

THE MAHARASHTRA RECOGNITION OF TRADE UNIONS AND PREVENTION OF UNFAIR LABOUR PRACTICES ACT, 1971.

PREAMBLE

MAHARASHTRA ACT NO. I OF 1972.

An Act to provide 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; 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; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid. WHEREAS, by Government Resolution, Industries and Labour Department, No. IDA. 1367-LAB-II, dated the 14th February 1968, the Government of Maharashtra appointed a Committee called "the Committee on Unfair Labour Practices" for defining certain activities of employers and workers and their organisations which should be treated as unfair labour practices and for suggesting action which should be taken against employers or workers, or their organisations, for engaging in such unfair labour practices; AND

WHEREAS, after taking into consideration the report of the Committee Government is of opinion that it is expedient to provide 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; 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; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid; It is hereby enacted in the Twenty-second Year of the Republic of India as follows :-

1. SHORT TITLE. - This Act may be called the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

2. EXTENT, COMMENCEMENT AND APPLICATION. –

(1) This Act extends to the whole of the State of Maharashtra.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas and for different provision of this Act.

(3) Except as otherwise hereinafter provided, this Act shall apply to the industries to which the Bombay Industrial Relations Act, 1946, Bom. XI of 1947, for the time being applies, and also to any industry as defined in clause (j) of section 2 of the Industrial

Disputes Act, 1947, XIV of 1947, and the State Government in relation to any industrial dispute concerning of such industry is the appropriate Government under that Act :

Provided that, the State Government may, by notification in the Official Gazette, direct that the provisions of this Act shall cease to apply to any such industry from such date as may be specified in the notification; and from that date, the provisions of this Act shall cease to apply to that industry and, thereupon, section 7 of the Bombay General Clauses Act, 1904, Bom. I of 1944, shall apply to such cess or, as if this Act has been repealed in relation to such industry by a Maharashtra Act.

3. DEFINITIONS. - In this Act, unless the context requires otherwise, -

(1) "**Bombay Act**" means the Bombay Industrial Relations Act, 1946, Bom. XI of 1947;

(2) "**Central Act**" means the Industrial Disputes Act, 1947, XIV of 1947;

(3) "**concern**" means any premises including the precincts thereof where any industry to which the Central Act applies is carried on;

(4) "**Court**" for the purposes of Chapters VI and VII means the Industrial Court, or as the case may be, the Labour Court:

(5) "**employee**" in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act; and in any other case, means a workman as defined in clause (s) of section 2 of the Central Act;

(6) "**employer**" in relation to an industry to which the Bombay Act applies, means an employer as defined in clause (14) of section 3 of the Bombay Act; and in any other case, means an employer as defined in clause (g) of section 2 of the Central Act;

(7) "**Industry**" in relation to an industry to which the Bombay Act applies means an industry as defined in clause (19) of section 3 of the Bombay Act, and in any other case, means an industry as defined in clause (j) of section 2 of the Central Act;

(8) "**Industrial Court**" means an Industrial Court constituted under section 4;

(9) "**Investigating Officer**" means an officer appointed under section 8;

(10) "**Labour Court**" means a Labour Court constituted under section 6;

(11) "**member**" means a person who is an ordinary member of a union, and has paid a subscription to the union of not less than 50 paise per calender month :

Provided that, no person shall at any time be deemed to be a member, if his subscription is in arrears for a period of more than three calendar months during the

period of a six months immediately preceding such time, and the expression "**membership**" shall be construed, accordingly.

Explanation : A subscription for a calender month shall, for the purpose of this clause, be deemed to be in arrears, if such subscription is not paid within three months after the end of the calender months in respect of which it is due;

(12) "**order**" means an order of the Industrial or Labour Court;

(13) "**recognised union**" means a union which has been issued a certificate of recognition under Chapter III;

(14) "**Schedule**" means a Schedule to this Act;

(15) "**undertaking**" for the purposes of Chapter III, means any concern in industry to be one undertaking for the purpose of that Chapter :

Provided that, the State Government may notify a group of concerns owned by the same employer in any industry to be undertaking for the purpose of that Chapter;

(16) "**unfair labour practices**" means unfair labour practice as defined in section 26;

(17) "**union**" means a trade union of employees, which is registered under the Trade Unions Act, 1926;

(18) 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 other case, shall have the meanings assigned to them by the Central Act.

4. INDUSTRIAL COURT. –

(1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.

(2) The Industrial Court, shall consist of not less than three members, one of whom shall be the President.

(3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.

(4) Every member of the Industrial Court shall be a person who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court :

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

5. DUTIES OF INDUSTRIAL COURT. - It shall be the duty of the Industrial Court –

(a) to decide an application by a union for grant of recognition to it;

(b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;

(c) to decided an application from another union or an employer for withdrawal or cancellation of the recognition of a union;

(d) to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV;

(e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;

(f) to decide references made to it on any point of law either by any civil or criminal court; and

(g) to decide appeals under section 42.

6. LABOUR COURT. - The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons having the prescribed qualifications to preside over such Courts:

Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

7. DUTIES OF LABOUR COURT. - It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act.

8. INVESTIGATING OFFICERS. - The State Government may, by notification in the Official Gazette, appoint such number of Investigating Officers for any area as it may consider necessary, to assist the Industrial Court and Labour Courts in the discharge of their duties.

9. DUTIES OF INVESTIGATING OFFICERS. –

(1) The Investigating Officer shall be under the control of the Industrial Court, and shall exercise powers and perform duties imposed on him by the Industrial Court.

(2) It shall be the duty of an Investigating Officer to assist the Industrial Court in matters of verification of membership of unions, and assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices.

(3) It shall also be the duty of an Investigating Officer to report to the Industrial Court, or as the case may be, the Labour Court the existence of any unfair labour practices in any industry or undertaking, and the name and address of the persons said to be engaged in unfair labour practices and any other information which the Investigating Officer may deem fit to report to the Industrial Court, or as the case may be, the Labour Court.

10. APPLICATION OF CHAPTER III. –

(1) Subject to the provisions of sub-sections (2) and (3), the provisions of this Chapter shall apply to every undertaking, wherein fifty or more employees are employed, or were employed on any day of the preceding twelve months :

Provided that, the State Government may, after giving not less than sixty days' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Chapter to any undertaking, employing such number of employees less than fifty as may be specified in the notification.

(2) The provisions of this Chapter shall not apply to undertakings in industries to which the provisions of the Bombay Act for the time being apply.

(3) If the number of employees employed in any undertaking to which the provisions of this Chapter apply at any time falls below fifty continuously for a period of one year, those provisions shall cease to apply to such undertaking.

11. APPLICATION FOR RECOGNITION OF UNION. - (1) Any union (hereinafter referred to as the "applicant-union") which has for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than thirty per cent. of the number of employees employed in any undertaking may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking.

(2) Every such application shall be disposed of by the Industrial Court as far as possible within three months from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

Explanation : 'Local area' for the purposes of this sub-section means the area which the State Government may, by notification in the Official Gazette, specify in the notification.

12. RECOGNITION OF UNION. –

(1) On receipt of an application from a union for recognition under section 11 and on payment of the prescribed fees, not exceeding rupees five the Industrial Court shall, if it finds the application on a preliminary scrutiny to be in order, cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon the other union or unions, if any, having membership of employees in that undertaking and the employers and employees affected by the proposal to show cause, within a prescribed time, as to why recognition should not be granted to the applicant-union.

(2) If, after considering the objections, if any, that may be received under sub-section (1) from any other union (hereinafter referred to as "other union") or employers or employees, if any, and if after holding such enquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in section 11 are satisfied, and the applicant-union also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant-union under this Act, and issue a certificate of such recognition in such form as may be prescribed.

(3) If the Industrial Court comes to the conclusion, that any of the other unions has the largest membership of employees employed in the undertaking, and the said other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if it satisfies the conditions requisite for recognition specified in section 11, and also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant such recognition to the other union, and issue a certificate of such recognition in such form as may be prescribed.

Explanation : For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(4) There shall not, at any time, be more than one recognised union in respect of the same undertaking.

(5) The Industrial Court shall not recognise any union, if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees, but is made in the interest of the employer, to the prejudice of the interest of the employees.

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

13. CANCELLATION OF RECOGNITION AND SUSPENSION OF RIGHTS. –

(1) The Industrial Court shall cancel the recognition of a union if after giving notice to such union to show cause why its recognition should not be cancelled, and after holding an inquiry, it is satisfied, -

(i) that it was recognised under mistake, misrepresentation or fraud; or

(ii) that the membership of the union has, for a continuous period of six calendar months, fallen below the minimum required under section 11 for its recognition :

Provided that, where a strike (not being an illegal strike under the Central Act) has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of six months :

Provided further that, the recognition of a union shall not be cancelled under the provisions of this sub-clause, unless its membership for the calendar month in which show cause notice under this section was issued was less than such minimum; or

(iii) that the recognised union has, after its recognition, failed to observe any of the conditions specified in section 19; or

(iv) that the recognised union is not being conducted bona fide in the interest of employees, but in the interests of employer to the prejudice of the interest of employees; or

(v) that it has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act; or

(vi) that its registration under the Trade Unions Act, 1926, XVI of 1926 is cancelled; or

(vii) that another union has been recognised in place of a union recognised under this Chapter.

(2) The Industrial Court may cancel the recognition of a union if, after giving notice to such union to show cause why its recognition should not be cancelled, and after holding an inquiry, it is satisfied, that it has committed any practice which is, or has been declared as, an unfair labour practice under this Act :

Provided that, if having regard to the circumstances in which such practice has been committed, the Industrial Court is of opinion, that instead of cancellation of the recognition of the union, it may suspend all or any of its rights under sub-section (1) of section 20 or under section 23, the Industrial Court may pass an order accordingly, and specify the period for which such suspension may remain in force.

14. RECOGNITION OF OTHER UNION. –

(1) If any union makes an application to the Industrial Court for being registered as a recognised union in place of a recognised union already registered as such (hereinafter in this section referred to as the "recognised union") for an undertaking, on the ground that it has the largest membership of employees employed in such undertaking, the Industrial Court shall, if a period of two years has elapsed since the date of registration of the recognised union, call upon the recognised union by a notice in writing to show cause, within thirty days of the receipt of such notice, as to why the union now applying should not be recognised in its place.

An application made under this sub-section shall be accompanied by such fee not exceeding rupees five as may be prescribed :

Provided that, the Industrial Court may not entertain any application for registration of a union, unless a period of one year has elapsed since the date of disposal of the previous application of that union.

(2) If, on the expiry of the period of notice under sub-section (1), the Industrial Court finds, on preliminary scrutiny, that the application made is in order, it shall cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon other union or unions, if any, having membership of employees in that undertaking, employer and employees affected by the proposal to show cause within a prescribed time as to why recognition should not be granted.

(3) If, after considering the objections, if any, that may be received under sub-section (2) and if, after holding such enquiry as it deems fit (which may include recording of evidence of witnesses and hearing of parties), the Industrial Court comes to the conclusion that the union applying complies with the conditions necessary for recognition specified in section 11 and that its membership was, during the whole of the period of six calendar months immediately preceding the calendar months, in which it made the application under this section, larger than the membership of the recognised union, then the Industrial Court shall, subject to the provisions of section 12 and this section, recognise the union applying in place of the recognised union, and issue a certificate of recognition in such form as may be prescribed.

(4) If the Industrial Court comes to the conclusion that any of the other unions has the largest membership of employees in the undertaking, and such other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if, such other union satisfies the conditions requisite for recognition under section 11 and complies with the conditions specified in section 19 of this Act, the Industrial Court shall grant such recognition to such other union, and issue a certificate of such recognition in such form as may be prescribed.

Explanation: For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(5) Every application under this section shall be disposed of by the Industrial Court as far as possible, within three months, from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for

which recognition is applied for is situated in the same local area; and in any other case, within four months.

Explanation : "local area" for the purposes of this sub-section means the area which the State Government may, by notification in the Official Gazette, specify in such notification.

15. APPLICATION FOR RE-RECOGNITION. –

(1) Any union the recognition of which has been cancelled on the ground that it was recognised under a mistake or on the ground specified in clause (ii) section 13, may, at any time after three months from the date of such cancellation and on payment of such fees as may be prescribed apply again to the Industrial Court for recognition; and thereupon the provisions of sections 11 and 12 shall apply in respect of such application as they apply in relation to an application under section 11.

(2) A union, the recognition of which has been cancelled on any other ground, shall not, save with the permission of the industrial Court, be entitled to apply for re-recognition within a period of one year from the date of such cancellation.

16. LIABILITY OF UNION OR MEMBERS NOT RELIEVED BY CANCELLATION. -

Notwithstanding anything contained in any law for the time being in force, the cancellation of the recognition of a union shall not relieve the union or any member thereof from any penalty or liability incurred under this Act prior to such cancellation.

17. PUBLICATION OF ORDER. - Every order passed under sections 12, 13, 14 or 15 shall be final, and shall be caused to be published by the Industrial Court in the prescribed manner.

18. RECOGNITION OF UNION FOR MORE THAN ONE UNDERTAKING. - Subject to the foregoing provisions of this Chapter, a union may be recognised for more than one undertaking.

19. OBLIGATIONS OF RECOGNISED UNION. - The rules of a union seeking recognition under this Act shall provide for the following matters, and the provisions thereof shall be duly observed by the upon, namely :-

(i) the membership subscription shall be not less than fifty paise per month;
(ii) the Executive Committee shall meet at intervals of not more than three months;

(iii) all resolutions passed, whether by the Executive Committee or the general body of the union, shall be recorded in a minute book kept for the purpose;

(iv) an auditor appointed by the State Government may audit its account at least once in each financial year.

20. RIGHTS OF RECOGNISED UNION. –

(1) Such officers, members of the office staff and members of a recognised union as may be authorised by or under rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right, -

(a) to collect sums payable by members to the union on the premises, where wages are paid to them;

(b) to put up or cause to be put up a notice-board on the premises of the undertaking in which its members are employed and affix or cause to be affixed notice thereon;

(c) for the purpose of the prevention or settlement of an industrial dispute, -

(i) to hold discussions on the premises of the undertaking with the employees concerned, who are the members of the union but so as not to interfere with the due working of the undertaking;

(ii) to meet and discuss, with an employer or any person appointed by him in that behalf, the grievances of employees employed in his undertaking;

(iii) to inspect, if necessary, in an undertaking any place where any employee of the undertaking is employed;

(d) to appear on behalf of any employee or employees in any domestic or departmental inquiry held by the employer.

(2) Where there is a recognised union for any undertaking, -

(a) that union alone shall have the right to appoint its nominees to represent workmen on the Works Committee constituted under section 3 of the Central Act;

(b) no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through the recognised union; and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking; and accordingly, the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947, XIV of 1947, shall stand amended in the manner and to the extent specified in Schedule I.

21. RIGHT TO APPEAR OR ACT IN PROCEEDINGS RELATING OF CERTAIN UNFAIR LABOUR PRACTICES. –

(1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognised union :

Provided that, where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices.

(2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear under section 30 of the Bombay Act.

22. RIGHTS OR UNRECOGNISED UNIONS. - Such officers, members of the office staff and members of any union (other than a recognised union) as may be authorised by or under the rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right –

(i) to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension;

(ii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer.

23. EMPLOYEES AUTHORISED BY RECOGNISED UNION TO APPEAR OR IN CERTAIN PROCEEDINGS TO BE CONSIDERED AS ON DUTY. - Not more than two members of a recognised union duly authorised by it in writing who appear or act on its behalf in any proceeding under the Central Act or the Bombay Act or under this Act shall be deemed to be on duty on the days on which such proceedings actually take place, and accordingly, such member or members shall, on production of a certificate from the authority or the court before which he or they appeared or acted to the effect that he or they so appeared or acted on the days specified in the certificate, be entitled to be paid by his or their employer his or their salary and allowances which would have been payable for those days as if he or they had attended duty on those days.

Explanation : For the purpose of this section "recognised union" includes a representative union under the Bombay Act.

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

(d) where submission in respect of any of the matters covered by the notice of strike is registered under section 66 of the Bombay Act, before such submission, is lawfully revoked;

(e) where an industrial dispute in respect of any of the matters covered by the notice of strike has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceedings or before the date on which the arbitration proceedings are completed or the date on which the award of the arbitrator comes into operation, whichever is later;

(f) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of strike;

(g) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sections 72, 73 or 73-A of the Bombay Act, during such arbitration proceedings or before the date on which the proceeding is completed or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of strike;

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

Provided that, nothing in clauses (g) and (h) shall apply to any strike, where the union has offered in writing to submit the industrial dispute to arbitration under sub-section (6) of section 58 of the Bombay Act or section 10-A of the Central Act, and

(i) the employer does not accept the offer; or

(ii) the employer accepts the offer but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act, and thereafter, the dispute has been referred for arbitration of the Industrial Court under section 73-A of the Bombay Act, or where the Central Act applies, while disagreeing on the choice of the arbitrator, the employer

does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf, and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act; or

(i) 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;

(2) "illegal lock-out" means a lock-out which is commenced or continued - (a) without giving to the employees, a notice of lock-out in the prescribed form or within fourteen days of the giving of such notice;

(b) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of any of the matters covered by the notice of lock-out;

(c) during the period when a submission in respect of any of the matters covered by the notice of lock-out is registered under section 66 of the Bombay Act, before such submission is lawfully revoked;

(d) where an industrial dispute in respect of matter covered by the notice of lock-out has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceeding or before the date on which the arbitration proceeding is completed or the date on which the award of the arbitrator comes into operation, whichever is later;

(e) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of lock-out;

(f) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court compulsorily under sections 72, 73 or 73-A of the Bombay Act, during such arbitration proceeding or before the date on which the proceeding is completed, or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of lock-out; or

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

Provided that, nothing in clauses (f) and (g) shall apply to any lock-out where the employer has offered in writing to submit the industrial dispute to arbitration under sub-section (6) of section 58 of the Bombay Act, or section 10-A of the Central Act; and

(i) the union does not accept the offer;

(ii) the union accepts the offer, but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act, and thereafter, the dispute has been referred for arbitration of the Industrial Court under section 73-A of the Bombay Act; or where the Central Act applies, while disagreeing on the choice of the arbitrator the union does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act;

(h) 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.

25. REFERENCE OF LABOUR COURT FOR DECLARATION WHETHER STRIKE OR LOCK-OUT IS ILLEGAL. –

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

(2) Where the employer of any undertaking has proposed a lock-out or has commenced a lock-out, the State Government or the recognised union or, where there is or recognised union, any other union of the employees in the undertaking may make a reference to the Labour Court for a declaration whether such lock-out will be illegal.

Explanation : For the purposes of this section, recognised union includes a representative union under the Bombay Act.

(3) No declaration shall be made under this section, save in the open Court.

(4) The declaration made under this section, shall be recognised as binding, and shall be followed in all proceedings under this Act.

(5) 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.

26. UNFAIR LABOUR PRACTICES. - In this Act, unless the context requires otherwise, 'unfair labour practices' mean any of the practices listed in Schedule II, III and IV.

27. PROHIBITION ON ENGAGING IN UNFAIR LABOUR PRACTICES. - No employer or union and no employees shall engage in any unfair labour practice.

28. PROCEDURE FOR DEALING WITH COMPLAINTS RELATING TO UNFAIR LABOUR PRACTICES. –

(1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, 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 :

Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.

(2) The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint.

(3) On receipt of a complaint under sub-section (1), the Court may, if it so considers necessary, first cause an investigation into the said complaint to be made by the Investigating Officer, and direct that a report in the matter may be submitted by him to the Court, within the period specified in the direction.

(4) While investigating into any such complaint, the Investigating Officer may visit the undertaking, where the practice alleged is said to have occurred, and make such enquiries as he considers necessary. He may also make efforts to promote settlement of the complaint.

(5) The Investigating Officer shall, after investigating into the complaint under sub-section (4) submit his report to the Court, within the time specified by it, setting out the full facts and circumstances of the case, and the efforts made by him in settling the complaint. The Court shall, on demand and on payment of such fee as may be prescribed by rules, supply a copy of the report to the complainant and the person complained against.

(6) If, on receipt of the report of the Investigating Officer, the Court finds that the complaint has not been settled satisfactorily, and that facts and circumstances of the case require, that the matter should be further considered by it, the Court shall proceed to consider it, and give its decision.

(7) The decision of the Court, which shall be in writing, shall be in the form of an order.

The order of the Court shall be final and shall not be called in question in any civil or criminal court.

(8) The Court shall cause its order to be published in such manner as may be prescribed. The order of the Court shall become enforceable from the date specified in the order.

(9) The Court shall forward a copy of its order to the State Government and such officers of the State Government as may be prescribed.

29. PARTIES ON WHOM ORDER OF COURT SHALL BE BINDING. - An order of the Court shall be binding on –

(a) all parties to the complaint;

(b) all parties who were summoned to appear as parties to the complaint, whether they appear or not, unless the Court is of opinion that they were improperly made parties;

(c) in the case of an employer who is a party to the complaint before such Court in respect of the undertakings to which the complaint relates, his heirs, successors or assigns in respect of the undertaking to which the complaint relates; and

(d) where the party referred to in clause (a) or clause (b) is composed of employees, all persons, who on the date of the complaint, are employed in the undertaking to which the complaint relates and all persons who may be subsequently employed in the undertaking.

30. POWERS OF INDUSTRIAL AND LABOUR COURTS. –

(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order -

(a) declare that an unfair practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all of any or its rights under sub-section (1) of section 20 or its right under section 23 shall be suspended.

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision :

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of –

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed.

31. CONSEQUENCES OF NON-APPEARANCE OF PARTIES. –

(1) Where in any proceeding before the Court, if either party, inspite of notice of hearing having been duly served on it, does not appear, when the matter is called on for hearing the Court may either adjourn the hearing of the matter to a subsequent day, or proceed ex parte, and make such order as it thinks fit.

(2) Where any order is made ex parte under sub-section (1), the aggrieved party may, within thirty days of the receipt of the copy thereof, make an application to the Court to set aside such order.

If the Court is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it may set aside the order so made, and shall appoint a date for proceeding with the matter:

Provided that, no order shall be set aside on any such application as aforesaid, unless notice thereof has been served on the opposite party.

32. POWER OF COURT TO DECIDE ALL CONNECTED MATTERS. - Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of this Act.

33. REGULATION TO BE MADE BY INDUSTRIAL COURT. –

(1) The Industrial Court may make regulations consistent with the provisions of this Act and rules made thereunder regulating its procedure.

(2) In particular, and without prejudice to the generality of the foregoing power such regulations may provide for the formation of Benches consisting of one or more of its members (including provision for formation of a Full Bench consisting of three or more members) and the exercise by such Bench of the jurisdiction and powers vested in them:

Provided that, no Bench shall consist only of a member, who has not been, and at the time of his appointment, was not eligible for appointment as a Judge of a High Court.

(3) Every regulation made under this section shall be published in the Official Gazette.

(4) Every proceeding before the Court shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code, XLV of 1860.

(5) The Court shall have power to direct by whom the whole or any part of the costs of any proceeding before it shall be paid : Provided that, no such costs shall be directed to be paid for the service of any legal adviser engaged by any party.

34. EXECUTION OF ORDER AS TO COSTS. - An order made by the Court regarding the costs of a proceeding may be produced before the Court of the Civil Judge within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within the local limits of the ordinary civil jurisdiction of the High Court, before the Court of small Causes of Bombay, and such Court shall execute such order in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

35. LAW DECLARED BY INDUSTRIAL COURT TO BE BINDING. - The determination of any question of law in any order, decision, or declaration passed or made, by the Full Bench of the Industrial Court constituted under the regulations made under section 33 shall be binding and shall be followed in all proceedings under this Act.

36. AUTHORISED OFFICER TO APPEAR IN ANY PROCEEDING BEFORE COURT. - The State Government may authorise, and direct any officer of Government to appear in any proceeding before the Court by giving notice to such Court; and on such notice being given, such officer shall be entitled to appear in such proceeding and to be heard by the Court.

37. POWERS OF INVESTIGATING OFFICERS. –

(1) An Investigating Officer shall exercise the powers conferred on him by or under this Act, and shall perform such duties as may be assigned to him, from time to time, by the Court.

(2) For the purpose of exercising such powers and performing such duties, an investigating Officer may, subject to such conditions as may be prescribed, at any time during working hours, and outside working hours after reasonable notice, enter and inspect –

(a) any place used for the purpose of any undertaking;

(b) any place used as the office of any union;

(c) any premises provided by an employer for the residence of his employees; and shall be entitled to call for and inspect all relevant documents which he may deem necessary for the due discharge of his duties and powers under this Act.

(3) All particulars contained in, or information obtained from, any document inspected or called for under sub-section (2) shall, if the person, in whose possession the document was, so requires, be treated as confidential.

(4) An Investigating Officer may, after giving reasonable notice, convene a meeting of employees for any of the purposes of this Act, on the premises where they are employed, and may require the employer to affix a written notice of the meeting at such conspicuous place in such premises as he may order, and may also himself affix or cause to be affixed such notice.

The notice shall specify the date, time and place of the meeting, the employees or class of employees affected, and the purpose for which the meeting is convened :

Provided that, during the continuance of a lock-out which is not illegal, no meeting of employees affected thereby shall be convened on such premises without the employer's consent.

(5) An Investigating Officer shall be entitled to appear in any proceeding under this Act.

(6) An Investigating Officer may call for and inspect any document which he has reasonable ground for considering to be relevant to the complaint or to be necessary for the purpose of verifying the implementation of any order of the Court or carrying

out any other duty imposed on him under this Act, and for the aforesaid purposes the Investigating Officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (V of 1908) in respect of compelling the production of documents.

38. POWERS OF LABOUR COURT IN RELATION TO OFFENCES. –

- (1) A Labour Court shall have power to try offences punishable under this Act.
- (2) Every offences punishable under this Act shall be tries by a Labour Court within the limits of whose jurisdiction it is committed.

39. COGNIZANCE OF OFFENCE. - No Labour Court shall take cognizance of any offence except on a complaint of facts constituting such offence made by the person affected thereby or a recognised union or on a report in writing by the Investigating Officer.

40. POWERS AND PROCEDURE OF LABOUR COURTS IN TRIALS. - In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, V of 1898, of Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence, shall follow the procedure laid down in Chapter XXII of the said Code for a summary trial in which an appeal lies; and the rest of the provisions of the said Code shall, so far as may be, apply to such trial.

41. POWERS OF LABOUR COURT TO IMPOSE HIGHER PUNISHMENT. - Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, V of 1898, it shall be lawful for any Labour Court to pass any sentence authorised under this Act in excess of its powers under section 32 of the said Code.

42. APPEAL. –

- (1) Notwithstanding any thing contained in section 40, an appeal shall lie to the Industrial Court - (a) against a conviction by a Labour Court, by the person convicted;
(b) against an acquittal by a Labour Court in its special jurisdiction, by the complainant;
(c) for enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the State Government.
- (2) Every appeal shall be made within thirty days from the date of the conviction, acquittal or sentence, as the case may be :

Provided that, the Industrial Court may, for sufficient reason, allow an appeal after the expiry of the said period.

43. POWERS OF INDUSTRIAL COURT. –

(1) The Industrial Court in an appeal under section 42 may confirm, modify, to, or rescind any order of the Labour Court appealed against; and may pass such order thereon as it may deem fit.

(2) In respect of offences punishable under this Act, the Industrial Courts shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898, V of 1898.

(3) A copy of the order passed by the Industrial Court shall be sent to the Labour Court.

44. INDUSTRIAL COURT TO EXERCISE SUPERINTENDENCE OVER LABOUR COURTS. - 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 cases;

(c) prescribe form in which books, entries and accounts shall be kept by officers of any such Courts; and

(d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.

45. POWER OF INDUSTRIAL COURT TO TRANSFER PROCEEDINGS. - The Industrial Court may, by order in writing, and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, and transfer the same to another Labour Court for disposal and the Labour Court to which the proceeding is so transferred may dispose of the proceeding, but subject to any special direction in the order of transfer, proceed either de novo or from the stage at which it was so transferred.

46. ORDERS OF INDUSTRIAL OR LABOUR COURT NOT TO BE CALLED IN QUESTION IN CRIMINAL COURTS. - No order of a Labour Court or an order of the Industrial Court in appeal in respect of offences tried by it under this Act shall be called in question in any criminal court.

47. PENALTY FOR DISCLOSURE OF CONFIDENTIAL INFORMATION. - If an Investigating Officer or any person present at, or concerned in, any proceeding under this Act wilfully discloses any information or the contents of any document in contravention of the provisions of this Act, he shall, on conviction, on a complaint

made by the party who gave the information or produced the document in such proceeding, be punished with fine which may extend to one thousand rupees.

48. CONTEMPTS OF INDUSTRIAL OR LABOUR COURTS. –

(1) Any person who fails to comply with any order of the Court under clause (b) of sub-section (1) or sub-section (2) of section 30 of this Act shall, on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five thousand rupees.

(2) If any person, - (a) when ordered by the Industrial Court or a Labour Court to produce or deliver up any document or to furnish information being legally bound so to do, intentionally omits to do so; or

(b) when required by the Industrial Court or a Labour Court to bind himself by an oath or affirmation to state the truth refuses to do so;

(c) being legally bound to state the truth on any subject to the Industrial Court or a Labour Court refuses to answer any question demanded of him touching such subject by such Court; or

(d) intentionally offers any insult or causes any interruption to the Industrial Court or a Labour Court at any stage of its judicial proceeding, he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) If any person refuses to sign any statement made by him, when required to do so, by the Industrial Court or a Labour Court, he shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) If any offence under sub-section (2) or (3), is committed in the view or presence of the Industrial Court or as the case may be, a Labour Court, such Court may, after recording the facts constituting the offence and the statement of the accused as provided in the Code of Criminal Procedure, 1898, V of 1898 forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of the accused person before such Magistrate or, if sufficient security is not given, shall forward such person in custody to such Magistrate.

The Magistrate to whom any case is so forwarded shall proceed to hear the complaint against the accused person in the manner provided in the said Code of Criminal Procedure.

(5) If any person commits any act or publishes any writing which is calculated to improperly influence the Industrial Court, or a Labour Court or to bring such Court or a member or a Judge thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of any such Court, such person shall be deemed to be guilty of contempt of such Court.

(6) In the case of contempt of itself, the Industrial Court shall record the facts constituting such contempt, and make a report in that behalf to the High Court;

(7) In the case of contempt of a Labour Court, such Court shall record the facts constituting such contempt, and make a report in that behalf to the Industrial Court; and thereupon, the Industrial Court may, if it considers it expedient to do so, forward the report to the High Court.

(8) When any intimation or report in respect of any contempt is received by the High Court under sub-sections (6) or (7), the High Court shall deal with such contempt as if it were contempt of itself, and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself.

49. PENALTY FOR OBSTRUCTING OFFICERS FROM CARRYING OUT THEIR DUTIES AND FOR FAILURE TO PRODUCE DOCUMENTS OR TO COMPLY WITH REQUISITION OR ORDER. –

Any person who wilfully, - (i) prevents or obstructs officers, members of the office staff, or members any union from exercising any of their rights conferred by this Act;

(ii) refuses entry to an Investigating Officer to any place which he is entitled to enter;

(iii) fails to produce any document which he is required to produce; or

(iv) fails to comply with any requisition or order issued to him by or under the provisions of this Act or the rules made thereunder; shall, on conviction, be punished with fine which may extend to five hundred rupees.

50. RECOVERY OF MONEY DUE FROM EMPLOYER. - Where any money is due to an employee from an employer under an order passed by the Court under Chapter VI, the employee himself or any other person authorised by him in writing in this behalf, or in the case of death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Court for the recovery of money due to him, and if the Court is satisfied that any money is so due, its shall issue a certificate for that amount to the Collector, who shall, proceed to recover the same in the same manner as an arrear of land revenue :

Provided that, every such application shall be made within one year from the date on which the money became due to the employee from the employer :

Provided further that, any such application may be entertained after the expiry of the said period of one year, if the Court is satisfied that the applicant had sufficient cause for not making the application within the said period.

51. RECOVERY OF FINES. - The amount of any fine imposed under this Chapter shall be recoverable as arrears of land revenue.

52. PERIODICAL RETURNS TO BE SUBMITTED TO INDUSTRIAL AND LABOUR COURTS. - Every recognised union shall submit to the Industrial Court and Labour Court on such dates and in such manner as may be prescribed periodical returns of its membership.

53. MODIFICATIONS OF SCHEDULES. - (1) The State Government may, after obtaining the opinion of the Industrial Court, by notification in the Official Gazette, at any time make any addition to, or alteration in, any Schedule II, III or IV and may, in the like manner, delete any item therefrom:

Provided that before making any such addition, alteration or deletion, a draft of such addition, alteration or deletion shall be published for the information of all persons likely to be affected thereby, and the State Government shall consider any objections or suggestions that may be received by it from any person with respect thereto.

(2) Every such notification shall, as soon as possible after its issue, be laid by the State Government before the Legislature of the State.

54. LIABILITY OF EXECUTIVE OF UNION. - Where anything is required to be done by any union under this Act, the person authorised in this behalf by the executive of the union, and where no person is so authorised, every member of the executive of the union shall be bound to do the same, and shall be personally liable, if default is made in the doing of any such thing.

Explanation: For the purpose of this section, the "**executive of a union**" means the body whatever name called to which the management of the affairs of the union is entrusted.

55. OFFENCE UNDER SECTION 48(1) TO BE COGNIZABLE. - The offence under sub-section (1) of section 48, shall be cognizable.

56. CERTAIN OFFICERS TO BE PUBLIC SERVANTS. - Investigating Officers, a member of the Industrial or Labour Court and a member of the staff of any such Court shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, XLV of 1860.

57. PROTECTION OF ACTION TAKEN IN GOOD FAITH. - No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or purported to be done by or under this Act.

58. PENDING PROCEEDINGS. - Any proceeding pending before the State Government or before any tribunal or any other authority, or any proceedings relating to the trial of offences punishable under the provisions of the Central Act or Bombay Act before the commencement of this Act shall be continued and completed as if this Act had not been passed and continued in operation, and any penalty imposed in

such proceedings shall be recorded under such Central, or as the case may be, Bombay Act.

59. BAR OF PROCEEDINGS UNDER BOMBAY OR CENTRAL ACT. - If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act.

60. BAR OF SUITS. - No Civil court shall entertain any suit which forms or which may form the subject-matter of a complaint or application to the Industrial Court of Labour Court under this Act; or which has formed the subject of an interim or final order of the Industrial Court or Labour Court under this Act.

61. RULES. –

(1) 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.

(2) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature, while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both House agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment, shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.