

(2024) 03 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition (Lodg.) No. 4064 Of 2024

M/s. Abbott India Ltd And Others

APPELLANT

Vs

All India Abbott Employees Union

RESPONDENT

Date of Decision : 22-03-2024

Acts Referred:

Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 4, 5, 7, 26, 28

Citation : (2024) 03 BOM CK 0060

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : V.P. Sawant, N.R. Patankar, Prabhakar M. Jadhav, Tanaya Patankar, A.S. Peerzada

Final Decision : Allowed

Judgement

Sandeep V. Marne, J

1) Rule. Rule is made returnable forthwith. With the consent of learned counsels appearing for parties, the Petition is taken up for final hearing and disposal.

2) Petitioner challenges the Order dated 1 January 2024 passed by the Industrial Court rejecting Petitioner's Application raising the preliminary issue of territorial jurisdiction in Complaint (ULP) No. 192 of 2023 filed by Respondent-Union to espouse the cause of Mr. Sandeep Kumar Dixit, a Territory Business Developer posted at Raebareli with regard to alleged change of his territory configuration. Petitioner claims that since Mr. Sandeep Kumar Dixit is employed at Raebareli in Uttar Pradesh i.e. outside Maharashtra, the Industrial Court established under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) does not have jurisdiction to entertain his complaint. It must be observed here that this is not the first time that the issue of jurisdiction of Industrial Courts in Maharashtra to decide complaints filed by the Respondent-Union is raised before this Court. It appears that on the issue of jurisdiction, various legal battles have ensued between the

Petitioner and Respondent-Union in the past. Before referring to various decisions rendered by this Court on the issue of jurisdiction, it would be first necessary to narrate brief factual background in which the issue has arisen for determination in the present petition.

3) Petitioner is a Limited Company incorporated under the provisions the Indian Companies Act, 1956. Petitioner is engaged in the business, inter-alia of manufacture and marketing of pharmaceutical products. Petitioner employs Medical Representatives and Territory Business Developers (TBD) for promotion of its products. Respondent is a union of employees employed by Petitioner No.1 and it is registered under the provisions of the Trade Unions Act, 1926.

4) Mr. Sandeep Kumar Dixit came to be employed by Petitioner No.1 as Territory Business Developer (TBD) w.e.f 1 May 2008. Though he was initially posted at Headquarter Office in Bengaluru and was later posted and continues to remain at Raebareli in Uttar Pradesh. Petitioner claims that Mr. Dixit has never operated or worked in the State of Maharashtra at any point of time. He is a resident of Raebareli. That his supervisors are Area Business Manager (ABM) and Business Manager (BM) having their offices in Lucknow.

5) Petitioner claims that there is a program implemented for grant of opportunity to TBDs to improve his/her performance and to improve productivity in the event it is found that there is a decline in performance and productivity of a particular TBD. That they have devised Performance Enhancement Programme (PEP), under which Petitioner No.1 provides opportunity, monitoring and guidance to the concerned TBDs. That the decision to apply PEP is taken by the concerned Superior Officer of the Region. PEP includes inter-alia directing the concerned TBD to concentrate on the product on which he is found to be more productive as well as suitable adaptation of his workload and area of operation to achieve targets. That PEP is implemented without affecting his salary or any other conditions of service and according to the Petitioners, it is only an ameliorative measure to weed out bad performance. That the practice of implementing PEP in respect of a poor performer is a usual practice adopted by all major pharmaceutical companies.

Neeta Sawant WPL-4064-2024-FC

6) It is the case of the Petitioners that Mr. Sandeep Kumar Dixit was consistently showing weak performance, which was impacting region's performance. That with a view to give him an opportunity to improve his work performance, PEP was implemented in respect of Mr. Sandeep Kumar Dixit by his Manager, Mr. Jitendra Sadhwani who is based in the regional office at Lucknow. That due intimations were given to the Respondent-Union about poor performance of Mr. Dixit. That even after implementation of PEP, there was no improvement in the performance of Mr. Sandeep Kumar Dixit as per the Report sent by the ABM and BM. In this background, an email was sent to Mr. Dixit by his BM from Lucknow office on 20 February 2023 by which he was instructed to consolidate his efforts

in the main City of his HQ Raebareli and not to visit the nearby towns till further intimation. That this was done by keeping in mind the fact that in the main town of Raebareli, there are specialists, surgeons, consultants, multi-specialty hospitals in addition to general practitioners as compared to nearby towns lacking presence of such Specialists and Hospitals. On the contrary, it is Respondent-Union's case that the territory configuration of Mr. Dixit is deliberately tinkered with thereby resulting in not just change of his service conditions but also reduced remuneration. It is not necessary to delve deeper into the allegations and counter allegations made by the parties in the light of limited controversy of jurisdiction involved in the present petition.

7) In the above factual background, Respondent-Union filed Complaint (ULP) No. 192 of 2023 before the Industrial Court, Mumbai taking email dated 20 February 2023 as the cause of action and seeking its withdrawal. Petitioners appeared in the Complaint and opposed the same by filing Affidavit dated 4 September 2023. Petitioners also challenged the maintainability of the complaint on the ground of lack of territorial jurisdiction of Industrial Court at Mumbai to entertain complaint filed in respect of Mr. Sandeep Kumar Dixit, who is working at Raebareli, Uttar Pradesh.

8) By Order dated 1 January 2024, the Industrial Court has dismissed Petitioner's application at Exhibit-C-6 raising the issue of territorial jurisdiction holding that the Industrial Court has territorial jurisdiction to decide the complaint of Respondent-Union. Aggrieved by the Industrial Court's Order dated 1 January 2024, Petitioners have filed the present petition.

9) Mr. Sawant, the learned senior advocate appearing for the Petitioner would submit that the Industrial Court has erroneously exercised jurisdiction in respect of the grievance of Mr. Dixit who, at no point of time, worked in Maharashtra. That the grievance of Mr. Sandeep Kumar Dixit, which is sought to be espoused by the Union, is of individual nature and the Labour/Industrial Court in Uttar Pradesh alone would have territorial jurisdiction to decide the said grievance. That in the complaint, Mr. Dixit is not even impleaded as a party. That he has personally not raised any grievance either with the Petitioners or before any Labour/Industrial Court. That the Industrial Court has erroneously assumed jurisdiction on the basis of execution of MOU dated 7 March 2012 in Mumbai.

10) Mr. Sawant would rely upon Division Bench Judgment of this Court in Glaxo Smith Kline Pharmaceuticals Ltd. Vs. Abhay Raj Jain & Anr. (2008) 6 Bom C.R. 602 in support of his contention that the situs of employment is a relevant factor to decide the place of cause of action and the actual adoption of unfair labour practice would be at a place at which the damage is caused to the employee. That mere issuance of an order from a particular place would not confer jurisdiction on the Industrial Court. That the cause of action for filing a complaint would arise only at a place where the harassment is allegedly caused to the employee. He would submit that implementation of PEP by Lucknow Regional Office allegedly affects the working of Mr. Dixit in Raebareli and therefore the

Industrial Court in Maharashtra does not have jurisdiction to decide the complaint.

11) Mr. Sawant would rely upon the judgment of single judge of this Court in M/s. Abbott Healthcare Private Limited Vs. Maharudra Chikane and Anr., Writ Petition No. 191 of 2023 decided on 5 June 2023 which according to Mr. Sawant, reiterates the position that mere location of the office of Petitioners in Mumbai would not automatically confer jurisdiction on Industrial Court at Mumbai in respect of employees of Petitioners spread over various parts of the country. He would also rely upon the judgment of this Court in Manish Ashok Badkas V/s. M/s. Novartis India Ltd. and Anr. Writ Petition No. 2007 of 2009, decided on 3 November 2009. He would further submit that it is settled position of law that any order takes effect only when it is served and applying this logic, the place at which the order is served, would confer jurisdiction on the court. In support of his contention, he would rely upon judgment of the Apex Court in State of Punjab V/s. Amar Singh Harika AIR 1966 SC 1313. Relying upon Notification dated 6 February 2004, Mr. Sawant would submit that territorial limits of jurisdiction of each Industrial Court have been prescribed in the said Notification and that therefore the Industrial Court, Mumbai cannot entertain a Complaint raising grievance about an employee posted in Raebareli. He would pray for setting aside the Order passed by the Industrial Court.

12) Per-contra, Mr. Peerzada the learned counsel appearing for the Respondent-Union would oppose the petition and support the order passed by the Industrial Court. According to Mr. Peerzada, what is sought to be espoused by the Respondent-Union is not the individual grievance of Mr. Sandeep Kumar Dixit, but deliberate attempt on the part of the Petitioner to violate various settlement/MOUs executed with the Union. That the grievance of the Respondent-Union is about violation of terms and conditions of settlement and MOUs which are undisputedly executed in Mumbai and that therefore the Industrial Court at Mumbai has territorial jurisdiction to entertain Respondent's complaint. He would invite my attention to some of the clauses of the MOU executed between Petitioner No.1 and Respondent-Union on 21 February 2013, under which, according to Mr. Peerzada, the Petitioners are prohibited from interfering in territory configuration of the TBDs. Mr. Peerzada would submit that this is just a test case where the Petitioners are seeking to tinker with the territory configuration of the TBDs by indirectly seeking to change their conditions of service. To highlight the case, he would submit that Mr. Sandeep Kumar Dixit used to earlier visit 173 Doctors, out of whom 15 Doctors were visited twice a month and 118 Doctors once a month. That the illegal direction issued by the Petitioners forces Mr. Dixit to visit only 96 Doctors out of which 41 Doctors are to be visited twice a month and 55 Doctors are to be visited thrice a month. He would submit that visiting a same Doctor three times a month would obviously result in decline in the performance of Mr. Dixit. That thus far from encouraging Mr. Dixit to improve his performance, the impugned email dated 20 February 2023 seeks to ensure that his performance declines. That the email dated 20

February 2023 results in unilateral change of territory configuration and since it violates the MOU, the Respondent-Union is entitled to invoke the jurisdiction of the Industrial Court at Mumbai.

13) Mr. Peerzada would submit that the issue involved in the present petition is squarely covered by the judgment of this Court between the same parties in Abbott India Ltd & Ors. Vs. All India Abbott Employees Union & anr. Writ Petition No. 1717 of 2011 decided on 12 October 2011. According to Mr. Peerzada, the issue involved in that petition is exactly identical to the one involved in the present petition. That in the said judgment, this Court has laid down the law that whenever issues relating to violation of settlements/MOUs are raised by the Union, the Industrial Court at Mumbai would have territorial jurisdiction to deal with such complaints. He would submit that the Industrial Court has rightly followed the judgment of this Court in Abbott India Ltd. and that therefore it is not necessary to once again determine the very same issue which is settled in the year 2011 itself. He would pray for dismissal of the petition.

14) Rival contentions of the parties now fall for my consideration.

15) The short issue that arises for consideration is whether the Industrial Court at Mumbai has jurisdiction to decide Complaint (ULP) No. 192 of 2023 instituted by the Respondent-Union to espouse the cause of Mr. Sandeep Kumar Dixit, a TBD posted at Raebareli, Uttar Pradesh. There is no dispute to the position that Mr. Dixit has never worked in any part of Maharashtra and that he has been continuously working outside Maharashtra. That his regional office and controlling officers are located at Lucknow. It is also not in dispute that the concerned email dated 20 February 2023 issued by Mr. Jitendra Sadhwani has originated from Lucknow. Thus, no order/ communication affecting any service conditions of Mr. Dixit are admittedly issued from Mumbai. Jurisdiction of Industrial Court is sought to be invoked by Respondent-Union contending that the email dated 20 February 2023 amounts to violation of MOUs dated 7 March 2012 and 21 February 2012 as well as SFA policy. It is Union's contention that since MOUs are executed and SFA is issued at Mumbai, the Union is entitled to file a complaint in respect of its grievance about violation of MOUs and SFA by filing complaint before the Industrial Court at Mumbai.

16) The Complaint (ULP) No. 192 of 2023 is filed by Respondent-Union under the provisions of Section 28 read with Item-5 of Schedule II and Items 3, 5, 9 and 10 of Schedule-IV of the MRTU & PULP Act. Section 28 of the MRTU & PULP Act reads thus:

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.

17) Thus, under Section 28, complaint can be filed by an employee or a union, where any person engages in any unfair labour practice, by filing a complaint before the Court competent to deal with such complaint under Sections 5 or 7 of the Act. Section 26 of the Act deals with unfair labour practices to mean any of the practices listed in Schedules-II, III and IV of the Act. The MRTU & PULP Act is silent about the territorial jurisdiction of the Industrial Court established under Section 4 of the Act. Since commission of unfair labour practice creates a cause for filing of complaint under Section 28 of the Act, the place where unfair labour practice is committed, ideally would be a relevant factor for determining the

territorial jurisdiction of an Industrial Court. In ordinary circumstances, unfair labour practices are committed qua an employee at a place at which he is posted. However, MRTU & PULP Act deals with two aspects. viz. recognition of trade unions and unfair labour practices committed qua employees. Since recognition of trade union is also an integral part of the MRTU & PULP Act, unions can also file complaints under Section 28 complaining about commission of unfair labour practice by an employer. Thus, right conferred on unions to file complaints of unfair labour practice creates confusion about territorial jurisdiction of the Industrial Court. As observed above, in ordinary circumstances, the place of posting of an employee would ideally be the determinative factor for deciding the territorial jurisdiction of the Industrial Court. However, independent of rights conferred on employees, MRTU & PULP Act also recognises rights of unions. A union may espouse the cause of an individual Workmen or on behalf of its entire members by filing a Complaint before the Industrial Court. In the present case, the Respondent-Union contends that since the Petitioners have violated the MOUs executed with the Union, it is entitled to maintain a complaint before the Industrial Court at Mumbai. Jurisdiction of Industrial Court at Mumbai is invoked essentially contending that the main cause is not with regard to individual suffering of Mr. Sandeep Kumar Dixit, but the act on the part of the Petitioners in violating the conditions of MOUs and SFA.

18) The Division Bench of this Court in Glaxo Smith Kline Pharmaceuticals (supra) has dealt with the issue of jurisdiction of Industrial Court at Mumbai to decide the issue of transfer of an employee from Udaipur to Imphal. In that case, the registered office of the Appellant-Company was at Mumbai and it had employed Medical Representatives all over the country for promoting sale of its products. The Respondent therein was a Medical Representative working at Udaipur and he was sought to be transferred from Udaipur to Imphal. In the light of this factual position, the Division Bench of this Court dealt with the issue of jurisdiction of Industrial Court at Mumbai to deal with the complaint filed by the Respondent therein challenging his transfer from Udaipur to Imphal. This Court held in paras-30, 31 and 32 as under :

30. 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.

31. 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. 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.

32. 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 following the appeal. 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.

19) Relying on the judgment of Glaxo Smith Kline Pharmaceuticals, it is sought to be contended on behalf of the Petitioners that the principle of law laid down in that judgment would apply to every case where the employee, in respect of whom allegation of unfair labour practice is made, is posted out of Maharashtra. Reliance is placed on the judgment of Single Judge of this Court in Manish Ashok Badkas (supra), wherein it has held that the judgment in Glaxo Smith Kline Pharmaceuticals though dealing with an order of transfer, the principle of law laid down therein applies to all cases. In Manish Ashok Badkas, the HQ of the Petitioner therein was at Sagar in the State of Madhya Pradesh and later at Ujjain. His services were terminated and he instituted a complaint of unfair labour practice before the Labour Court at Mumbai. This Court followed the judgment in Glaxo Smith Kline Pharmaceuticals holding that the situs of employment would be a relevant factor to decide whether the complaint would be maintainable under the MRTU & PULP Act. This Court therefore held that since

the Petitioner therein was employed in Madhya Pradesh at the time of passing of order of termination, the Labour Court at Mumbai did not have jurisdiction to decide the complaint of unfair labour practice under the MRTU & PULP Act.

20) Reliance is also placed by Mr. Sawant on judgment of Single Judge of this Court in (N.J. Jamadar, J.) in Abbott Health Care Pvt. Ltd. (supra). After going through the judgment, I am of the view that though this Court has discussed the objection of jurisdiction, ultimately the issue is not decided and the Labour Court was directed to frame the issue of jurisdiction as preliminary issue and to decide the same. Therefore, the judgment in Abbott Health Care Pvt. Ltd. provides no assistance in deciding the issue at hand.

21) The Respondent-Union, on the other hand, relies upon the judgment of this Court in Abbott India Ltd (supra) which, according to Mr. Peerzada, is rendered between the same parties and consequently decides the exact issue which is involved in the present petition. In Abbott India Ltd, Petitioner had filed Writ Petition challenging the order of the Industrial Court rejecting its preliminary objection of territorial jurisdiction. The Respondent-Union therein had filed a complaint of unfair labour practice in violating various settlements executed with the Union. The main grouse of the Union therein was about action of Petitioner in serving promotion orders to 800 Sales Promotion Employees (SPEs) during workshop held at Bangalore and Hyderabad designating them as Territory Business Managers. The Union complained that fresh appointment letters in the form of promotion orders were deliberately issued to ensure that the concerned employees do not continue with the Union. That such a course of action was adopted without consulting the Union. This action according to the Union amounted to violation of terms of settlement. With this broad grievance, the Union therein filed complaint of unfair labour practice against the Petitioner in Industrial Court at Mumbai. This Court took into consideration various judgments including the judgment of the Division Bench in Glaxo Smith Kline Pharmaceuticals and held in paras-34, 35, 36, 42 and 43 as under:

34} In the instant case, the decision of the Division Bench cannot be of any assistance to the petitioners because what the petitioners are alleging is, that the Industrial Court at Mumbai lacked territorial jurisdiction to entertain and try a complaint of unfair labour practice, which complaint does not only project and raise the issue of transfer. The complaint has been referred to by me in details. The allegations in the complaint have been reproduced by me, with a view to appreciate the rival contentions. If the complaint is perused as a whole, it projects that the service conditions of the petitioners' employees are determined and decided by it at Mumbai. All policy decisions in relation thereto, are taken at Mumbai. Whenever such policy decisions are taken at Mumbai and they are known to all the member employees of the petitioners through the medium of the respondent No.1-Union, which is a recognised Union and the Undertaking of the petitioners and its registered office is at Mumbai, that the complaint has been filed at Mumbai. Each of the issues in relation to the service conditions have been

raised by the respondent No.1-Union at Mumbai. There is a reference to the Charter of Demands and the prior settlement, each one of which is a event taking place at Mumbai. It is alleging breach of the terms of the settlement and the essential foundation of collective bargaining, that the unfair labour practice on the part of the petitioners have been extensively set out. The allegations in the complaint refer to Items 9 and 10 of the MRTU and PULP Act. These Items 9 and 10 in Schedule IV read thus:

"9. Failure to implement award, settlement or agreement. 10. To indulge in act of force or violence."

35} A bare perusal of the same would indicate that they refer to failure to implement award, settlement or agreement and to indulge in any act of force or violence. If what the Union alleges, is failure to implement an award, settlement or agreement in relation to the service conditions which have been determined and decided after negotiations and discussions with the sole collective bargaining agent, viz., recognised Union at Mumbai and merely because the complaint alleges force or violence stated to have occurred at a conference at Bangalore, and which act is allegedly committed so as to cause a breach of the settlement agreement with the Union, then, I do not see how a complaint of unfair labour practice under the abovementioned items of MRTU and PULP Act, cannot be filed by the recognised Union in Mumbai. The service conditions and policies are framed at Mumbai. The recognised Union is based at Mumbai. Both are amenable to a law made by the State legislature as is clear from the schedules thereto. The Members of the recognised Union may be working out of Maharashtra. The Union proclaims to be a single all India Union. However, that alone is not decisive in the present case because what is also alleged in para 3.1 of the complaint is that the Union is a registered trade union functioning in the establishment of the company since 1966. It is also a recognised Union under the State Act. It is submitting Charter of Demand regarding the service conditions of the employees at the Head Office of the petitioner No.1 at Mumbai. The settlements and decisions on these charters are taken at Mumbai. The appropriate Government for the company is the State of Maharashtra. In my view, this is not a case where any extra territorial operation of the statute is an issue involved. This is not a case where the Industrial Court at Mumbai is taking cognizance of a cause of action which has occurred beyond its territorial limits and thereby extending its territorial operation. It is clearly a case where unfair labour practice is stated to have been committed within the territorial limits of the Industrial Court, inasmuch as Charter of Demands are concerned, negotiations in pursuance thereof are under way and mid-stream, the acts of force and/or violence have been committed which caused, according to the Union, complete failure to abide by the settlement or agreement in relation to the service conditions. Therefore, it is not as if some isolated incident of a conference at Bangalore is the basis of the allegations in the complaint. The complaint perused in its entirety projects a grievance of unfair labour practice having being committed within the territorial limits of the said Court.

36} Equally, there is an allegation of unfair labour practice which has been committed by refusing to bargain collectively, in good faith with the Recognised Union which, once again is the concept also under the State law, namely, MRTU and PULP Act, 1971. If the refusal to bargain collectively, in good faith is an alleged unfair labour practice on the part of the employer and which act has allegedly taken place at Mumbai, where both the employer and the Union are located, then, I do not see how the Court at Mumbai lacked territorial jurisdiction. This is an Item 5, covered by Schedule

II. The Schedule II enlists unfair labour practices on the part of employers, Schedule III sets out the unfair labour practices on the part of the Trade Unions and Schedule IV set out General Unfair Labour Practices on the part of the employers.

42} Thus, finding that the subject matter of the complaint was squarely within the competence of the Industrial Court and also finding that the cause of action has arisen within its territorial limits, that the conclusion of the Industrial Court that it had jurisdiction, cannot be said to be erroneous or vitiated by an error apparent on the face of record. Ultimately, it is a finding of fact and on which petitioners' hold another view. We are in writ jurisdiction. There is no perversity committed by the Industrial Court while rendering such finding. For all these reasons, I do not find merit in this writ petition and it is rejected. Rule is discharged but without any order as to costs.

43} It is clarified that as and when the application for interim relief made by the 1st respondent is taken up and the request is to stay the orders of transfer of individual employees and if such of the employees in relation to whom the interim reliefs are sought, are posted out of Maharashtra even initially and have been transferred to offices/regions outside the State of Maharashtra, then, insofar as their cases are concerned, it would be open for the petitioners to raise a plea of lack of territorial jurisdiction of the Industrial Court and if such a plea is raised, then, in relation to such employees, after hearing the parties, the Industrial Court can make appropriate order in accordance with law. Those pleas and in relation to transfer are not dealt with nor concluded by either the impugned order or the judgment rendered in the present writ petition.

22) Mr. Peerzada would contend that the judgment of S.C. Dharmadhikari J. in Abbott India Ltd. conclusively holds that the Respondent-Union is entitled to file a complaint of unfair labour practice in Industrial Court at Mumbai, where there is an allegation of violation of terms of settlement. On the other hand, it is the contention of Mr. Sawant that in Abbott India Ltd. the question involving conditions of service of several employees, including the ones posted in Maharashtra and therefore the complaint filed before the Industrial Court at Mumbai was held to be maintainable.

23) After going through the facts as well as the findings in Abbott India Ltd, it is seen that the grievance raised by the Union therein was about change of

conditions of service of as many as 800 SPEs whereby they were issued fresh appointment orders (couched as promotion orders) re-designating them as Territory Business Managers. Since sudden change of conditions of service in respect of 800 members of Union was effected by Petitioner, that too by inviting them at a conference held at Hyderabad and Bangalore, particularly when negotiations were taking place on Charter of Demands with the Headquarter Office at Mumbai, the Union was required to file a complaint of unfair labour practice. It is in the background of these facts that this Court held that the conditions of service of the concerned employees were determined and decided at Mumbai. This Court also held that Charter of Demands and Settlements were effected at Mumbai and the Union alleged breach of terms of settlement which was the essential foundation of collective bargaining. This Court further held that the commission of unfair labour practice cannot be treated as having taken place at Bangalore or Hyderabad in the facts and circumstances of that case.

24) Thus, in Abbott India Ltd, this Court upheld jurisdiction of Industrial Court at Mumbai essentially on account of the fact that the grievance raised by the Union therein was concerning large number of employees (800 SPEs) spread across the country, many of whom were working in Maharashtra as well. The case involved change of conditions of large number of employees situated in different parts of the country. Fresh appointment orders in the form of promotions were served on them in conferences held at Bangalore and Hyderabad. It is on account of these factors that this Court held in Abbott India Ltd that the Industrial Court in Mumbai had jurisdiction to entertain the complaint filed by the Union alleging unfair labour practice by violating the terms of settlement. However, in para-35, this Court clearly held that where there is isolated incident of transfer of any SPE, Petitioner would be entitled to raise objection of jurisdiction.

25) Unlike in Abbott India Ltd, the issue involved in the present case is about individual grievances of Mr. Sandeep Kumar Dixit to whom direction is given by his supervisor from Lucknow vide email dated 20 February 2023. In this regard it would be apposite to reproduce the contents of email dated 20 February 2023 which reads thus :

Dear Mr Sandeep,

It has been observed that there is steep decline in your performance post PEP meeting at Mumbai in Aug 2022. This meeting was to improve your performance but on the contrary your performance has come down to just 53.00% with a PCPM of 1.91 L (Aug 22-Dec'22) though till July 2022 your performance was 86.00% with PCPM of 2.80 L. Further you have started 2023 with just 51.00% in Jan'2023 which is lowest in the region.

Apart from this there is no improvement in your brand performance including power brands as well as NPIs. One more observation is there that till July'22 your Brufen sales were 10.92 L that is 1.56 L/month but you ended year with just 13.24 L YTD means in last five month your sales were only 2.32 L just 0.46 L/

month. There is straight decline of 1.10 L/month alone in Brufen.

Further your HQ is surrounded with good number of Ex towns and currently you are covering 9 Ex towns. Total 86 Drs are available in these towns as per Genpower data and total 182 doctors are there in your DVL including HQ. Your return per doctor was just INR 1538.00/Dr till July'22 which has come down to INR 1050.00/Dr (Aug'22-Dec'22). This return/Dr is now just INR 830.00/Dr in Jan'23.

Looking into above data let's consolidate your efforts on set of doctor based at your HQ to improve P/D and stop visiting all 9 Ex towns till further information and same will be effective from 1st March 2023. This will help you to concentrate more on all important doctors of HQ town as all 2 PC doctors are available at HQ only. Your ABM will also plan his JFW accordingly. Suggested coverage is given below for your doctors available at HQ.

Total Doctors at HQ currently

1 PC

2 PC

96

41

55

No. of visits

41*2

55*3

TOTAL

82

165

Total calls

247

No of FW

24

Call Avg

10.3

Kindly acknowledge the receipt of this mail and plan your coverage accordingly. Let's start working on improving per dr. return and improve your overall performance.

All the best.

26) Perusal of the email dated 20 February 2023 would indicate that the supervisor of Mr. Sandeep Kumar Dixit has directed him to consolidate his efforts on set of Doctors based at Headquarters to improve his performance and stop visiting the nine towns till further information. Such direction has been issued to help him to concentrate more on important doctors of HQ. Whether issuance of such direction affects the conditions of service or remuneration payable to Mr. Sandeep Kumar Dixit is something which forms merits of the dispute between the parties. For the purpose of the present petition, it is seen that the dispute is isolated case in respect of one employee about his performance, who is posted at Raebareli, Uttar Pradesh. Infact, Dharmadhikari, J. has, in para-43 of judgment in Abbott India Ltd, granted opportunity to the Petitioner to raise the issue of lack of territorial jurisdiction of Industrial Court, Mumbai in respect of the grievance of any employee who are posted out of Maharashtra. Thus the ratio of the judgment of Abbott India Ltd is that the Industrial Court at Mumbai would have jurisdiction only in respect of the larger grievance of the Union about violation of settlements qua large number of its members. When it comes to grievance of individual member, this Court did not hold that Industrial Court at Mumbai would continue to have jurisdiction and granted opportunity to the Petitioner to raise the issue of jurisdiction before the Industrial Court. The present case undoubtedly relates to individual grievance of Mr. Sandeep Kumar Dixit. Therefore, the judgment in Abbott India Ltd cannot be relied upon to hold that the Industrial Court at Mumbai would have jurisdiction to decide individual cause of Mr. Dixit relating to measures adopted to improve his personal performance.

27) Mr. Peerzada has strenuously attempted to suggest that directions issued in the email dated 20 February 2023 amounts to violation of settlements in the form of MOUs dated 7 March 2012 and 21 February 2013. I have gone through both the MOUs and I do not find any clauses relating to restrictions on the Petitioner to suggest measures to any particular TBD for improving his personal performance. Mr. Peerzada has relied upon Clause-7(c) of the MOU dated 7 March 2012 which reads thus :

7(c.) In case after such transfer(s) if there are excess number of SPEs (MRs/ TBDs) or TEs in any territory, such SPEs (Mrs/Tbs) or TEs shall continue to work at their existing headquarter and further changes of head quarter/territory coverage shall be discussed with the Union and decisions will be arrived at amicably.

28) Similarly he has also relied upon the opening portion of MOU dated 21 February 2013 which reads thus :

The Management and the Union have agreed to find solutions to the issue pertaining to the restructuring of the existing territories and incorporate enhanced geographical coverage so as to improve productivity.

29) However, Clause-6 of the MOU dated 21 February 2013 reads thus :

6. The Union agrees that other related aspects viz. Coverage of total number of doctors and repeat doctors, field work days for coverage and repeat coverage etc. shall be discussed and agreed by the employee/s with their respective Area Business Manager and Business Manager and shall work upon the agreed list.

30) Infact, reading of Clause 6 of the MOU dated 21 February 2013 would indicate that the aspects such as coverage of total number of Doctors and repeat doctors is to be discussed by individual employee with his/her Area Business Manager and Business Manager. Under clause-8, the covenants of the Agreement are made subject to the sole prerogative of the Management to organise/re-organise its business. I do not wish to delve deeper into the aspect of violation or otherwise of the MOUs as the same would amount to touching to the merits of the case. Suffice it to observe that this is not a case where any cause is created in favour of the Union on account of violation of any condition in the MOU in respect of large number of its members. It cannot file every complaints before Industrial Court at Mumbai in respect of individual grievance of isolated employee posted in different parts of the country. In my view, therefore the Industrial Court at Mumbai does not have jurisdiction to entertain the complaint filed by the Respondent-Union.

31) The petition accordingly succeeds. Order dated 1 January 2024 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 192 of 2023 is set aside and application filed by the Petitioners at Exhibit-C-6 is made absolute in terms of prayers made therein.

32) With the above observations the Writ Petition is allowed. Rule is made absolute. There shall be no orders as to costs.