

(2008) 08 BOM CK 0114

In the Bombay High Court

Case No : Appeal No. 716 of 2002 in Writ Petition No. 760 of 2002

Glaxo Smith Kline Pharmaceuticals Ltd.

APPELLANT

Vs

Abhay Raj Jain and Another

RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 18, 2

Citation : (2008) 6 BomCR 602 : (2009) 120 FLR 335 : (2009) 2 LLJ 337

Hon'ble Judges : Majmudar P.B., J;Khandeparkar R.M.S., J

Bench : Division Bench

Advocate : P.K. Rele, assisted with ., Vinod Tayde and Rajesh Rele, instructed by Piyush Shah, for the Appellant; J.P. Cama, a/w. R.D. Bhat, for the Respondent

Final Decision : Allowed

Judgement

Khandeparkar R.M.S., J.—Heard at length the learned Senior Counsel for the parties. This appeal arises from the judgment and order dated 9-7-2002 passed by the learned Single Judge in Writ Petition No. 760 of 2002. By the impugned order, the petition filed by the appellant against the order of the Industrial Court, Mumbai has been dismissed.

2. The Industrial Court, Mumbai by order dated 24-1-2002 passed in Complaint (U.L.P.) No. 921 of 2001 had allowed the application filed by the respondent No. 1 against the order of transfer passed against the said respondent by the appellant on 16-10-2001 overruling the objection regarding lack of jurisdiction to entertain the complaint raised by the appellant in the said case. The Industrial Court and the learned Single Judge held that the Industrial Court under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter called as "the M.R.T.U. & P.U.L.P. Act") has jurisdiction to entertain the complaint on the ground that the order of transfer dated 16-10-2001 was signed and issued by the appellant at Mumbai, though it was served upon the respondent No. 1 at Delhi and was to take effect outside the

State of Maharashtra.

3. Few facts relevant for the decision are that the appellant-company has registered office at Dr. Annie Besant Road, Worli, Mumbai and is engaged in the business of manufacturing and selling pharmaceutical products, life saving drugs, etc., and have their factories at Thane and Nashik in the State of Maharashtra as well as at Ankleshwar in the State of Gujarat. For promoting the sales of the products manufactured by the appellant, the company engages medical representatives all over India. The respondent No. 1 is a medical representative working at Udaipur.

4. The medical representatives are employed in various sale areas. Out of the total 1435 medical representatives employed by the appellant, 1417 thereof accepted the benefits as well as the obligations under the subsisting long term Settlements dated 2-7-2000, 4-7-2000, 19-7-2000 and 18-8-2000. Only 18 medical representatives across the country refused to give undertaking as provided under the respective Settlements.

5. The respondent No. 1 is one of such representatives. The transfer of the medical representatives from one place to another is a routine matter for the appellant-company and it depends upon the business exigencies. In October/ November, 2001 number of medical representatives were transferred from one place to another including the respondent No. 1 herein.

6. A letter dated 16-10-2001 was served upon the respondent No. 1 on 24-10-2001 during the sales meeting at Delhi. However, he refused to accept the same and hence a copy thereof was sent by registered A.D. on 25-10-2001. The said transfer order to the respondent No. 1 was issued, according to the appellant, as a matter of administrative and/or business exigencies. The respondent No. 1 was given sufficient time to report for the work at the new head-quarters i.e., Imphal (Manipur) with effect from 15-11-2001. There were about four medical representatives already working at Imphal since long. The respondent No. 1 refused to report to the transferred place on the ground that it is a disturbed area.

7. The respondent No. 1 thereafter filed a complaint on 9-11-2001 before the Industrial Court at Mumbai invoking Item 4(a) of Schedule-II and Item 3 of Schedule-IV of the M.R.T.U. & P.U.L.P. Act. The Industrial Court by an ex parte order dated 9-11-2001 stayed the transfer of the respondent No. 1. The appellant filed their affidavit in reply to the said complaint and the application for interim relief on 13-12-2001 before the Industrial Court.

8. The appellant therein raised a point regarding lack of jurisdiction to the Industrial Court at Mumbai to entertain and try the complaint and prayed for dismissal of the said complaint on the preliminary issue regarding lack of jurisdiction. Both the parties also placed on record various documents in support of their rival contentions. By order dated 24-1-2002 the Industrial Court allowed the application filed by the respondent No. 1 and confirmed the interim order and

thereby stayed the transfer of the respondent No. 1 from Udaipur to Imphal. Being aggrieved, the appellant filed Writ Petition No. 760 of 2002 and the same was disposed of by the impugned order. Hence the present appeal.

9. While assailing the impugned order, the learned Senior Counsel submitted that the learned Single Judge erred in dismissing the petition and rejecting the plea of the appellant that the Industrial Court at Mumbai had no jurisdiction to entertain the complaint. According to the learned Senior Counsel, the jurisdiction of the labour Court and the Industrial Court under the M.R.T.U. & P.U.L.P Act is limited in scope and since the Act is operative only in the State of Maharashtra, it is necessary for the person complaining of unfair labour practice to have been employed within the State of Maharashtra against whom the unfair labour practice is allegedly committed. Under the scheme of the M.R.T.U. & P.U.L.P Act, the situs of employment where the alleged unfair labour practice is complained to have taken place or is complained to have taken effect is necessary and essential for the purpose of determining the jurisdiction of the Court and being so, such situs of employment has necessarily to be within the territorial limits of the State of Maharashtra in order to enable the Court at Mumbai to entertain complaint under the M.R.T.U.& P.U.L.P Act.

10. As regards the unfair labour practices taking place elsewhere than the State of Maharashtra, the provisions of law which would be attracted are from Chapter V-C of the Industrial Disputes Act, 1947 and not of the M.R.T.U.& P.U.L.P Act which has no application to the territory beyond the State of Maharashtra. The order which has to take effect at Udaipur cannot be the subject-matter of the complaint under the M.R.T.U. & P.U.L.P Act in Maharashtra. The learned Single Judge, therefore, ought to have appreciated that the M.R.T.U. & P.U.L.P Act has its operation within the territory of the State of Maharashtra and that the authorities under the M.R.T.U.& P.U.L.P Act have jurisdiction to decide the complaints which have consequences or effect within the State boundaries and the authorities cannot issue any order in respect of the matters which had no consequence or effect within the State of Maharashtra.

11. The situs of the head office of the appellant-company is immaterial for vesting jurisdiction on the authority under the M.R.T.U.& P.U.L.P Act while dealing with the grievances regarding the alleged unfair labour practice, once it is disclosed that the same has consequence or effect beyond the territories of the State of Maharashtra. Besides, the transfer being incidence of service, the Industrial Court could not have restrained the appellant from transferring its employee from one place to the other.

12. Reliance is sought to be placed in the decisions in the matters of Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, , Hindustan Aeronautics Ltd. Vs. The Workmen and Others, , (Ramlal v. Labour Court Patiala and Ors.) reported in 1986(xi) L.L.J. 231, (Pritam Singh v. Labour Court, Union Territory, Chandigarh and Ors.) reported in 1994(1) L.L.N. 241, (New Delhi General Mazdoor Union v. Government of Delhi and Ors.)

reported in 2000 (3) C.L.R. 627, (Paritosh Kumar Pal v. State of Bihar and Ors.) reported in 1984 L.I.C. 1254, (Little Sons & Co. v. Amar Nath and Ors.) reported in 1978 L.I.C. 430, (Hindustan Samachar v. State of Orissa and Ors.), reported in 1979 L.I.C. 106 , Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , R.K. Jha and K.T.V. Prasad Vs. H.D. Tanpe and Others, , (H.M.T. Limited v. Chandigarh Administration and Ors.) reported in 2002 L.L.R. 154, Laxman Baburao Bepal Vs. Manager, Nagar District Urban Central Co-op. Bank Ltd. and Another, , (G.S. Batra v. Shri R.N. Mehrotra) reported in 2004 (2) C.L.R. 100, (Lalbhai Tricumlal Mills Ltd. v. Vin (DM) and Ors.) reported in 1956(i) L.L.J. 557, (Managing Director, Emerald Valley Estates Ltd. v. Secretary for Kerala, The Estates & Staffs" Union of South India and Anr.) reported in 1979 L.I.C. 86, Ram Prasad Sao and Another Vs. State of Bihar and Another, , Bhandari Builders Pvt. Ltd. Vs. M.K. Seth and another, and Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, .

13. On the other hand, the learned Senior Counsel appearing for the respondents has submitted that the place where the order operates is not only the place where the effect of the order takes place but also includes the place from where the order originates or is issued. Once it is not in dispute that the order was issued from the head office of the company at Mumbai, the cause of action arose not only at the place where the order was served upon the respondent but also at the place where it was issued and in that respect both the places would include the expression "situs of employment".

14. Every aspect of the service conditions are controlled from Mumbai, the head office of the company and, therefore, it cannot be said that the unfair labour practice has not taken effect within the territory of the State of Maharashtra. The unfair labour practice is sought to be practiced by virtue of the order of transfer issued from Mumbai. It is the origin of the unfair labour practice which would constitute the cause for filing the complaint. There is neither any statutory provision nor any judicial pronouncement brought to the notice of the Court which states that situs of the authority of the order is excluded for the purpose of jurisdiction of the Industrial Court under the M.R.T.U.& P.U.L.P Act. Besides, there is no branch office of the appellant-company in Udaipur. The order of appointment as well as the order of transfer in relation to the respondent No. 1 were issued from Mumbai.

15. Once it is clear from the records that the order of transfer was passed and issued by the appellant-company at its head office in Mumbai, which is within the territorial jurisdiction of the Industrial Court at Mumbai, no grievance can be made about the lack of jurisdiction to such Court to entertain the complaint in relation to the unfair labour practice sought to be employed by issuing the said order of transfer.

16. The point of jurisdiction is to be considered on the basis of the averments in the complaint and if the complaint on the face of it reveals that part of the cause of action has arisen within the territorial limits of the State of Maharashtra, the

Industrial Court at Mumbai would have jurisdiction to entertain complaint under the M.R.T.U.& P.U.L.P Act. The actual effect of the unfair labour practice might take place beyond the territory of State of Maharashtra but the origin of such effect lies in the State of Maharashtra at Mumbai and once that is disclosed in the complaint, it cannot be said that the Industrial Court at Mumbai has no jurisdiction to entertain and deal with such complaint. Very fact that the respondent having refused to accept the Settlement, by way of harassment the respondent has been sought to be transferred from one corner of the country to another corner of the country and that itself shows mala fide on the part of the appellant-company and being so, nothing forbids the Industrial Court at Mumbai from exercising the jurisdiction to put an end to the unfair labour practice sought to be employed against the respondent by issuing the said order.

17. The learned Counsel for the respondent has sought to place reliance in that regard in the decisions of the Apex Court in the matters of M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company, , Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , Lipton Limited and Another Vs. Their Employees, , and of the High Court in the matter of Mohan R. Mhatre Vs. Udaipur Distillery Co. Ltd. and Others, .

18. The point which arise for determination in the case in hand is that:

Q. Whether the Industrial Court and the Labour Court under the M.R.T.U.& P.U.L.P Act have jurisdiction to entertain a complaint solely on the ground that an order allegedly having effect of unfair labour practice is issued from a place situated within the territory of the State of Maharashtra even though the effects and/or consequences of such an order are to take place outside the territory of the State of Maharashtra and the person against whom such an order is issued for all purpose is employed in an area situated outside the State of Maharashtra?

19. While dealing with the said issue, the learned Single Judge in the impugned order has stated that though the situs of employment is at Udaipur, the origin of the unfair labour practice sought to be employed by the appellant-company was at Mumbai and, therefore, the Industrial Court at Mumbai has jurisdiction to entertain the complaint. At the same time it is apparent that the finding by the learned Single Judge, which is, in fact, reiteration of the finding of the Industrial Court on the point in issue, is very clear to the effect that the situs of employment is at Udaipur. Indeed, it is not in dispute that the respondent No. 1 had been employed at Udaipur and his area of employment lies beyond the territory of the State of Maharashtra. Being so, there is no dispute on the aspect of situs of employment to be at Udaipur.

20. In Lipton Ltd.'s case (supra) the point of jurisdiction was decided against the company and the Industrial Tribunal had pointed out that all the workmen of the Delhi office, whether they worked in Delhi or not, were receiving their salary from the Delhi office, they were controlled from the Delhi office in the matter of leave, travel, supervision etc., and, therefore, the Delhi State Government was

the appropriate Government within the meaning of Section 2 of the Industrial Disputes Act, 1947 in relation to the dispute which arise between the company and the employees and u/s 18 of the said Act the award made by the Tribunal was binding on all the persons employed in the Delhi Office. The Appellate Tribunal had upheld the decision of the Industrial Tribunal on the said point and though the question of jurisdiction was sought to be raised in the appeal, before the Apex Court it was not seriously pressed by the learned Attorney General. In those circumstances, the Apex Court had observed that it was of the view that the Industrial Tribunal had jurisdiction to adjudicate on the dispute between the company and its workmen of the Delhi office.

21. In H.M.T. Limited's case (supra) it was an admitted position that the workmen was never employed by the company in any of its establishments at Chandigarh and the workmen was last employed at Mumbai. She was transferred from Srinagar to Mumbai. Considering the same, it was held by the Punjab & Haryana High Court that substantially the cause of action had arisen at Mumbai. Merely because the order of dismissal was served at Chandigarh, that would not be sufficient to hold that the industrial dispute had substantially arisen within the Union Territory of Chandigarh.

22. In L.B. Repal's case (supra) the Division Bench of this Court held that the test of jurisdiction of a Court or Tribunal requires ascertaining where substantially the dispute arose, and not where the employee is employed or dismissed, and such a test can never be inflexible and must necessarily depend on the facts of each case. The underlying approach has to be the test of enforce-ability of the order. It is the place where the order can be effectively enforced that would satisfy the requirement of jurisdiction to the Court to entertain the complaint.

23. In G.S. Batra's case (supra) the learned Single Judge of the Delhi High Court held that since the termination of service of the employee was in Delhi while he was being employed at Delhi, the Delhi Court had jurisdiction and the Delhi Government was the appropriate Government within the meaning of the provisions of law comprised under the Industrial Disputes Act, 1947 for the purpose of reference.

24. In Lalbhai Tricumlal's case (supra) the Division Bench of this Court clearly ruled that when the Bombay Industrial Relations Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court, but applying the well-known test of jurisdiction a Court or Tribunal will have to entertain the matter when the parties reside within its jurisdiction or if the subject-matter of the dispute substantially arises within its jurisdiction and, therefore, the correct approach to ascertain the jurisdiction is to ask oneself as to where does the dispute substantially arose. Referring to the facts of the said case before the Division Bench, it was held that:

in our opinion the only answer to that question can be that the dispute substantially arose in Bombay and not in Ahmedabad. What is the dispute? The

dispute is not as to whether the employee approached the employer in Ahmedabad and no agreement was arrived at. The dispute is whether the employer was justified in dismissing the employee, and in as much as the employment was in Bombay, and the dismissal was in Bombay, it is difficult to understand how it can possibly be urged that the dispute did not substantially arise in Bombay.

25. In *Emerald Valley Estates*'s case (supra) The learned Single Judge of the Kerala High Court held that in determining which of the States has jurisdiction to make a reference u/s 10 of the Industrial Disputes Act, 1947, what is necessary is that there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arises. It might also be noted that to confer jurisdiction for reference on the State Government concerned, it is not absolutely necessary that the cause of action should wholly or exclusively arise in that State. There may be cases where part of the cause of action may arise in two or more States. In such cases, two or more States may have concurrent jurisdiction. When the question regarding territorial jurisdiction crops up, what is to be asked and answered is whether the cause of action substantially arose in the State, the Government of which referred the dispute for adjudication.

26. In that case, the workmen concerned were all along working in the State of Kerala and they were also residing in the said State. The transfer of the workman was from a place in Kerala to a place in Karnataka State. The dispute on the point of jurisdiction was as to whether it was the Government of Kerala or the Government of Karnataka which would be the appropriate Government to make the reference. It was clearly held that it would be wrong to construe that because the workman concerned, in pursuance of the notice, went over to the place in Karnataka to join duty, the cause of action had also arisen exclusively or wholly in that place.

27. In *S.N.D. Sampath*'s case (supra) the Division Bench of the Madras High Court held that the Tamil Nadu Shops and Establishments Act is expected to apply to the establishments in the State of Tamil Nadu alone and to the employees employed to work in such establishments. The first respondent was employed in the Goa establishment of the company, an establishment governed by the Goa Shops and Establishments Act and when there were no employer employee relationships subsisting with regard to an establishment situated in the State of Tamil Nadu, the mere fact that the resignation letter was accepted at Chennai would not be sufficient to clothe the Appellate Authority u/s 41(2) of the Tamil Nadu Shops and Establishments Act to entertain the appeal filed by the workman.

28. The order of the learned Single Judge in that regard was, therefore, set aside while holding that the relationship of employer and employee with reference to a commercial establishment in Tamil Nadu is a pre-requisite for preferring an appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act and that when

a person is employed to work in the Goa establishment of the company, it must be held that he is employed wholly in connection with the business of Goa establishment and merely because, the Corporate Office of the company is at Chennai or because his resignation letter has been accepted at Chennai, it cannot be held that the Appellate Authority u/s 41(2) of the Act has jurisdiction to entertain the appeal filed by the employee.

29. In *Bhandari Builders*" case (supra) the question was whether a person recruited by an establishment in Delhi and working abroad in Iraq can invoke the provisions of the Delhi Shops and Establishment Act, 1954. It was held that the provisions of the said Act leave no room for doubt that they apply to the establishments located in Delhi and not to any establishment, outside India. It cannot be argued that each office where the business of the company is being run is not a separate establishment for the purpose of legislation like the Delhi Shops Act. Each premises where commercial activity of the nature given in the definition is carried on is to be treated as a separate establishment. The employee was not employed in any establishment in Delhi and, therefore, he was not covered by the said Act.

30. In *Kalyan Banerjee*'s case (supra) the Apex Court held that the since the entire cause of action arose within the State of Jharkhand, only because the head office of the company was situated in the State of West Bengal, that by itself would not confer the jurisdiction upon the Calcutta High Court to entertain the petition. That was a case wherein the employee, who was employed at Mugma area in the District of Dhanbad, State of Jharkhand, his services came to be terminated at Mugma but he filed the writ petition in the Calcutta High Court only on the ground that the Corporate Office of the company in which he was working was at Calcutta.

31. In *Sri Ranga Vilas Motors*" case (supra) the workman working at the Bangalore branch office of the company having head office in Krishnagiri, Madras State, was transferred by the order issued from the head office. The order of reference made by the State of Mysore inter alia related to the dispute as to whether the transfer was unjustified and if so, the workman was entitled to reinstatement at Bangalore with benefits of back-wages. It was held that in those facts the dispute arose at Bangalore, where the concerned employee was working at the time of his transfer. It was ruled that there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. The subject-matter of the dispute having substantially arisen within the jurisdiction of the State of Mysore, the Mysore Government was the appropriate Government to take steps in accordance with the labour laws.

32. In *Aeronautics Hindustan Aeronautics*" case (supra), while dealing with the issue relating to appropriate Government for reference u/s 10 of the Industrial Disputes Act, 1947, it was held that if there is any disturbance to industrial peace, the Government of the State where the disturbance takes place will be

the appropriate Government.

33. In Ramlal's case (supra) the Punjab & Haryana High Court was dealing with a matter wherein there was a challenge to the order of termination which was passed at Chandigarh and served at Bhatinda. It was held that the order became effective and operative at Bhatinda where the workman was at the material time working and earning his wages. The relationship of Master and servant snapped at Bhatinda. The industrial dispute definitely arose at Bhatinda and consequently the order of reference made by the State Government of Chandigarh was appropriate and it was competent to make a reference. Existence of the head office of the Bank at Chandigarh and the management of the business therefrom does not mean that the Government of Chandigarh is the appropriate Government.

34. In Pritam Singh's case (supra) the Punjab & Haryana High Court held that the situs of the employment where the worker was employed and the order of his dismissal from service, suspension or retrenchment is received would determine the appropriate Government competent to make reference and not the head office of the company from where the order is issued.

35. In New Delhi General Mazdoor Union's case (supra) the Delhi High Court held that only on the averment that the registered office of the Management Development Institute is situated in Delhi, would not be sufficient to contend that the Delhi Government was the appropriate Government for the reference of industrial dispute when the materials placed on record disclosed that the entire establishment of the Institute was situated within the State of Haryana.

36. In Paritosh Kumar Pal's case (supra) the Full Bench of the Patna High Court held that the provisions of the CPC are not specifically made applicable to the proceedings under the Industrial Disputes Act, 1947 and the situs of employment of the workmen would determine the Tribunal's jurisdiction. It laid down, therefore, three tests to determine the jurisdiction of the Tribunal, namely (i) Where does the order of the termination of service operate? (ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State? and (iii) That the well-known test of jurisdiction of a Civil Court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable.

37. In R.K. Jha's case (supra) the Patna High Court was dealing with a case wherein two medical representatives of the company were visited with the penalty of termination of their services, when they allegedly failed to join their new places of posting on transfer and consequently they filed complaints u/s 26 of the Bihar Shops and Establishments Act, 1953 before the Labour Court, Patna, which was dismissed on the ground of lack of territorial jurisdiction to entertain the complaint. Allowing the writ petition, it was held that in view of the admitted position that the employees were working within the jurisdiction of the Patna Depot of the company from where their services were terminated, the cause of

action wholly arose within the jurisdiction of the Labour Court, Patna but even assuming that the petitioners were actually working at Laheriasarai, at least part of the cause of action arose at Patna in view of the fact that Laheriasarai was within the jurisdiction of the Patna Depot.

38. In *Kusum Ingots & Alloys*'s case (supra) the Apex Court was dealing with the issue as to whether the seat of Parliament or the legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India.

39. It was held that when an order is passed by a Court or Tribunal or an executive authority whether under the provisions of a statute or otherwise, a part of cause of action arises at that place. The order of the Appellate Authority constitutes a part of cause of action and, therefore, writ petition would be maintainable in the High Court within whose jurisdiction it is situated having regard to the fact that the order of the Appellate Authority is also required to be set aside and as the order of the original authority merges with that of the Appellate Authority.

40. In *Patel Roadways*" case (supra), it was a decision in relation to suit for damages and not relating to labour matter based on the provisions of the Civil Procedure Code.

41. Much reliance was sought to be placed "by the learned Senior Counsel for the respondents on the decision of this Court in *Mohan Mhatre*'s case (supra), repeatedly reminding us that the said decision was delivered by one of us (Sri R.M.S. Khandeparkar, J.) holding that the place of issuance of the order of transfer also forms part of the cause of action for initiating action under the M.R.T.U. & P.U.L.P. Act. That was a case wherein after taking into consideration the various earlier decisions of the Apex Court it was held that:

It is the place where the dispute substantially arises or where both the parties reside that is the test to be applied to decide the issue of the jurisdiction of the Court to entertain the proceedings relating to such dispute.

42. Referring to the facts of that case, it was held that the materials on record nowhere disclosed that the dispute had substantially arisen in any part of Mumbai so as to give jurisdiction to the Industrial Court at Mumbai to entertain the complaint filed by the employee. The appointment of the petitioner at Mumbai was with the hope to commence establishment by the respondent No. 1 in the State of Maharashtra. Being so, in the said case, though the employee was at Mumbai, there was no part of the establishment of the company in Mumbai, nor there was any activity on the part of the company in Mumbai. On the contrary, the activities of the respondent-company were yet to commence and, in fact, in order to ascertain the possibility of commencement of such activity of the establishment of the company in Mumbai, that the employee was deputed at Mumbai. In those circumstances, it was held that:

The undisputed facts in the matter, are that the petitioner was employed by the respondent No. 1 at Mumbai with the hope that the respondent No. 1 would be able to organize its operation in a big way in the State of Maharashtra, but the same has not materialized till this date and as the respondent No. 1 has lost the hope to have its operations in the State of Maharashtra, that therefore, the order of transfer of the petitioner was issued and the petitioner has been directed to report to his duties at Delhi. Apart from the petitioner's appointment at Mumbai, the respondent No. 1 has no establishment as such in Mumbai.

In those circumstances, it was also observed that:

Had the respondent No. 1 been successful in commencing its operations in the State of Maharashtra, perhaps the position would have been different.

Being so, any observation made in the decision in Mohan Mhatre's case have to be understood in the facts of that case and having so understood, the decision nowhere helps the respondents in the case in hand.

43. It is thus clear that it is the situs of the employment which would be the relevant factor to decide the place of cause of action for initiating any legal proceedings. Once it is not in dispute that the respondent, at the relevant time, was employed at Udaipur and he was sought to be transferred from Udaipur to Imphal (Manipur), it is obvious that the situs of employment of the respondent was sought to be changed from Udaipur to Imphal, both the places beyond the territory of the State of Maharashtra.

44. In the case of unfair labour practice, which is sought to be employed by the employer on account transfer of the employee from one place to another, the actual adoption of the unfair labour practice would be at the place from where the employee is either sought to be transferred or at the place where the employee is sought to be transferred. It cannot, by any stretch of imagination, be said to have resulted at the place from where mere order of transfer of the employee is issued. It is not the issuance of the order but it is the consequence of the order issued that would result in unfair labour practice to the employee. Being so, in case of alleged harassment consequent to the transfer resulting into unfair labour practice to the employee can result either at the place where the employee had been working prior to the issuance of the order of transfer or at the place where is actually transferred under such order. Being so, the cause of action on account of alleged unfair labour practice would arise only at one of these two places and not at any third place.

45. Undoubtedly, in a case where an employee is merely sent to ascertain the possibility of having an establishment of the employer, till and until such establishment commences at any such place, it could not be said that the unfair labour practice would result at any place other than from where the employment of the employee is controlled. Considering the same, therefore, in Mohan Mhatre's case it was held that the place where the dispute substantially arises or where both the parties reside, that is the test to be applied to decide the issue of

jurisdiction of the Court to entertain the proceedings relating to such dispute.

46. In the case in hand, undisputedly, the unfair labour practice is alleged to have been employed on account of transfer of the respondent from Udaipur to Imphal and, therefore, it cannot be said that any part of the cause of action in relation to the alleged unfair labour practice had arisen within the territory of the State of Maharashtra. The appellant, therefore, is justified in contending that this aspect of the matter was totally ignored by the Industrial Court as well as by the learned Single Judge and hence the impugned orders in that regard cannot be sustained and are liable to be set aside while allowing the appeal.

47. In the result, therefore, the appeal is allowed; the impugned orders are hereby set aside and it is held that the Industrial Court at Mumbai has no jurisdiction to entertain the complaint filed by the respondent considering the facts and circumstances of the case and, therefore, the said complaint is liable to be dismissed and is accordingly hereby dismissed.

48. The appeal is accordingly allowed in above terms with no order as to costs.