

(2008) 09 BOM CK 0064

In the Bombay High Court

Case No : Appeal No. 316 of 2008 in Writ Petition No. 1304 of 2008, Appeal (L) No. 430 of 2008 in Writ Petition No. 1304 of 2008 and Writ Petition No. 3505 of 2008

Nicholas Piramal India Limited and Others

APPELLANT

Vs

Nicholas Employees Union
 Nicholas Employees Union
Vs Nicholas Piramal India Limited and Others

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 26, 27, 28, 30(2)

Citation : (2008) 5 ALLMR 62 : (2009) 2 BomCR 385 : (2008) 119 FLR 918 : (2009) 1 LLJ 649

Hon'ble Judges : Swatanter Kumar, C.J.;A.P. Deshpande, J

Bench : Division Bench

Advocate : J.P. Cama, instructed by Haresh Mehta and Co. in Appeal No. 316 of 2008 in Writ Petition No. 1304 of 2008 and Arshad Shaikh, instructed by Piyush Shah, in Appeal L No. 430 of 2008 in Writ Petition No. 1304 of 2008 and Writ Petition No. 3505 of 2008, for the Appellant; Arshad Shaikh, instructed by Piyush Shah in Appeal No. 316 of 2008 in Writ Petition No. 1304 of 2008 and J.P. Cama, instructed by Haresh Mehta and Co. in Appeal (L) No. 430 of 2008 in Writ Petition No. 1304 of 2008 and Writ Petition No. 3505 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—The Appellant is a Limited Company engaged in the business of manufacturing and marketing of pharmaceutical products. In the year 1988, Nicholas Laboratories India Limited was taken over by the Piramal Group. They are having manufacturing plants at Thane, Mahad in Maharashtra, Pithampur in Madhya Pradesh, Baddi in Himachal Pradesh, Digwal in Andhra Pradesh and Ennore in Tamil Nadu. The Appellant Company acquired the Plant at Mulund on 7th February, 2000 and wanted to expand its business in the field of manufacturing. The Company wanted to start

manufacturing of Haemacel which is a large volume parental product and a life saving drug and therefore, transferred certain workmen from its erstwhile Deonar establishment which had become an unviable unit on a stand-alone basis. The order of transfer was challenged by the workmen by filing a complaint under the Maharashtra Recognition of trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Learned Industrial Court, Mumbai, being Complaint (ULP) No. 172 of 2000. The workmen did not report for work at Haemacel Plant between the period from 7th February, 2000 to 20th September, 2000. It was only after the High Court had passed an order that the workmen reported to their duty at the transferred place. The Company on account of business necessities decided to shift its Haemacel Plant from Mulund, Mumbai to Baddi in the State of Himachal Pradesh in the year 2008. Discussions were held with the representatives of the Union on the subject matter of shifting of the said plant and prior to holding of meetings with the Union, the Appellant addressed a letter dated 14th February, 2008 to the Union pointing out the exigencies and the necessities which required the Appellant to shift its plant from Mumbai to Baddi in Himachal Pradesh. On 25th February, 2008 individual letters of transfers were issued to the employees and they were informed that due arrangements in respect of their transfer from Mumbai to Baddi, as well as the arrangements for providing them shared accommodation for a period not exceeding 30 days from the date of reaching Baddi establishment will also be made.

2. It is the case of the Company that transferability of the employees is an express condition of service and also an established practice in the Appellant company. The Company had a right to transfer its employees from one establishment to another in terms of Clause 8 of the Letter of Appointment issued by the Company to these employees.

3. On or about 11th March, 2008, 26 employees filed a Complaint of unfair labour practices before the Industrial Court, Mumbai, being Complaint (ULP) No. 118 of 2008, inter alia, challenging the action of the transfer of 26 workers from Mumbai to Baddi. An application for interim order was also filed praying that the order of transfer should be stayed as well as the Company should be restrained from moving, selling, alienating or disposing of the plant and the machinery from the Haemacel Plant at Mumbai. These prayers in the application and the Complaint were resisted by the Company by filing detailed statement and also requisite documents.

4. After hearing the parties concerned, the Industrial Court vide its order dated May, 2008 directed that pending the determination of the complaint, the Company shall accommodate and/or absorb the seven employees at Sr. Nos. 1 to 7 in Exhibit-A of the Complaint, in the establishment of Mumbai, Thane Region.

5. Aggrieved by the said order, the Company filed the Writ Petition before this Court being Civil Writ Petition No. 3505 of 2008. The said Writ Petition came up for hearing before the learned Single Judge. The workmen through their Union also filed a Writ Petition being Writ Petition No. 1304 of 2008 praying in that

Petition that the Court may pass order and direction calling for the records of the Complaint (ULP) No. 118 of 2008 and quash the same and the Order dated 5th May, 2008 declining interim relief to the claimants also be quashed. They prayed for quashing and setting aside the orders of transfer and other consequential reliefs arising therefrom. Both these Petitions were heard together by the learned Single Judge and by the judgment and order dated 3rd July, 2008, both the Petitions were disposed of.

6. At this stage itself, it will be useful to refer to the operative part of the Order dated 3rd July, 2008.

43. As the Company has admittedly not obtained the requisite manufacturing licence so far at Baddi but is ready to pay the wages to the employees even though the unit is operational, provided the employees report for duty at Baddi, in my view, considering totality of circumstances it would be just and proper to direct the Company to engage the technical staff and obtain requisite manufacturing licence as expeditiously as possible. As soon as the licence is granted by the Competent authority, the Company shall intimate the same to the Union. Thereupon, the employees within 15 days of receiving the above intimation shall report for duty at Baddi. Till such time, that is, till the intimation is received by the Union from the Company regarding the acquisition of manufacturing licence and 15 days thereafter the Company shall pay the wages including the arrears of salary to these employees. It is made clear that the employees will be entitled to the temporary accommodation which was offered by the Company. Obviously, the Company will not be required to pay the wages to these employees if they fail to report for duty at Baddi within 15 days of the Union receiving the intimation from the Company regarding the grant of manufacturing licence.

44. In the result, Writ Petition No. 3505 of 2008 filed by the Company is allowed and the direction given by the Industrial Court to the Company to absorb the employees in other establishments of the Company in Mumbai/Thane region is quashed and set aside, except in the case of one employee who is due to retire in the first week of July, 2008.

45. Writ Petition No. 1304 of 2008 filed by the Nicholas Employees Union is dismissed. However, the employees are directed to report for duty at Baddi within two weeks from the date the Company intimates to the Union that the licence to manufacture Haemaccel at Baddi has been granted by the competent authority. Till that time, that is upto the date of intimation and two weeks thereafter the Company shall pay the wages including arrears to these employees. On the employees reporting for duty at Baddi, the Company shall provide temporary accommodation to the employees as already proposed by the Company.

46. The Industrial Court is directed to dispose of the Complaint (ULP) No. 118 of 2008 expeditiously and preferably within a period of three months from the date

of receiving a copy of this order.

47. Both the Writ Petitions are disposed of accordingly with no order as to costs.

7. Aggrieved by the order dated 3rd July, 2008 and the above directions issued by the Learned Single Judge, the Company has filed the Appeal No. 316 of 2008, whereas, the Workmen have filed the Appeal (L) No. 430 of 2008. Thus, by this judgment, we will dispose of both these Appeals together.

8. The main thrust of the submissions on behalf of the Company is that once the Learned Single Judge had recorded a finding that the decision of the Company to transfer the workmen to Baddi from Mumbai prima facie does not appear to be vitiated by malafide, then the Court could not have granted any other relief and no other directions could be issued. On the contrary, according to the workmen, the order of the Industrial Court ought to have been entirely upset by the writ Court and the orders of transfer passed against the workmen should have been quashed as the entire exercise by the Company was malafide and was the result of unfair labour practice adopted by the Company. In a detailed judgment, the Learned Single Judge discussed the merits of these contentions and the law applicable and thereafter issued the above directions.

9. The complaints had been filed before the Industrial Court at Mumbai under the provisions of Section 28 read with Item 5 of Schedule II and Items 3, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (hereinafter referred to as the "Act") in relation to adoption of unfair labour practices by the Company. The onus to prove and show that the unfair labour practices being adopted and the transfer order was result of such unfair or arbitrary practice is on the workmen. The Industrial Court in its order had found that the workmen had no prima facie case, and therefore, had declined the interim reliefs vide its order dated 5th May, 2008. A finding was recorded that the Company had taken all steps in making transfer of the employees and such transfer was not beyond the terms of Item 8 of Letter of Appointment. In the writ petition before the Learned Single Judge, it was argued vehemently on behalf of the workmen that subsequent to the appointment of 26 permanent employees, the Company could not have transferred the employees to Baddi and whatever the workmen the Company wanted to transfer had been transferred earlier and the transfers were without any authority in law and was result of, if not factually, atleast illegal and malafide action. We may notice here that there is no dispute to the fact that all the workmen in question and even others had been issued letters of appointment. Exhibit-"UU" is a letter of appointment dated 9th February, 1978 issued to the workman Shri P.D. Dwivedi and Clauses 8 and 9 deal with transferability of the employment including the applicability of general terms and conditions as framed by the company.

10. Clauses 8 and 9 of the Letter of Appointment read as under:

8. Transferability : You should note that your services will be subject to Inter-Departmental or Inter-Establishment transfers, temporarily or permanently

without any additional remuneration or compensation, depending upon the exigencies of work of which the Management will be the sole judge.

9. Other Terms and Conditions : Other terms and conditions will be those as applicable to other workmen of this Company as modified from time to time. You will also be governed by the Certified Standing Orders which will be in force for the time being or as may be modified from time to time.

It should be understood that our offer of employment will be subject to a satisfactory report from the References and/or previous employer you have mentioned.

11. In the face of the above specific terms, it cannot be disputed that the Company has the right to transfer the workmen. These terms have not only been accepted but also acted upon between the parties since 1978. There is no document produced by the workmen on record to show that any of the appointments was made without the above clauses.

12. We also have no hesitation in concurring with the view taken by the Learned Single Judge that the Company has the power as per the terms of the letter of appointment to transfer the workmen as well as their decision to shift the unit from Mumbai to Baddi was in exercise of its powers of internal management and the said decision did not suffer from the factual malafide. The decision of the Company apparently at least at this stage of the proceedings does not appear to be suffering from any unfair labour practice. We in fact would accept the reasoning given by the Learned Single Judge in support of his conclusion as it is an approach based on the facts of the case and is in consonance with the settled principles of law which have been referred to by the Learned Single Judge in the judgment under appeal. Besides this, we would further add that the argument on behalf of the Company that the Court could not issue any direction, once it found the action of the Company does not suffer from unfair labour practices or malafide, is misconceived in law and even in facts of the present case. The Industrial Court as well as the Learned Single Judge were concerned with the interim order during the pendency of the regular complaint pending enquiry before the Industrial Court and the interim order is passed by the Court taking a prima facie view and not as a final determination of issues between the parties. The power of the Industrial Court as well as that of the Learned Single Judge while exercising the powers under Articles 226 and 227 of the Constitution of India cannot be limited in law or otherwise. The powers of the Court particularly under Article 227 of the Constitution of India are very wide. Unfair labour practice has been explained in Section 26 of the Act. Any practice listed in Schedule II, III and IV would mean unfair labour practice. Adoption of such practice is barred u/s 27 of the Act and the complaint in that behalf is filed and dealt with in accordance with the provisions of Section 28 of the Act. In terms of Section 30(2) of the Act, the Industrial Tribunal/ Court before whom the proceedings are pending has been given powers to pass interim orders including any temporary relief or restraining order as it deems just and proper. This is

indicative of the powers that are vested in the Industrial Tribunal and obviously in the Courts dealing with the proceedings arising thereafter. Necessarily, to restrict the scope or powers vested in relation to the approach to be adopted in a given case can hardly be justified while keeping in mind the legislative intent and the purpose for which these special provisions have been enacted. While referring to the judgment of the Supreme Court in the case of State Bank of India Vs. Anjan Sanyal and Others, , the learned Counsel appearing for the Company impressed upon us to hold that since the transfer orders have been held to be valid and for some period they have not been carried out by the workers, they are not entitled to wages. There could hardly be any such principle of law stated by the Supreme Court in Anjan Sanyal's case (supra) but that principle has to be applied to a given case with reference to its facts. In the present case, the Industrial Court had declined the relief while the Learned Single Judge keeping in view the facts and circumstances of the case passed the interim directions which squarely and fully protect the interest of the parties. With the exception of one workman who was to retire in the first week of July, 2008 and in fact might have retired by today, the other workers were required to join their duties at Baddi subject to discharge of the obligations by the Management. Even if the decision of the Company to transfer its employees in the Plant is not intended with a malafide or a patent unfair labour practice, still it has to be an order which even prima facie should be just fair, equitable and must be in the organizational interest. The Court is bound to examine the matter from a prima facie point of view as the proceedings and the complaints are still pending before the Industrial Court. This being the position, the Court has to balance equities between the parties in line with the provisions of Sections 26 to 28 and 30(2) of the Act.

13. It is a settled principle of law that the Appellate Court should not disturb the order passed by the Learned Single Judge of this Court merely on the ground that another view was possible. The Learned Single Judge has exercised the discretion in relation to the interim order. Therefore, we hardly see any reason to interfere with the order passed by the Learned Single Judge. Consequently, we dismiss both the Appeals, however, leaving the parties to bear their own costs.