

(2000) 01 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 58 of 2000

H.S.T. Hedge

APPELLANT

Vs

The Premier Automobiles Ltd. and Others

RESPONDENT

Date of Decision : 14-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 45

Citation : (2000) 2 ALLMR 69 : (2000) 2 BomCR 64 : (2000) 2 BOMLR 92 : (2000) 86 FLR 43 : (2000) 3 MhLj 198

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : N.M. Ganguli, for the Appellant; T.S. Shetty, for the Respondent

Judgement

R.M. Lodha, J.—Rule returnable forthwith. Mr. Shetty, Advocate waives service for respondents.

2. By consent, writ petition is heard finally at this stage.

3. The petitioner has filed this writ petition under Article 226 of the Constitution of India challenging the two orders passed by the Industrial Court, Mumbai on 7-12-99 whereby the said Court has ordered Complaint (U.L.P) No. 322 of 1992 and an Application (ID-A) No. 292 of 1992 to be transferred from Judge, 4th Labour Court, Mumbai to Judge 6th Labour Court, Mumbai.

4. The two orders dated 7-12-99 impugned in the present writ petition suffered from gross arbitrariness which if not set aside may demoralise the Presiding Officers of Labour Court that the cases ripe for disposal at their fag end on the application of party feeling inconvenient may be got transferred from one Labour Court to the other without valid and justifiable reasons. It is true that Industrial Court is empowered u/s 45 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short M.R.T.U. & P.U.L.P Act)

to transfer the proceedings from one Labour Court to other Labour Court for its disposal but that does not mean that such power of Industrial Court to transfer the proceedings can be exercised arbitrarily and without any justifiable grounds. Again, merely because u/s 33-B read with section 39 of the Industrial Disputes Act, 1947, the power to transfer certain proceedings from one Labour Court to the other Labour Court has been given, the same cannot be exercised at the sweet will of the concerned Industrial Court in an arbitrary fashion. Section 45 of the M.R.T.U. & P.U.L.P. Act reads thus:---

"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."

5. A perusal of the said section would show without leaving any manner of doubt that such power of transfer of proceedings from one Labour Court to other Labour Court may be exercised by the Industrial Court for stated reasons in writing. Obviously the stated reasons must justify the exercise of power of transfer being good reasons. There is no scope of arbitrariness in exercise of such power. The Industrial Court cannot exercise the power of transfer of proceedings from one Labour Court to the other because he thinks so even though he does not record valid reasons for exercise of such power. Similarly, u/s 33-B of the Industrial Disputes Act, 1947, the appropriate Government has been empowered to transfer certain proceedings by order in writing and for reasons to be stated therein. Section 39 of the industrial Disputes Act, 1947 authorises the appropriate Government by notification in the Official Gazette to direct that the power exercisable by it under the Act and the Rules may be exercised by the officer or authority subordinate to it. Section 33-B and section 39 of the Industrial Disputes Act, 1947 read thus:---

33-B. Power to transfer certain proceedings.--- (1) The appropriate Government may by order in writing and for reasons to be stated therein withdraw any proceeding under this Act pending before a Labour Court, Tribunal, or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer proceed either de nova or from the stage at which it was so transferred:

Provided that whether a proceeding u/s 33 or section 33-A is pending before a Tribunal or National Tribunal the proceeding may also be transferred to Labour Court.

(2) Without prejudice to the provisions of sub-section (1) any Tribunal or

National Tribunal if so authorized by the appropriate Government may transfer any proceeding u/s 33 or section 33-A pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette and the Labour Court to which the proceeding is so transferred shall dispose of the same.

39. Delegation of powers.---The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, it may, as may be specified in the direction, be exercisable also.

(a) where the appropriate Government is Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government by such officer or authority subordinate to the State Government as may be specified in the notification.

6. The power exercisable by the appropriate Government or for that matter, the authority having been delegated with such power for transfer of certain proceedings pending before one Labour Court to another Labour Court has also to be exercised for good reasons. The said reasons must justify the transfer of proceedings from one Labour Court to another Labour Court. The power of transfer of proceedings cannot be exercised by the authority concerned u/s 33-B merely because he chooses it to do so. The transfer of proceedings from one Court to the other is done in rare cases and in special circumstances where the authority exercising the power of transfer is of the view that unless the matter is transferred, that may lead to injustice to one of the parties. The transfer of case from one Court to the other is a serious matter, because it indirectly casts doubt on the integrity or competence of the Judge from whom the matter is transferred. Such order of transfer therefore can only be passed when the transferring Court or authority finds a proper and sufficient cause. The said cause or the reasons for transfer must be clearly set out in the order. Though the power of the Industrial Court u/s 45 of M.R.T.U. & P.U.L.P. Act and the appropriate Government or the delegated authority u/s 33-B of Industrial Disputes Act is discretionary power exercise of which cannot be put within the straightjacket or cast iron for all the situation but it goes without saying that the concerned Industrial Court or the authority exercising such power of transfer of proceedings must record valid reasons for the transfer of the case. Coming to the facts of the present case, it would be seen that the Industrial Court has exercised the power in the arbitrary manner without any good or justifiable ground or sufficient or proper cause. As regards the transfer of Complaint No. 322 of 1992 is concerned, the Industrial Court in paras 13 and 14 of the impugned order has observed thus.--

"13. On considering the submissions of both the parties and on carefully perusing the Transfer Application and the affidavit-in-reply, I am of the view that the Complaint (U.L.P.) No. 322/92 is to be withdrawn from the file of 4th Labour Court. It is important to note that the complaint is of 1992 and the evidence of both the sides is over and the matter is at the stage of hearing the arguments of both the parties. I do-not find that it is necessary to make any observation regarding the allegations made in the Transfer Application by the applicant Company, regarding the fairness on the part of the Labour Judge. I am aware that much was canvassed by Mr. Palshikar that the Company had to bear about Rs. 30,000-35,000/- cost for the payment of fees to the Commissioner for recording the evidence and in support of his contention he invited my attention to the dates for recording the evidence by the Commissioner. It is important to note that the complainant has not led any evidence and in fact, the witness of the Company was to be examined. Apart from the above position, record reveals that when the Commissioner was appointed, the Ld. Labour Judge has quoted the fees of Rs. 500/- per sitting for recording the said evidence and the said order as referred to above, has been signed by both the parties. Meaning thereby, that the grievance made by Mr. Palshikar in respect of the appointment of the Commissioner and the cost incurred for the payment of fees is not relevant and has no significance because of the order passed by the Ld. Labour Judge in presence of the parties and their Advocates.

14. It is necessary to place on record that much has been alleged by the Applicant regarding the conduct of the Ld. Labour Judge while hearing the matter and thereby, it is contended that the Ld. 4th Labour Court will not give fair and proper justice to the Applicant. It is important to note that the complaint was made time-bound by the President, Industrial Court and the period has been extended from time to time and it reflects that the parties have not taken any effort to finish the matter within the time-limit. In the said circumstances, it was but natural on the part of the Ld. Labour Judge to dispose of the matter within the time-limit and for that purpose, he was constrained to press the Advocates appearing for the parties. The report of the Commissioner makes it clear that he recorded the evidence in the matter on about 60 dates. Meaning thereby, if the parties had co-operated the Commissioner, the matter could have been disposed of as early as possible. I do not find that it is necessary for me to go into the allegations levelled against the Ld. Labour Judge because the complaint in question is to be decided as early as possible in the interest of the complaint. In view of the aforesaid state of affairs, I do not feel that it is necessary to state in detail in the Transfer Application the grievances made by the Applicant and their denial thereof by the Opponent and to avoid further delay, I am convinced to exercise the powers u/s 45 of the M.R.T.U. & P.U.L.P. Act, 1971. Thus, I answer the point No. 1 in the affirmative."

7. A perusal of the aforesaid reasons would clearly indicate that the learned Industrial Court has found nothing wrong in conduct of the proceedings by the 4th Labour Court but has still ordered the transfer of the complaint from the

concerned 4th Labour Court to 6th Labour Court. It may be noted that the Complaint (U.L.P.) No. 322 of 1992 is at the fag end of disposal since the parties have already filed written arguments. Unless the Industrial Court held that there was some merit in the grievances made by the respondents herein who made the transfer application, which in fact, has not been found by the Industrial Court, I am afraid the transfer of complaint from Judge, 4th Labour Court to Judge, 6th Labour Court cannot be justified. Similarly, as regards the transfer of Application (I.D.A.) No. 292 of 1992, the learned Industrial Court has held in paras 9, 10 and 12 thus :-

"9. On considering the submissions of both the parties and on carefully perusing the Transfer Application and the reply, I am of the view that Application (I.D.A.) No. 292 of 1992 is to be withdrawn from the file of 4th Labour Court. It is important to note that the application is of 1992 and the evidence is still in progress. I do not find that it is necessary to make any observation regarding the allegations made in the transfer application regarding the fairness on the part of the Ld. Labour Judge. I am aware that such was canvassed by Mr. Palshikar that the company had to bear about Rs. 30,000-35,000/- cost for the payment of fees to the Commissioner for recording the evidence in Company (U.L.P) No. 332/92. Apart from the above position, record reveals that when the Commissioner was appointed the Ld. Labour Judge has quoted the fees of Rs. 500/- per sitting for recording the said evidence and the said order, as referred to above, has been signed by both the parties. Meaning thereby, that the grievance made by Mr. Palshikar in respect of the appointment of the Commissioner and the cost incurred for the payment of fees, is not relevant and has no significance because of the order passed by the Ld. Labour Judge in presence of the parties and their Advocates.

10. It is necessary to place on record that much has been alleged by the applicant in the conduct of the Ld. Labour Judge and thereby, it is contended that the Ld. 4th Labour Court will not give fair and proper justice to the applicant. It is important to note that the application was made time-bound by the President, Industrial Court and the period has been extended from time to time and it reflects that the parties have not taken any effort to finish the matter within the time-limit. In the said circumstances, it was but natural on the part of the Ld. Labour Judge to dispose of the matter within the time-limit and for that purpose, he was constrained to press the Advocates appearing for the parties. I do not find that it is necessary for me to go into the allegations levelled against the Ld. Labour Judge because the application in question is to be decided as early as possible in the interest of the opponents.

12. In view of the aforesaid state of affairs, I do not feel it is necessary to state in the detail in the Transfer Application the grievances made by the applicant and their denial thereof by the Opponent and to avoid further delay, I am convinced to exercise the powers u/s 33-B of the Industrial Disputes Act, 1947. Thus, I answer the point No. 1 in the affirmative."

8. The reasons afore-quoted do not justify at all the transfer of the proceedings from Judge 4th Labour Court to 6th Labour Court. The Industrial Court has not found that the Judge, 4th Labour Court was conducting the proceedings in the manner which may give rise to reasonable apprehension in the mind of the respondents herein that they may not get justice from the said Court. The Industrial Court has also not recorded that grievance raised by the respondents in the transfer application has any merit. I am afraid, in the matters which are at the fag end of disposal, the transfer thereof by the Industrial Court merely because it has such power would lead demoralising the subordinate Labour courts and would affect the system which cannot be countenanced. The impugned orders are grossly unjustified and therefore, have to be set aside.

9. Accordingly, the order dated 7-12-99 Exhibit "S" passed by the Industrial Court in Misc. Application No. (T.R.-U.L.P) No. 56 of 1999 in Complaint (U.L.P.) No. 322 of 1992 and the order of the even date passed in Misc. Application (T.R.-II) No. 56 of 1999 in Application (I.D.A.) No. 292 of 1992 are quashed and set aside.

10. The parties are directed to appear before the Judge, 4th Labour Court on 24-1-2000.

11. The learned Counsel for respondents submitted that even the concerned Judge, 4th Labour Court himself expressed his reluctance in deciding the matter, I do not find any material on record in that regard. In any case, if that was so, there was no necessity for the respondents herein to make transfer application before the concerned Industrial Court. Be that as it may if the concerned Judge, 4th Labour Court for any reason is not desirous of proceeding further with the matter, the present order shall not come in his way in requesting the Industrial Court for transfer of the proceedings to come other Labour Court. The concerned Court is expected to hear and decide Complaint (U.L.P.) No. 322 of 1992 as expeditiously as possible and in no case later than 15 days of appearance of the parties. The concerned Labour Court is also expected to hear and decide Application (I.D.A.). No. 292 of 1992 expeditiously and preferably within three months of the date of appearance of the parties.

No costs.

The parties may be provided ordinary copy of this order duly authenticated by Court Associate on payment of usual copying charges and upon production thereof, the concerned Labour Court and Industrial Court to act accordingly.

12. Petition allowed.