
(2002) 07 BOM CK 0065
In the Bombay High Court
Case No : Writ Petition No. 760 of 2002

Glaxo Smithkline Pharmaceuticals Ltd.	APPELLANT
Vs	
Abhay Raj Jain and Another	RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28(1)

Citation : (2002) 94 FLR 1036 : (2002) 4 MhLj 426

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : P.K. Rele, R.P. Rele and R.N. Shah, instructed by Piyush Shah, for the Appellant; C.U. Singh and Vinod Shetty, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner is a multinational company having its establishments all over the country. Its registered office is situated in Mumbai. It has also its manufacturing activities at Mumbai. It is a very large organization employing a large number of employees not only at Mumbai but at its various branches or units or undertakings all over India. It has a very large cadre of medical representatives, scattered all over the country. The entire net work all over the country is fully controlled by the petitioners head office at Mumbai. All the decisions are taken from the head office. It is the head office that decides the matters in respect of service conditions of the employees employed all over the country. From appointment orders to termination orders, every such order is passed by and originated in the Head office in Mumbai. Every order of transfer of the employees employed and posted all over the country is passed from the head office at Mumbai. The Head Office of the petitioner is the centralised point having computerised network to control the remotest activity of the company anywhere in India. There is no dispute over these facts.

2. The dispute in the present petition arose when the petitioner passed an order

of transfer of the respondent No. 1, who was posted at Udaypur as medical representative ordering his transfer from Udaypur to Imphal, (Manipur) by an order dated 16th October 2002, which appears to have been handed over to the respondent No. 1 on 16th October 2002 at New Delhi in a meeting. It is alleged that he refused to accept the said order and, therefore, it was posted to him at his residence at Udaypur. There is no dispute that the petitioner had appointed the respondent No. 1 at Mumbai. There is no dispute that at the relevant time of his transfer he was working as a medical representative at Udaypur in the region of Jodhpur, State of Rajasthan. There is no dispute that he was ordered to be transferred from Udaypur to Imphal, There is no dispute that the said order of transfer was passed by the petitioner from Mumbai and the same was communicated to him finally by post at his residence at Udaypur. There is also no dispute that the respondent No. 1 has not reported at the transferred place of work at Imphal. Instead, he along with the Federation of Medical Sales Representatives" Association of India, Mumbai, filed a complaint of unfair labour practice before the industrial court, Maharashtra, Mumbai under the provisions of the M.R.T.U. and PULP Act, 1971. They invoked Item 4(a) of Schedule II and Item 3 of Schedule IV of the said Act in the complaint. It was pleaded that the petitioner as the employer company and the officers named in the said complaint have engaged in unfair labour practice by ordering transfer of the respondent No. 1 from Udaypur to Imphal, mala fide under the guise of following management policy. It was also averred that the respondent No. 1 was an active trade union worker of the federation and, therefore, he was penalised as he was organizing the union. The complainants in the said complaint sought declaration from the industrial court that the petitioner company had engaged in unfair labour practice and that it should be ordered to desist from engaging in such unfair labour practice. Along with the complaint an application for interim orders was filed for stay of the transfer order. The learned Member of the industrial court, after hearing the parties, in his exhaustive order of 35 pages passed on 24-1-2002 granted interim relief and stayed the transfer order dated 16th October 2001.

3. The petitioner company was aggrieved by the said order and approached this court under Article 226 of the Constitution of India to challenge the said order of the industrial court. On 13-3-2002 I had granted Rule and expedited the complaint observing that the crucial issue of jurisdiction of the Industrial Court required to be considered and therefore, in my discretion, I had stayed the impugned order passed by the industrial court. As a result of the said order, the order of transfer was revived. The respondent No. 1, employee was aggrieved by the said order of this court and, therefore, he approached the appeal court challenging the order passed by this court on 13-3-2002. The appeal court, allowed the appeal and set aside the order passed by me at the time of admission of this petition. The appeal court, however, requested this court to expedite the hearing of the petition and to dispose of the same preferably before 31st July 2002. In the aforesaid circumstances, in deference to the request made by the appeal court, I, as a firm believer of judicial discipline and respect fixed

the petition for hearing and final disposal by giving top priority, over the head of all other pending old matters, to which the attention of the Appeal court was perhaps not drawn. Since a grievance was made by some advocates and the parties as to how this Writ Petition of 2002 gets priority over the other very old matters, I have made my position clear by setting out the factual position. At the moment as a result of the order of the Appeal court, the order of the Industrial court staying the order of the transfer is restored.

4. I have heard Shri Rele, the learned Senior Counsel for the petitioner. I have also heard Shri C.U. Singh, the learned Counsel for the respondents. Both have addressed me at length and both have taken me through the catena of judgments in support of their respective contentions. Both the learned Counsel have also taken me through the entire proceedings. As far as the factual matrix is concerned, there is hardly any dispute as stated by me hereinabove.

5. According to Shri Rele, though the order of transfer was passed by the petitioner company from its head office at Mumbai, ordering transfer of the respondent No. 1 from Udaypur to Imphal, the respondent--employee being at Udaypur i.e. out of Maharashtra, the industrial court under the M.R.T.U. and PULP Act being the State Act, has no jurisdiction to stay the transfer order which had its consequences or effect at Udaypur. According to Shri Rele, the territorial jurisdiction of a labour/industrial court/tribunal would depend on the situs of the employment or the situs of the arising of the industrial dispute. The learned Counsel submits that since the transfer order was to take its effect at Udaypur, the industrial court in Maharashtra had no jurisdiction to entertain a complaint of unfair labour practice and to stay the order of transfer which had its effect at Udaypur. According to Shri Rele, the State Act has its operation within the territory of the State of Maharashtra and, therefore, the industrial court has jurisdiction to decide the complaints which have consequences or effect within the boundaries of the State and it cannot issue any orders in respect of the matters which have no consequences or effect within the State of Maharashtra. According to Shri Rele, the situs of the head office of the petitioner company is not material for vesting territorial jurisdiction in the industrial court under the Act in the State of Maharashtra. Shri Rele points out that the head office being the unitary place and all the orders are passed from this office, it, therefore, cannot be said that every order which has its effect beyond the State of Maharashtra can become a subject matter of a complaint under this Act. According to the learned Counsel, though the transfer order was originated from and passed in the head office at Mumbai, the respondent No. 1 was at Udaypur and he was ordered to be transferred from Udaypur to Imphal and, therefore, says Shri Rele, that the courts at Udaypur or in the region of Jodhpur will have territorial jurisdiction to entertain and deal with such matters under the appropriate law, prevailing in the State of Rajasthan. According to Shri Rele, the sole criteria of jurisdiction is the situs of employment not the origin of the order. In support of his submissions Shri Rele has cited the following judgements :

(1) 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, (3) Ramlal Vs. Labour Court and Others, (4), Pritam Singh v. L.C.U.T. Chandhigarh and Ors., 1994 (i) LLJ 241. (5) New Delhi General Mazdoor Union v. Govt. of Delhi and Ors. 2000 (3) CLR 627 (6) Paritosh Kumar v. State of Bihar 1984 LIC 1254 (7) Little Sons and Co. v. Amar Nath (Sharma J.) 1978 LIC 430 (8) Hindustan Samachar v. State of Orissa, (Mohanti J), 1979 LIC 106 (9) Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, (10), R.K. Jha and K.T.V. Prasad Vs. H.D. Tanpe and Others, (11), Janta Commercial Co-op. Bank v. Member, Industrial Court 1996 LIC 2812 (12) Shivaji A. More v. Estate Manager Maharashtra State Farming Corporation Ltd., 1996 (72) FLR 447.

6. Shri C.U. Singh, the learned Counsel appearing for the respondents, the employee and the Federation, has stoutly defended the order passed by the industrial court. According to Shri Singh, since the order of transfer was passed by the head office in Mumbai in Maharashtra, the industrial court under the Act will have exclusive jurisdiction to entertain and decide a complaint of unfair labour practice challenging the order of transfer of the respondent No. 1 from Udaypur to Imphal. According to Shri Singh, it is the place of the order and the territory from which the order is originated is material. The courts in such territory will have territorial jurisdiction to decide such matters. According to Shri Singh, the allegations of unfair labour practice were made against the petitioner company and its officers that they had engaged in the unfair labour practice from Mumbai. According to the learned Counsel, the consequences or the effect of such orders do not exclude the jurisdiction of the courts from the territory of which such orders are passed or originated. According to Shri Singh, not only the situs of employment or the situs of the effect or consequences of such an order is important but the place from where the order was passed would in fact determine the jurisdiction of the court. Shri Singh, contends that the whole cause of action had arisen in Mumbai as the order was passed in Mumbai and as the allegations in the complaint were made against the petitioner and its officers who are in Mumbai, the industrial court in Mumbai under the M.R.T.U. and PULP Act will also have proper jurisdiction to decide such complaint of unfair labour practice. Shri Singh pointed out that neither the Head Office of the company or its officers are within the territorial jurisdiction of Rajasthan and, therefore, it was doubtful whether the courts in Rajasthan would entertain any complaint or proceedings against the orders passed by the petitioner company from Mumbai. According to Shri Singh, the courts constituted under this Act will have jurisdiction to decide every such complaint which satisfies the test of cause of action. Shri Singh has cited the following judgments in support of his contentions:--

(1) State of Rajasthan and Others Vs. Swaika Properties and Another, (2) Bombay Tyres International Ltd. v. All India Bombay Tyres International Employees Federation and Anr. 2000 2 CLR 874 Repal and Nagar District Urban Central Cooperative Bank Ltd. Ahmednagar and Ors. 1979 (38) FLR 289. (4) Kuldip S. Makani and S.V. Kotnis, Presiding Officer, 2nd Labour Court, Bombay

and Anr. 1979 (39) FLR 229. (5) Navinchandra N. Majithia Vs. State of Maharashtra and Others, . (6) Federation of Medical and Sales Representatives Assn. of India and Ors. v. State of Maharashtra and Ors. (unreported Writ Petition No. 2438 of 2001 D.B. Justice A.P. Shah and Justice S.A. Bobde). (7) The State of Bihar and Others Vs. Charusila Dasi, . (8) Transport Corporation of India v. Employees' State Insurance Corporation and Anr. 2000 (1) CLR 38. (9) S.R. Murthy v. The state of Karnataka and Ors. 2000 (1) CLR 57.

7. The petitioner being a highly reputed multinational company with its multi pronged establishments all over the world and all over India wants to check the arms of this State Act within the State borders only. According to the petitioner, the efficacy of the Act ends with the State border and it cannot chase up to the farthest point outside the State where they have created the effect or consequences, say the State of Rajasthan. Pithily stated, the M.R.T.U. and PULP Act has no cross border application. What is the shooting range of the M.R.T.U. and PULP Act is the question to be answered in this petition. What is the width and breadth of the claws of this State Act is to be decided. There is no straight and direct authority to answer these queries, which are perhaps posed for the first time under the State Act. The authorities cited by both the learned Counsel are under the Industrial Disputes Act, which is the Central Act having its wings of applicability spread over the country. In the authorities cited by both the learned Counsel, a uniform and consistent ratio is very well settled. In those authorities, the origin of the cause of action i.e. the passing of the order did not arise and hence was not decided as the territory within which the jurisdiction of the court would arise. These authorities, however, do hold the jurisdiction of the courts as proper where the consequences or the effect of the orders is made. In these authorities, the situs of the employment or the consequences of the order is accepted as the territory to have jurisdiction, to entertain such disputes. There is no such authority which is cited as a binding precedent under this Act that the origin of the order is not to be treated as the place of the jurisdiction and the territory on which the consequences or the effect of such order is passed only will have jurisdiction. I have precisely summarised the issue in all the aforesaid citations and, therefore, I have not discussed each and every authority cited by the learned Counsel. I have, however, followed the principles which are enshrined in the judgments cited before me. The basic, uniform and consistent principle laid down in all these decisions for the purpose of jurisdiction is the foundation of situs of employment where the consequence or the effect of the order would be felt and where the industrial peace would be disturbed. The issue is very small and narrow but has been expanded, enlarged and magnified by the skill Counsel with their legal acumen and dexterity which I do appreciate.

7-A. The preamble of the Act specifies the purpose of this State enactment. From the longish title of the Act it is clear that it was enacted for the purpose, of recognition of trade union for facilitating collective bargaining for certain undertakings and for prevention of unfair labour practices in the State of Maharashtra. Section 2 specifies, the extent of the applicability of the Act being

the whole of the State of Maharashtra. The Act constitutes labour courts and industrial courts for the purpose of enforcing the provisions of the Act. Section 26 defines the unfair labour practices, which are listed in the Schedules 2, 3 and 4. Section 27 puts a total prohibition on engaging in unfair labour practice. It says that no employer or union and no employee shall engage in any unfair labour practice. Section 28 prescribes the procedure for dealing with the complaint relating to unfair labour practice. Section 28(i) of the M.R.T.U. Act, which is relevant reads as under:--

28(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 u/s 5 or as the case may be u/s 7 of this Act;"

8. It is significant to note that the opening Clause indicates as to against whom a complaint of unfair labour practice can be filed. The opening sentence of the Section "Where any person is engaged in or engaging in any unfair labour practice" is sufficiently clear to throw light on our matter. It is the situs of the unfair labour practice engaged in is given primacy. The petitioner company has passed the order of transfer of the respondent No. 1 employee from Udaypur to Imphal. The said transfer order came to be issued from the head office of the petitioner at Mumbai. The order under challenge is the order of transfer which according to the respondent No. 1 was a malafide transfer in the guise of following management policy falling under Item 3 of Schedule IV of the Act. According to the respondent No. 1 employee, the malafide order of his transfer was passed by the head office of the petitioner and, therefore, that is the root cause of unfair labour practice engaged in by the petitioner company and its concerned officers. According to the respondent employee, the unfair labour practice was engaged in by the petitioner company at Mumbai at its head office, and, therefore, the origin of the unfair labour practice was engaged in at the seat of the petitioner company which was at Mumbai within the jurisdiction of the industrial court, Maharashtra, Mumbai under the provisions of the M.R.T.U. and PULP Act. If we read the complaint, it is crystal clear that the allegations of unfair labour practice are made against the petitioner and its officers that they had engaged in the unfair labour practice under Item 4(a) of Schedule II and Item 3 of Schedule IV of the Act. It is immaterial or irrelevant at this stage whether the allegations are true or not and whether the transfer of the respondent No. 1 amounts to an unfair labour practice or not or whether the transfer was bona fide transfer arising out of administrative exigencies of the work in the area. It would further be not material for us at this stage to form our opinion as to who is actually guilty of the allegations made in the complaint. For the purpose of jurisdiction, the averments in the complaint are sufficient to decide the issue of jurisdiction. The defence set out in the written statement is not to be looked into or considered while considering and deciding the issue of jurisdiction. If the averments and allegations made in the complaint are to constitute prima facie

the unfair labour practice alleged, the industrial court Maharashtra, Mumbai constituted under the Act will have jurisdiction to entertain and decide such a complaint u/s 28 read with Section 30 of the Act. There is no dispute that the impugned order of transfer was issued by the head office at Mumbai and, therefore, the State Act would squarely apply in the matter. There is no dispute that the whole control of the establishments and undertakings all over the country is with the head office at Mumbai and if the averments and allegations made in the complaint squarely fall within the four corners of the Act, then the courts under this Act will certainly have jurisdiction to entertain and decide such complaints. The cause of action has certainly arisen at the place or the seat of the Head office at Mumbai, where the petitioner company has engaged in the alleged unfair labour practice. The petitioner, therefore, cannot escape the clutches of the Act on the ground that the consequence or effect of such an order was felt at Udaypur in Rajasthan as the respondent No. 1 employee was posted there and was transferred from Udaypur to Imphal. No doubt, it is true that the concerned employee was at Udaypur at the time of his transfer. No doubt the situs of employment is at Udaypur. The judgment of the Supreme Court and other High Courts (supra) relied upon by Shri Rele do support his contention that the alleged industrial dispute or the alleged unfair labour practice is said to have occurred or arisen at the place of the employment and, therefore, the appropriate Government has been decided in the aforesaid judgments to be that Government where such industrial dispute had arisen i.e. the situs of employment where the consequences or effect of the orders passed from the head office were felt or had resulted. In all these cases, the courts have upheld the references for adjudication of the industrial disputes referred by the State Governments within which the situs of employment of the concerned workman was mentioned. I do not have to labour on each and every judgment by discussing the facts therein. I have carefully gone through all the judgments and I have analysed them to conclude that the situs of employment was the criteria to uphold the reference for adjudication of the industrial disputes referred by such State Government. A liberal approach in such matters has been commended and insisted upon in favour of the weaker Section i.e. the labour. In no case, the jurisdiction of the reference courts/tribunals has been ousted. On the basis of the uniform thread of situs of employment as the basis of the jurisdiction under the Industrial Disputes Act/Bombay Industrial Relations Act, Shri Rele forcefully emphasised that it is the situs of employment alone which determines the jurisdiction and not the place from where the orders giving rise to such industrial disputes were passed, i.e. the head office. Shri Rele, pointed out that it is the place of employment where the industrial peace gets disturbed and, therefore, that Government is the only appropriate Government to take cognizance of such industrial disputes. Shri Rele is right to this extent. But he is wholly wrong when he submits that the head office or the place of the passing of the order is not determinative of the jurisdiction or the power of the appropriate Government to refer such disputes for adjudication. The situs of the employment does not exclude the situs of head office from where orders are originated

resulting in the industrial disputes. In my opinion, the root cause of the industrial disputes is the author of such orders which give birth to the industrial disputes. In my considered opinion, the root or the author can never be ignored for the purpose of industrial, adjudication. It is the head office as the source of the authority of the passing of the orders which result into industrial disputes as consequence or effect thereof, is the first to be held responsible to be questioned for their propriety or legality of the orders passed by them. They cannot escape the responsibility of such orders and challenge to such orders. The root cause of the action arises from the main or principal source of the head office and, therefore, this source cannot be ignored. The situs of order is equally important to determine the jurisdiction of the court/tribunal within which the situs of the author of the order is mentioned. In no case cited before me, by both the learned Counsel, the situs of the authority of the order is excluded from the Jurisdiction of the court/tribunal under any enactment. In no case it is held that the place of the head office from where orders are passed giving rise to the industrial disputes can not be considered for the purpose of jurisdiction. In all the cases cited, the workman had raised industrial disputes wherefrom they were employed and they did not go to the place of the head office to raise such industrial disputes. Even in the celebrated judgement in the case of Lalbhai Tricumlal Mills Ltd. v. Dhanubhaiu Motilal Vin, reported in 57 Bom.L.R. 907 Shri M.C. Chagla, the then C.J. of Bombay High Court, had left the question open as to whether the head office which had issued the order of termination had jurisdiction or not? It was not held that the court at the place of the head office had no jurisdiction to decide the legality and validity of the order of termination at all.

9. In the present case, it is not possible for me to agree with the submissions of Shri Rele that the Industrial Court under the M.R.T.U. and PULP Act has no jurisdiction at all to entertain and decide a complaint against the order passed by the petitioner from its head office at Mumbai. The unfair labour practice complained of is in respect of the transfer order and it was passed by the petitioner from the head office at Mumbai. The situs of the employment of the respondent No. 1 is at Udaypur in Rajasthan and, therefore, even the appropriate courts in Rajasthan will certainly have jurisdiction to entertain and decide the dispute if the respondents so chose to approach such courts in the State of Rajasthan on the basis of the doctrine of situs of employment. That, however, will not deprive or denude the Industrial Court in Mumbai under the Act of its independent jurisdiction to entertain and decide the complaint against the transfer order, which was passed by the petitioner from the Head office at Mumbai. This would be a case of concurrent jurisdiction of the courts. In my opinion, the cause of action has arisen at Mumbai as well as at Udaypur, where the effect and consequence of the transfer order was felt. It is also not possible for me to agree with the submissions of Shri Rele that the M.R.T.U. and PULP Act being the State Act has no application beyond the boundaries of the State. This submission is fallacious as the unfair labour practice complained of is originated

from the head office of the petitioner at Mumbai, though its effect is in some other State. Once the appropriate court under this Act decides the complaint and declares that the order of transfer amounted to unfair labour practice, within the meaning of Item 3 of Schedule IV of the Act, the Industrial Court will be well within its jurisdiction to tell the petitioner to desist from engaging in the unfair labour practice by requiring the petitioner to withdraw the same. As a result of such order, the effect or consequence of the order of transfer wherever felt would also be nullified. The Industrial Court under this Act will not be issuing any directions to the authorities beyond the borders of the State but would be issuing directions to the petitioner which is well within the territorial jurisdiction of the Industrial Court under the Act. It is not that the State Act is required to be made applicable beyond the boundaries of the State. The object of the Act is to prevent unfair labour practice and to decide the unfair labour practice and to give appropriate reliefs to the parties under the provisions of the Act and in accordance with the provisions of the law. Once the Industrial Court concludes that the petitioner company had engaged in unfair labour practice as complained of by the respondents, it would be well within the powers and jurisdiction of the Industrial Court under the said Act under Sections 28 and 30 to issue appropriate orders to the petitioner at Mumbai. I, therefore, hold that the Industrial Court or the labour court under the M.R.T.U. and PULP Act has jurisdiction to entertain and decide a complaint of unfair labour practice against the employer who passes an order from Mumbai or anywhere in the State of Maharashtra even though the situs of employment of the employee might be outside the State and though the effect or the consequences might be felt outside the State and not within the State. In the present case the impugned order of transfer was passed by the petitioner company at its Head Office at Mumbai within the territorial jurisdiction of the Industrial court, Maharashtra at Mumbai under the M.R.T.U. and PULP Act, that court will have proper jurisdiction to entertain and decide the present complaint.

10. In view of the above discussion, I do not find any merits in the petition and the same is dismissed with no costs. Rule is discharged. The Industrial Court shall decide the complaint on merits in accordance with law. In view of huge pendency of old matters before the Industrial Courts, I am not inclined to pass an oppressive order of directing the court to dispose of the complaint in any time frame. I am however, sure that it will do so as expeditiously as possible.

11. All concerned to act on a copy of this order duly authenticated by the Associate.