nor an administrative body discharging public duties. The Union does not fall within the definition of 'State' or an instrumentality of the State under Article 12 of

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1 *2003-III-LLJ*
2 *2025 SCC OnLine MAD 14430*
3 *W.P. No.47257 of 2025 & W.M.P.No.52794 of 2025*
4 (2013) 2 AIR KANT R 613
5 *1952 SCC OnLine SC 146*

the Constitution of India and, therefore, the jurisdiction under Article 226 of the Constitution cannot be invoked against it.

(b) The dispute is an 'industrial dispute' within the meaning of Section 2(q) of the Code, 2020. The Code, 2020 provides a statutory forum and remedy for resolution of such disputes and, therefore, the writ petition is not maintainable.

(c) The right to strike is a statutory right recognised under the Industrial Disputes Act, 1947 ('Act, 1947') as well as under the Code, 2020, and the petitioner cannot seek to curtail such right otherwise than in accordance with law.

9. Learned counsel for respondent No.2-Union places reliance on the following judgments:

(i) *T.C. Basappa Vs. T. Nagappa and Another*[6].

(ii) *S. Shobha Vs. Muthoot Finance Ltd.*[7].

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[6] AIR 1954 SC 440
[7] 2025 SCC OnLine SC 177

(iii) *Praga Tools Corporation v. C.A. Imanual and Others*[8].

(viii) *Gujarat Steel Tubes Ltd. and Others v. Gujarat Steel Tubes Mazdoor Sabha and Others*[9]; and

(ix) *B.R. Singh and Others v. Union of India*[10].

(x) *U.P. State Bridge Corporation Ltd. and Others v. U.P. Rajya Setu Nigam S. Karamchari Sangh*[11].

(xi) *Chemosyn (P) Ltd. and Others v. Kerala Medical Sales Representatives' Association*[12].

(xii) *M/s Style (Dress Land) v. Union Territory, Chandigarh and Another*[13]; and

(xiii) *M/s Jet Airways (India) Pvt. Ltd. v. Prashant Rao*[14].

DISCUSSION ON QUESTION (a):

10. The learned counsel appearing for the petitioner has relied on the judgment of the Madras High Court in ***Bharat***

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[8] AIR 1969 SC 1306
[9] (1980) 2 SCC 593
[10] (1989) 4 SCC 710
[11] (2004) 4 SCC 268
[12] 1987(2) KLT 654
[13] AIR 1999 SC 3678
[14] W.P. No.15526/2017, High Court of Karnataka

Petroleum Corporation Ltd., *supra.* In the said proceeding the petitioner Bharat Petroleum Corporation sought the writ of mandamus to restrain the Union from proceeding with the strike. The petition was filed on the premise that the intended strike was during the pendency of the conciliation proceeding. The Court noticing the fact that the conciliation proceedings were pending and the strike notice violated Section 22(1)(d) of the Act, 1947 granted the relief.

11. It is relevant to notice that Bharat Petroleum Corporation is a Government owned Company and has the trapping of the instrumentality of "State" or can be construed as discharging a public service. Thus, the said judgment does not come to the aid of the petitioner. It is also relevant to notice that the employer in the said case came under the definition of public utility service under Section 2(n) of the Act, 1947.

12. The petitioner also placed reliance on the judgment of the Coordinate Bench of this Court in ***Indian Oil Corporation Ltd.,*** *supra.* In the said proceeding also, the petitioner is a Government owned Company and the reasons

assigned while distinguishing the judgment in ***Bharat Petroleum,*** supra would also apply to the said case.

13. The petitioner has also relied on the judgment of the Apex Court in the ***Workers of The Industry Colliery, Dhanbad,*** *supra*. The said judgment arises from the order passed by the Industrial Tribunal which confirmed the order passed by the Regional Labour Commissioner wherein one day strike was held to be illegal. It is relevant to notice that in the aforementioned judgment the Apex Court was dealing with the question of legality of the strike after the dispute went through the adjudication mechanism provided under the Industrial Disputes Act, 1947 and that was not a case where the validity of the strike was questioned in a writ petition.

14. Learned counsel for the respondent-Union relied on the judgment of the Apex Court in *S. Shobha*, supra. The Apex Court has held that the question whether a writ petition is maintainable against a body, public or private, has to be determined with reference to the nature of the function discharged by such body. If a body, whether public or private, discharges a public duty, a writ petition may be entertained to the limited extent of enforcing such public duty.

15. Further, in paragraphs 8 and 9, the Apex Court has summarised the principles governing the maintainability of a writ petition against a private body as under:

> *"8. A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. <u>The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.</u>*
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> *9. We may sum up thus:*
>
> *(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.*
>
> *(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii)*

Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or

statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) *Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.*

(7) *If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.*

(8) *According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and*

> *not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."*
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> *(Emphasis supplied)*

16. Applying the aforesaid test, it is evident that respondent No.2-Union does not qualify as a body discharging public duty or public function. Admittedly, the Union is neither the 'State' nor an instrumentality or agency of the State. It is neither a statutory authority nor a body substantially funded by the State. Nor is it a body required by statute to discharge any public function.

17. In *S. Shobha*, supra, the Apex Court has further held that, in exceptional circumstances, a writ of mandamus may be issued against a private body where a public duty is imposed upon such body by a statute or statutory rule. Even in such cases, the writ would be confined to compelling the performance of the public duty so imposed.

18. In the present case, no statutory obligation involving the discharge of a public duty is imposed upon respondent No.2-Union.

19. The respondent-Union also placed reliance on the judgment of the Apex Court in *T.C. Basappa v. T. Nagappa*, supra, which dealt with the scope of a petition seeking a writ of certiorari. In the said judgment, the Apex Court has held that a writ of certiorari can be issued to quash a judicial or quasi-judicial order. The decision to go on strike does not satisfy the test laid down in the said judgment.

20. The petitioner is, indeed, complaining of violation of the statutory provisions of the Code, 2020 governing strikes. Such statutory obligations, however, cannot, by themselves, be equated with a public duty or public function.

21. It is true that *Trade Unions and Negotiating Unions or Negotiating Councils* are recognised under the Code, 2020. Section 14 deals with recognition of a Negotiating Union or constitution of a Negotiating Council. The Code also provides for registration of Trade Unions. The employer, the Union and the workers are undoubtedly bound by the provisions of the Code. That, by itself, is not sufficient to invoke jurisdiction under Article 226 of the Constitution of India. Despite its registration and recognition, a workers' Union or Trade Unions and Negotiating Unions or Negotiating Councils do not partake

the character of an instrumentality of the State. The tests laid down in *S. Shobha*, supra, would therefore continue to apply while examining the maintainability of a writ petition under Article 226 against such a Union recognised under the Code, 2020.

22. Though, in an appropriate case, a writ may be issued to enforce a statutory right or obligation, the question that first requires consideration is whether a statutory remedy is available to redress the grievance and, if so, whether exceptional circumstances are made out for invoking the writ jurisdiction despite the statutory remedy being available.

23. The Court is of the view that a statutory remedy is available to the petitioner under the Code, 2020, to seek the remedy sought in the present petition and the reasons are discussed in question (b) as under:

DISCUSSION ON QUESTION (b):

24. The petitioner-Company contends the conciliation proceeding is pending consideration, it can approach the Tribunal only after the conciliation officer records a failure report under Section 53(1) of the Code, 2020. The question,

therefore, is whether the Tribunal constituted under the Code, 2020 can adjudicate the controversy relating to a strike proposed to be held during the pendency of conciliation proceedings, when such proceedings are yet to conclude.

25. Chapter VII of the Code, 2020 provides the machinery for resolution of industrial disputes. Section 44 provides for the constitution of Industrial Tribunals. Section 50 deals with the mechanism for adjudication of disputes of individual workers relating to discharge, dismissal or termination. Section 53 provides for conciliation proceedings whenever an industrial dispute exists or is apprehended or a notice under Section 62 has been given.

26. Section 53(1), (5) and (6) of the Code, 2020, relevant for the present case, read as under:

> ***"53. Conciliation and adjudication of dispute.***—*(1) Where any industrial dispute exists or is apprehended or a notice under section 62 has been given, the conciliation officer shall, hold conciliation proceedings in such manner as may be prescribed:*
>
> *Provided that the conciliation officer shall not hold any such proceedings relating to the industrial dispute after two years from the date on which such industrial dispute arose.*

(2) xxx.

(3) xxx.

(4) xxx.

(5) Notwithstanding anything contained in sub-section (4), the conciliation officer shall send the report to the concerned parties and the appropriate Government within forty-five days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

Provided that where a conciliation officer receives notice under section 62, he shall send the report to the concerned parties and to the appropriate Government within fourteen days of the commencement of the conciliation proceedings:

Provided further that subject to the approval of the conciliation officer, the time may be extended by such period as may be agreed upon in writing by the concerned parties to the dispute.

(6) Any concerned party may make application in the prescribed form to the Tribunal in the matters not settled by the conciliation officer under this section within ninety days from the date on which the report under sub-section (4) is received to the concerned party and the Tribunal shall decide such application in the prescribed manner."

27. Under Section 53(1), where an industrial dispute exists or is apprehended, or where a notice under Section 62 relating to a strike or lock-out has been given, the Conciliation

Officer is required to hold conciliation proceedings. Section 53(4) requires the Conciliation Officer, where no settlement is arrived at, to send a report to the concerned parties and the appropriate Government containing the particulars specified therein.

28. Section 53(5) requires the Conciliation Officer to submit the report referred to in sub-section (4) within forty-five days from the commencement of conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. However, where the conciliation proceedings arise out of a notice under Section 62 relating to a strike or lock-out, the first proviso to Section 53(5) requires the report to be submitted within fourteen days from the commencement of such proceedings. The second proviso permits extension of the said period by such period as may be agreed upon in writing by the concerned parties, subject to the approval of the Conciliation Officer.

29. Section 53(6) enables a concerned party, in respect of matters not settled by the Conciliation Officer, to make an application in the prescribed form to the Tribunal within ninety

days from the date on which the report under sub-section (4) is received by such party.

30. Section 62(1) of the Code, 2020 deals with the procedure and prohibition relating to strikes in *all industrial establishments*. In this respect, the scheme under the Code, 2020 is wider than Section 22 of the Act, 1947, which applied to strikes and lock-outs *only in public utility services*.

31. Section 62(1)(d), relevant for the present case, reads as under:

> ***"62. Prohibition of strikes and lock-outs.****—(1) No person employed in an industrial establishment shall go on strike, in breach of contract—*
>
> *(a) x x x*
> *(b) x x x*
> *(c) x x x*
>
> *(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; or"*

Section 63(1) of the Code, 2020 reads as under:

> ***"63. Illegal strikes and lock-outs.****—(1) A strike or lock-out shall be illegal, if it is—*

(i) commenced or declared in contravention of section 62; or

(ii) continued in contravention of an order made under sub-section (7) of section 42."

Thus, a strike commenced or declared in contravention of Section 62 would be illegal.

32. In the present case, the strike notice issued is dated 23.02.2026 and the strike was proposed to commence on or after 09.03.2026. When the writ petition was filed on 09.03.2026, the conciliation proceedings had already commenced and had not concluded. Though the first proviso to Section 53(5) provides that the Conciliation Officer shall submit the report within fourteen days from the commencement of conciliation proceedings arising out of a notice under Section 62, the proceedings do not automatically stand concluded upon expiry of fourteen days. Section 60 of the Code, 2020, which is substantially similar to Section 20 of the Act, 1947, provides for the commencement and conclusion of conciliation proceedings.

33. The settled position under Section 20 of the Act, 1947 is thatconciliation proceedings are deemed to commence on the date on which the notice of strike or lock-out is received by the Conciliation Officer and conclude only in the manner

statutorily prescribed, namely, upon the signing of a settlement where a settlement is arrived at, or upon receipt of the failure report by the appropriate Government where no settlement is arrived at.

34. Under Section 60 of the Code, 2020, where the conciliation proceedings do not culminate in a settlement, the proceedings are deemed to have concluded *when the failure of conciliation is recorded by the Conciliation Officer, unlike Section 20(2)(b) of the Act, 1947, the conclusion of the proceedings is not dependent upon receipt of the report by the appropriate Government*.

35. The provision contained in Section 12(6) of the Act, 1947, pescribing the period for submission of the report by the Conciliation Officer, is comparable to Section 53(5) of the Code, 2020. The interpretation of the corresponding provision under the Act, 1947 is well settled, and a report submitted beyond the prescribed period does not become invalid. Consequently, if no settlement is arrived at or the failure of conciliation is not recorded within fourteen days, it cannot be held that the conciliation proceedings automatically stand concluded upon expiry of the said period. Any such interpretation would render

the provisions of Section 60, which specifically prescribe when conciliation proceedings are deemed to conclude, otiose.

36. Thus, conciliation proceedings would remain pending beyond fourteen days if they have not concluded in the manner prescribed under Section 60 of the Code, 2020.

37. In the present case, when the Union intended to commence the strike on 09.03.2026, the proceedings before the Conciliation Officer were still pending. Consequently, the statutory prohibition contained in Section 62(1)(d) operates and the strike during the pendency of conciliation proceedings is prohibited. However, the Union is intending to go on strike during the conciliation proceedings which is prohibited under law and what is the remedy for the petitioner if the petitioner intends to question the such strike during the pendency of the conciliation proceedings.

On the jurisdiction of the Civil Court or the Tribunal to entertain the dispute during the pendency of the conciliation proceeding.

38. The Act, 1947 did not contain an express provision barring the jurisdiction of the Civil Court. However, Section 97

of the Code, 2020 expressly bars such jurisdiction. Section 97 reads as under:

> ***"Jurisdiction of Civil Court barred**.-No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Code applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Code."*

(emphasis supplied)

39. The language employed in Section 97 of the Code, 2020 incorporates two distinct restrictions: *first, the jurisdiction of the Civil Court is barred in respect of any matter to which any provision of the Code applies*; and second, *the Civil Court is prohibited from granting an injunction in respect of anything done or intended to be done by or under the Code*.

40. From the tenor and tone of Section 97 of the Code, 2020, it is evident that the jurisdiction of the Civil Court is expressly excluded in respect of matters to which the provisions of the Code apply. *The petitioner, therefore, cannot approach the Civil Court seeking an injunction in respect of the proposed strike governed by the provisions of the Code, 2020*.

41. In the event of conciliation failing, the aggrieved party can approach the Tribunal for adjudication of the industrial dispute by invoking Section 53(6) of the Code, 2020.

42. In this context, it is necessary to refer to Section 44 of the Code, 2020, which provides for the constitution and jurisdiction of Industrial Tribunals. Section 44(1) and Section 44(7), insofar as they are relevant for the present purpose, read as under:

> ***"44. Industrial Tribunal.**—(1) <u>The appropriate Government may, by notification, constitute one or more Industrial Tribunals for the adjudication of industrial disputes</u> and for performing such other functions as may be assigned to them under this Code and the Tribunal so constituted by the Central Government shall also exercise the jurisdiction, powers and authority conferred on the Tribunal, as defined in clause (m) of section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) by or under that Act.*
>
> x x x x
>
> x x x x
>
> x x x x
>
> *(7) The procedure of the Tribunal (including distribution of cases in the benches of the Tribunal) shall be such as may be prescribed, provided a bench consisting of a Judicial Member and an Administrative*

Member shall entertain and decide the cases only relating to—

(a) the application and interpretation of standing order;

(b) discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen dismissed;

(c) <u>illegality or otherwise of a strike or lockout;</u>

(d) retrenchment of workmen and closure of establishment; and

(e) Trade Union disputes,

and the remaining cases shall be entertained and decided by the bench of the Tribunal consisting either a Judicial Member or an Administrative Member of the Tribunal."

(emphasis supplied)

43. A reading of Section 44(1) reveals that the Industrial Tribunal has ***jurisdiction to adjudicate industrial disputes and to perform such other functions as may be assigned to it under the Code***. Significantly, Section 44(7)(c) expressly provides that the <u>*illegality or otherwise of a strike or lock-out is a matter to be entertained and decided by a Bench consisting of a Judicial Member and an Administrative Member*</u>. <u>*Thus, a dispute concerning the illegality or otherwise*</u>

of a strike or lock-out falls within the adjudicatory jurisdiction of the Tribunal constituted under the Code, 2020.

44. It is to be noticed that the Code, 2020 marks a significant departure from the scheme under the Act, 1947. Under Section 10 of the Act, 1947, except in specified categories of individual disputes, the adjudicatory process commenced on a reference made by the appropriate Government. An aggrieved party, except in specified cases, could not directly approach the Labour Court or the Tribunal. Under Section 53(6) of the Code, 2020, however, the aggrieved party may directly approach the Tribunal, within the period prescribed therein, in respect of matters not settled in conciliation.

45. Section 53(6) postpones the commencement of proceedings relating to an industrial dispute before the Tribunal until the conciliation comes to an end. The object is to facilitate a smooth conciliation process. If so, whether Section 53(6) can be construed as creating an absolute exclusion of the Tribunal's jurisdiction during the pendency of conciliation proceedings to address a grievance relating to a statutory violation during the pendency of such proceedings is the question.

46. Though the decision taken to hold a strike during conciliation proceedings, which have commenced because of a notice issued under Section 62(1)(a) to go on strike, may also qualify as an industrial dispute, there cannot be another conciliation proceeding relating to the decision taken to go on strike during the pending conciliation proceedings. Such an interpretation does not serve any purpose. The Conciliation Officer who is holding the proceedings triggered by a notice under Section 62(1)(a), even if asked to hold conciliation proceedings on the decision to hold a strike during the pending conciliation proceedings, despite the statutory prohibition against going on strike during such proceedings, has no authority to restrain such a strike. That being the position, the contention that Section 53(6) does not enable the aggrieved party to approach the Tribunal complaining of a statutory violation defeats the very purpose behind Sections 53 and 62 of the Code, 2020.

47. It is necessary to notice that there are two legally distinct issues in the case:

(a) The legality or otherwise of the industrial dispute between the employer and the workers, including the circumstances which led to the strike notice.

(b) Whether the Union can call for a strike during the period in which Section 62 expressly prohibits a strike.

48. Section 53(6) postpones adjudication of issue (a) referred to above by the Tribunal until the conclusion of the conciliation process. In the case of issue (b), if the matter is taken to the Tribunal, it is not necessary for the Tribunal to enter upon the merits of issue (a) or the merits of the strike notified before the conciliation proceedings commenced. For deciding the second issue, the Tribunal is only required to ascertain whether there is a proposed or continuing strike during the pendency of conciliation proceedings and nothing else.

49. The question whether a party can resort to a strike or lock-out during the period in which the Code, 2020 prohibits such action stands on a different footing. That question arises because of the pendency of conciliation; it may not strictly be an industrial dispute of a nature which again calls for a fresh invocation of Section 53(1) of the Code, 2020.

50. Section 44 assumes significance in this context. Section 44(1) confers jurisdiction upon the Tribunal to adjudicate industrial disputes and to perform such other functions as may be assigned to it under the Code. More significantly, Section 44(7)(c) expressly places the *"illegality or otherwise of a strike or lockout"* within the jurisdiction of the Tribunal. Thus, the Code confers jurisdiction upon the Tribunal as the specialised adjudicatory forum competent to determine the legality of a strike or lock-out.

51. Sections 53 and 62 of the Code, 2020 have specific purposes to serve. Section 53 aims at resolving the dispute amicably by postponing the adjudication process. Section 62 aims at facilitating the conciliation process by ensuring that strikes or lock-outs are prohibited during the conciliation process until the statutory conciliation mechanism has been exhausted.

52. If the Court is to take the view that the aggrieved party cannot approach the Tribunal to enforce the statutory right under Sections 62(1)(d) and 63 of the Code, 2020, then such an interpretation would rob both provisions of their essence and efficacy. Such an interpretation has to be avoided,

instead the purposive and harmonious interpretation which aim at protecting the statutory right should be preferred.

53. If Section 53(6) is construed as having totally excluded the Tribunal's jurisdiction and as not being available for enforcing the right under Section 62(1)(d) of the Code, 2020, it leads to an anomaly. The reason is that, on the one hand, the Code mandates conciliation and simultaneously prohibits a strike or lock-out during such conciliation; on the other hand, in the event of a threatened violation, the Code does not enable the Tribunal to intervene until the conciliation proceedings have concluded. To put it simply, the situation creates an unintended vacuum or legislative gap which is required to be addressed.

54. In the situation referred to above, where the Tribunal is empowered to address the larger issue and provisions are made to resolve disputes, minor anomalies in the provisions of law relating to jurisdiction should receive a harmonious and purposive construction to achieve the object behind the provisions of law, more so in a situation where statutory rights are conferred.

55. In that view of the matter, the Court is of the view that Section 53(6) cannot be treated as a bar to adjudicating the legality or otherwise of a strike or lock-out proposed or existing during the pendency of conciliation proceedings. The Tribunal, in exercise of its jurisdiction under Section 44 read with Section 62 of the Code, 2020, without getting into the merits of the industrial dispute or the reason for the strike notified in terms of Section 62(1)(a), can decide the question of the validity of the strike or lock-out during the conciliation proceedings. Such an interpretation does not amount to conferring jurisdiction for the first time. It is all about tracing the jurisdiction within the scheme of the Code, 2020, without diluting the object of Section 53(6) of the Code, 2020, which aims at postponing the commencement of adjudication of the industrial dispute. Such an interpretation strengthens, and does not weaken or defeat, the conciliation process and avoids the anomaly of an express statutory prohibition being incapable of enforcement.

56. The limited jurisdiction to be exercised by the Tribunal in such a situation shall be available only during the period of prohibition contemplated under Section 62(1)(d) of

the Code, 2020. Where the complaint concerns violation of Section 62(1)(d), the Tribunal may pass such appropriate orders to give effect to the prohibition during the pendency of conciliation proceedings and for the statutory period of seven days after their conclusion.

57. Consequently, if the conciliation proceedings conclude while such an application is pending before the Tribunal, any protective order passed in exercise of such limited jurisdiction can operate only to the extent necessary to give effect to the prohibition continuing for seven days after the conclusion of conciliation proceedings and not beyond.

58. Otherwise, it will lead to an undesirable situation. If a party, despite being prohibited from going on strike or proceeding with a lock-out during the pendency of conciliation proceedings, still resorts to such action, the aggrieved party will be left with no remedy.

59. A specialised Industrial Tribunal, upon which the Code expressly confers jurisdiction to adjudicate the illegality or otherwise of strikes and lock-outs, cannot be held to be powerless to grant appropriate relief for enforcement of the

statutory prohibition merely because conciliation proceedings concerning the underlying industrial dispute have not formally concluded. Recognition of such limited jurisdiction advances the object of maintaining industrial peace without trenching upon the conciliation mechanism contemplated under Section 53.

60. It was contended on behalf of the petitioner that the Tribunal under the Code, 2020 has not been constituted. Section 104 of the Code, 2020 was amended by introducing sub-section (1A), conferring jurisdiction on the Labour Courts and Tribunals under the Act, 1947. In view of the amendment, the Labour Courts and Tribunals under the Act, 1947 will have jurisdiction to decide disputes which have arisen after the commencement of the Code, 2020. Though there is a difference in the Bench strength of the Industrial Tribunal under the Code, 2020 concerning some of the industrial disputes, and that of the Labour Courts and Industrial Tribunals under the Act, 1947, keeping in mind the legislative intent behind the amendment to Section 104 of the Code, 2020, which is to avoid a vacuum in the adjudication process, the Labour Court or the Industrial Tribunal, as the case may be, under the Act, 1947 will have jurisdiction to entertain disputes arising under the Code, 2020. Such Labour Courts and Industrial Tribunals under the Act,

1947 will exercise jurisdiction until the Tribunals are constituted under the Code, 2020. Thus, the petitioner can approach the Labour Court or the Tribunal under the Act, 1947.

CONCLUSIONS:

61. For the reasons assigned above, the questions formulated supra are answered as follows:

Question (a):

The writ petition against respondent No.2-workers' Union to restrain the proposed strike during the pendency of conciliation proceeding, as a general rule is not maintainable. Such recourse may be available in exceptional circumstances, brought about in a given case.

Question (b):

(i) Notwithstanding the pendency of conciliation proceedings, an aggrieved party can approach the Industrial Tribunal for limited relief where the opposite party proposes to commence or continue a strike or lock-out in violation of the statutory prohibition contained in Section 62 of the Code, 2020.

(ii) While exercising such limited jurisdiction, the Tribunal shall confine itself to the statutory question arising under Section 62 and shall not adjudicate the merits of the proposed strike or lock-out or the substantive industrial dispute which is the subject matter of conciliation and grant such interim protection incidental to the grievance raised.

(iii) The jurisdiction exercised for enforcement of Section 62(1)(d) is co-extensive with the duration of the statutory prohibition and cannot be continued beyond the period for which such prohibition remains operative.

62. The Court has taken note of the fact that during the pendency of the writ petition there was a prohibitory order restraining the respondent Union from holding the strike. Section 62 of the Code, 2020 prescribes the time frame to go on strike after issuance of notice. Such a time frame has come to an end during the pendency of this petition. Thus, the time spent in prosecuting this petition from 09.03.2026 till today is to be excluded. The Court excludes such period keeping in mind the law laid down in ***M/s Style (Dress land),*** *supra*.

ORDER

(i) The writ petition is dismissed as not maintainable.

(ii) Liberty is reserved to the petitioner to approach the competent Industrial Tribunal under the Industrial Relations Code, 2020, seeking such relief as may be available in law in respect of the alleged violation of Section 62(1)(d), provided the statutory prohibition under the said provision is still operative.

(iii) If such an application is filed, the Tribunal shall confine its adjudication to the question whether the proposed or continuing strike is in violation of Section 62(1)(d) of the Code, 2020 and shall not adjudicate the merits of the strike notice or the substantive industrial dispute which is the subject matter of conciliation.

(iv) Any proceeding instituted before the Tribunal solely for enforcement of the prohibition under Section 62(1)(d) shall cease to survive upon expiry of the statutory period prescribed thereunder.

(v) Since respondent No.2-Union was restrained by an interim order of this Court from proceeding with the strike, the period during which the interim order remained in operation shall stand excluded while reckoning the period prescribed under Section 62 of the Code, 2020.

(vi) All contentions of the parties relating to the merits of the substantive industrial dispute are kept open.

(vii) Pending interlocutory applications, if any, stand disposed of accordingly.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN/CHS/GVP
CT:VN