

(2008) 07 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No's. 1304 and 3505 of 2008

Nicholas Piramal India Limited

APPELLANT

Vs

Nicholas Employees Union
 Nicholas Employees Union
Vs Nicholas Piramal India Ltd. and Others

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 28
Drugs and Cosmetics Rules, 1945 — Rule 79

Citation : (2008) 5 BomCR 69 : (2008) 110 BOMLR 2304 : (2008) 119 FLR 424 : (2009) 1 LLJ 2 : (2008) 5 MhLj 805

Hon'ble Judges : J.P. Devadhar, J

Bench : Single Bench

Advocate : J.P. Cama, instructed by Haresh Mehta for Company, for the Appellant; Arshad Shaikh and Piyush Shah, for Union, for the Respondent

Judgement

J.P. Devadhar, J.—In these two Writ Petitions the interim order passed by the Industrial Court, Mumbai on 5/5/2008 in Complaint (ULP) No. 118 of 2008 is challenged. By the said interim order, the Industrial Court has rejected the application of the Complainant-Union by declining to stay the transfer of the employees from Mulund in Mumbai to Baddi in Himachal Pradesh except in the case of 7 employees.

2. Complaint (ULP) No. 118 of 2008 was filed by the Nicholas Employees Union (Union for short) alleging unfair labour practice on the part of Nicholas Piramal India Ltd. (Company for short) in closing the Mulund Unit and transferring the permanent employees working in the Mulund Unit to Baddi a place in Himachal Pradesh. The Union contended that the decision of the Company in shifting the Mulund Unit and consequently transferring the employees is vitiated by malafides and constituted unfair labour practice under the MRTU & PULP Act, 1971. As the Industrial Court declined to grant interim relief except in the case of 7 employees, both the Company as well as the Union have filed these two Writ Petitions.

3. Writ Petition No. 3505 of 2008 is filed by the Company to challenge the order of the Industrial Court in so far as it relates to directing the Company to absorb 7 employees of the Mulund Unit at its other establishments of the Company in Mumbai / Thane region. Writ Petition No. 1304 of 2008 is filed by the Union to challenge the order of the Industrial Court in so far as it relates to declining to stay the transfer of the remaining 19 employees.

4. Since both the Writ Petitions arise from a common order passed by the Industrial Court dated 5/5/2008, both the writ petitions are admitted and heard finally by consent of the parties and disposed of by this common Judgment.

5. The Company is engaged in the business of manufacturing and marketing various pharmaceutical products. For that purpose, the Company has established various units in Maharashtra, Madhya Pradesh, Himachal Pradesh, Andhra Pradesh and Tamil Nadu.

6. The dispute in the present case, relates to Haemaccel Plant at Mulund (Mulund Unit for short) which was acquired by the Company in the year 2000, from Hoechst Marion Roussel Ltd. In the said plant, life saving drug known as Haemaccel was manufactured.

7. The Company had acquired the Mulund Unit consisting of plant and machinery and not the labour force attached to it. Therefore, for running the newly acquired Mulund Unit, the Company transferred some employees from its Deonar Unit to the Mulund unit. The Company had also hired the services of some of the technical staff on contract basis, who were working in the said unit prior to the acquisition, so as to train the employees who were transferred from Deonar Unit to Mulund Unit. It is not in dispute that the employees transferred from the Deonar Unit as well as the technical staff hired from Hoechst Marion Roussel Ltd. continued to work in the Mulund Unit till the operations were closed in March, 2008.

8. It may be noted that these employees who were transferred from the Deonar Unit had challenged their transfer to the Mulund Unit by filing a Complaint through their Union under the MRTU & PULP Act and in those proceedings, a Division Bench of this Court by an order dated 19/1/2004 directed that during the pendency of the complaint, the services of the employees transferred from Deonar Unit to the Mulund Unit shall not be terminated without first seeking permission of the Court. The said complaint is still pending. Accordingly, since 2000 the employees transferred from the Deonar Unit have been working in the Mulund Unit.

9. Some time in April 2007, these transferred employees working in the Mulund Unit became apprehensive that the company may close the Mulund unit. The Union representing these employees addressed a letter to that effect to the Company on 26/4/2007. By its letter dated 29/5/2007 the Company informed the Union that there is no basis for such apprehension and if any action contemplated by the Company has adverse impact on the workmen, then the

same will be done by following the due process of law.

10. Thereafter, the Company by its letter dated 1/2/2008 called upon the Union leaders to attend a meeting inter alia to discuss the issue relating to the shifting of the Mulund Unit. In the said meeting, the Union leaders were informed that the Company has decided to shift the Mulund Unit to their factory site at Baddi in H.P. due to business exigencies. The basic reason given for shifting the unit was that the Form Fill and Seal (FFS) Machine at Mulund Unit used for manufacturing Haemaccel has the capacity to manufacture 40 lakh bottles per year whereas it is utilised only to the extent of 18 lakhs bottles per year. To utilise the FFS machine to its full capacity at Mumbai, it would be necessary to modernise the Mulund unit and for that purpose, the Unit will have to be shut for atleast 6 months for modernisation which will lead to short supply of life saving drug manufactured at the said unit. Moreover, modernisation of the Mulund unit would mean incurring huge expenditure which can be avoided by shifting the Unit from Mulund to Baddi in H.P. where the requisite infrastructure is readily available with the Company. Further, shifting of the unit from Mulund to Baddi in H.P. would give the company tax benefits as also other benefits. The Company informed the Union that the dismantling work of the Mulund Unit would commence from 1/3/2008. The Union leaders were informed that the permanent employees in the Mulund Unit would be transferred to Baddi with effect from 1/3/2008 on the existing terms and conditions of service. It was further intimated that the reasonable travelling expenditure from Mumbai to Baddi would be borne by the Company and temporary accommodation would also be provided to these employees.

11. Challenging the action of the company, complaint (ULP) No. 118 of 2008 was filed by the Union alleging that closing the Mulund and transferring the 26 permanent employees from Mulund in Mumbai to Baddi in the State of H.P. was vitiated by malafides and constituted unfair labour practice covered u/s 28 read with item 5 of schedule II and items 3, 9 & 10 of schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act for short). In the said complaint, an application was filed by the Union seeking an order that the transfer of the employees from Mulund to Baddi in the State of Himachal Pradesh be stayed till the disposal of the complaint.

12. By the impugned order dated 5/5/2008 the Industrial Court rejected the application for stay by holding that, prima facie, as per service conditions the company had a right to shift the plant and machinery from the Mulund Unit along with its employees and that the company has prima facie taken all necessary steps in arranging for the transfer of its employees and their accommodation which are reasonably expected from an employer. In spite of holding that no case was made out for staying the transfer, the Industrial Court on humanitarian grounds directed the company to absorb 7 out of the 26 employees in other establishments of the company in Mumbai / Thane region and as regards remaining 19 employees, the Industrial Court held that their transfer to Baddi

will be subject to the outcome of the complaint. Challenging the aforesaid order, both the company as well as the union have filed the aforesaid two petitions.

13. Mr. Arshad Shaikh, learned Counsel appearing on behalf of the Union submitted that the action of the Company in closing the Mulund Unit and shifting the machinery to Baddi in H.P. and directing the employees of the company working in the Mulund Unit to report for duty at Baddi is in gross abuse of the process of law and is vitiated by malafides. He submitted that since prima facie case of malafides and unfair labour practice was made out, the Industrial Court ought to have stayed the transfer of all the employees during the pendency of the complaint.

14. Elaborating his arguments, Mr. Shaikh submitted that the action of the Company is vitiated by legal malafides as well as factual malafides. The legal malafides are that in the absence of any clause in the service conditions, the Company could not have transferred the employees from Mulund to Baddi. In the appointment letters issued by the Company to all these 26 employees, nowhere it is stated that their services are liable to be transferred to an establishment which may be set up, established or acquired at any time in the future. As the Unit at Baddi has been established in the year 2008, that is subsequent to the appointment of these 26 permanent employees, the Company could not have transferred these employees to Baddi. He submitted that while engaging the services of the technical staff on contract basis in the year 2000, the Company had specifically incorporated a clause in the appointment letter to the effect that their services are liable to be transferred to an establishment which may be set up, established or acquired at any time in future. Thus, wherever the Company wanted to transfer the employees to any future establishment, a specific clause was incorporated to that effect in the appointment letter itself. Therefore, transferring these 26 employees from Mulund to Baddi without there being any clause to that effect in the service condition constitutes legal malafides on the part of the Company and, therefore, the Industrial Court ought to have stayed the transfer orders of all the permanent employees from Mulund to Baddi. In this connection, he relied upon a decision of the Apex Court in the case of *Kundan Sugar Mills Vs. Ziyauddin and Others*, as well as decisions of this Court in the case of *Crest Crest Communication Limited v. Ms. Sheetal Shenoy* reported in 2001 2 CLR 1036, *Maharashtra General Kamgar Union v. All India Handloom Fabrics Marketing Coop. Society Limited* reported in 1991 2 CLR 293, *Group Pharmaceuticals Limited v. Blossom Godinho* reported in 1998 II LLJ 1182 and *P.T.I. Ltd. v. P.T.I. Employees Union* reported in 2002 3 CLR 879.

15. Mr. Shaikh further submitted that apart from the legal malafides, the transfer order suffers from factual malafides, because, when Mulund unit was running smoothly and was making profits, there was no need to close the unit and shift the machinery. Even if the Company wanted to enhance the production, it could be done at the existing Mulund Unit and there is nothing on record to suggest that the modernisation of the said Unit was necessary. In fact upgradation of the

Mulund Unit was done from time to time to meet the standards prescribed by the Food & Drug Administration. Moreover, the transfer order has been issued without application of mind and without considering as to whether any employee is due to retire in the near future and whether there were exceptional circumstances such as serious ailment, family problems, etc. of the employees. Even an employee who is due to retire in the first week of July, 2008 is also transferred. Three lady employees who had put in more than 35 years of service had serious family problems and there were three employees having heart problem. None of these factors have been considered by the Company and, therefore, the Industrial Court had to interfere and stay their transfer. Thus, closing the Mulund Unit without any justification was vitiated by factual malafides. Assuming that there was any commercial expediency in closing the Mulund Unit, the Company ought to have absorbed these 26 employees in its other establishments in Mumbai - Thane Region as these employees were transferred from Deonar Unit and in the proceeding relating to that transfer, this Court by its order dated 19-1-2004 had directed the Company to obtain prior permission from the Court in case the Company decided to close the Mulund Unit during the pendency of the Complaint. Even though the Company has decided to close the Mulund Unit, with a view to avoid seeking approval of this Court, the Company claims to have shifted the Mulund Unit when in fact it had decided to close the Mulund Unit. Therefore, the action of the Company which is vitiated by legal and factual malafides ought to have been stayed by the Industrial Court.

16. Mr. Shaikh further submitted that in the proceeding relating to the transfer of these employees from the Deonar Unit to the Mulund unit, the Company had filed an affidavit stating that the transfer from Deonar unit to Mulund Unit was in the interest of the employees as it was in the nature of having a permanent job in Mumbai. In spite of the above solemn statement on oath, it was not open to the Company to transfer these employees from Mumbai to Baddi in the State of H.P.

17. Mr. Shaikh further submitted that the fact that the services of the technical staff hired from the Hoechst Marion Roussel Limited have been discontinued from March 2008 clearly shows that the Company has in fact decided to close the Mulund Unit and the contention that the Mulund Unit has been shifted is totally false, because, without the technical staff it is impossible to run the unit at Baddi. Moreover, when the Company does not have requisite licence to manufacture Haemaccel at Baddi, directing the 26 employees who are only the packing staff, helpers, sweepers etc. to report for duty at Baddi is wholly unjustified and therefore, pending the hearing and final disposal of the Complaint, the transfer of all the employees be stayed.

18. Relying upon a decision of this Court in the case of Brihanmumbai Union of Journalists v. Nav Bharat Press Limited reported in 2002 2 CLR 67 Mr. Shaikh submitted that the alleged shifting of the Unit and transferring the 26 employees from Mulund to Baddi without any justification is colourable exercise of power and such an action ought not to have been permitted to be implemented.

19. Relying upon the decisions of the Apex Court in the case of *Workmen v. Associated Rubber Industry Limited* reported in 1986 1CLR 284, *B. Varadha Rao v. State of Karnataka* reported in (1984) 4 SCC 131, *State of Madhya Pradesh Vs. Shankar Lal and Ors*, , Mr. Shaikh submitted that unwarranted and unreasonable transfer from Mulund in Mumbai to Baddi in H.P. is bound to cause irreparable harm to the employees as it disrupts the education of their children and lead to numerous other complications and problems and results in hardship and demoralisation and therefore, the Company should not have abruptly closed the unit and transferred the employees to a new establishment. He submitted that since the complaint can be decided in a time bound manner, it is just and proper that the transfer order be stayed and the employees be paid wages subject to the final decision in the Complaint and subject to adjustment of the said wages from the gratuity amount etc. payable to the employees. Mr. Shaikh lastly submitted that the employees would go to Baddi if the services of these employees who are packing staff, helpers, sweepers etc. is absolutely necessary and the Company takes effective steps to ameliorate their hardships by way of monetary benefits and till then the transfers be stayed.

20. Mr. Cama, learned Senior Advocate appearing on behalf of the Company on the other hand submitted that the Industrial Court having held that the transfer was prima facie in accordance with law could not have directed that pending the complaint, 7 out of the 26 employees be absorbed in the other establishments of the Company. Mr. Cama fairly stated that as regards the employee who is due to retire in the first week of July 2008, he is not pressing the case. However, as regards the other 6 employees, he submitted that the Industrial Court committed an error in directing the Company to absorb them in other establishments of the Company in the Mumbai / Thane region, in spite of the clear stand taken by the Company that no vacancies exist in those establishments.

21. Mr. Cama submitted that the direction of the Industrial Court to accommodate / absorb some of the employees in other establishments of the Company at Mumbai / Thane region is based on inferences and not warranted by facts and such a presumption is not permitted in law. He submitted that having held that the personal difficulties and hardships are no grounds for staying the transfer, the Industrial Court could not have stayed transfer of some of the employees. The fact that the three lady employees had put in more than 35 years of service and the fact that three other employees were suffering from heart ailment could not be a ground to stay the transfer. The impugned order in so far as it pertains to directing the Company to absorb the employees in other establishments in the Mumbai / Thane region without any cogent reasons and exceptional circumstances, cannot be sustained.

22. Dealing with the case of 19 employees who were denied interim relief by the Industrial Court, Mr. Cama submitted that in their appointment letter, it was specifically stated that their services are liable to be transferred to any other inter department or inter establishment of the Company. Therefore, the Company

was within its rights to transfer the employees. The fact that in the appointment letter issued to the technical staff employed in the year 2000 the Company had stated that their services liable to be transferred to any establishment which may be set up, established or acquired at any time in future, it cannot be inferred that these 26 employees were not liable to be transferred to Baddi. The submission is that what was implicit in the existing transfer clause was made explicit in the transfer clause contained in the appointment letters issued to the technical staff in the year 2000. Therefore, there is no merit in the contention that the Company could not have transferred these employees.

23. Mr. Cama further submitted that the decision to shift the Mulund Unit to Baddi in H.P. was a commercial decision taken by the Company due to business exigencies. After taking decision to shift the Unit, the Company could have terminated the services of these employees, however, with a view to maintain industrial harmony, the Company has decided to transfer the services of all the permanent employees on the same terms and conditions to the shifted place. Moreover, the Company has agreed to bear the reasonable travelling expenses of the employees and has also made temporary arrangements for their stay at Baddi till, they find suitable accommodation. In these circumstances, the decision of the Industrial Court in declining to stay the transfer cannot be faulted.

24. Mr. Cama further submitted that in the proceedings relating to the transfer of the employees from Deonar Unit to Mulund unit, the Union leaders as well as the employees had specifically expressed their willingness to work in any of the establishments of the Company including the Unit at Madhya Pradesh. Therefore, it is not open to the employees to blow hot and cold and contended that the service conditions do not permit the Company to transfer the employees to Baddi.

25. Mr. Cama further submitted that 100% of the Plant & Machinery from the Mulund Unit has already been shifted to Baddi, however, the Company is unable to obtain the licence, because, as per rule 79 framed under the Drugs & Cosmetics Act, 1940 when the concerned officer visits the Unit for the purpose of granting licence, it is necessary that the requisite staff is present. Therefore, it is essential that these employees must report for duty at Baddi immediately.

26. Relying upon a Division Bench decision of this Court in the case of Biddle Sawyer Limited v. Chemical Employees Union reported in 2007 III LLJ 391, Mr. Cama submitted that shifting the place of manufacturing from one location to another and discontinuing the manufacture at the former location does not amount to closure of business. He submitted that whether to shift the place of business or not is a commercial decision which can be taken exclusively by the Company and the employees have no say in that behalf. Whether such discretion exercised by the Company is vitiated by malafides is a question which the labour Court will go into in the complaint filed by the Union. As the Union failed to establish prima facie case of malafides the Industrial Court was justified in refusing to grant interim relief to the employees.

27. Referring to the decision of the Apex Court in the case of Kundan Sugar Mills (supra) which is strongly relied upon by the counsel for the Union, Mr. Cama submitted that the said decision has no application to the facts of the present case, because in that case the transfer was to a new establishment started by the employer, whereas, in the present case, the transfer is to a place where the existing unit is shifted. In this connection, he relied upon the unreported decisions of this Court in the case of M/s. Associated Breweries & Distilleries v. Shri Purshottam G. Patil (W.P. No. 1570 of 1994) decided on 21-7-1994 and V.I.P. Industries Limited v. Maharashtra Kamgar Karmachari Sanghatana (W.P. No. 1410 of 2008) decided on 9-4-2008.

28. Relying upon a decision of the Apex Court in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, , and a decision of this Court in the case of Executive Engineer v. Sadashiv D. Deshmukh reported in 1997 1 CLR 68, Mr. Cama submitted that unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Court should not substitute its own decision for that of the management. He submitted that the proper course for the Union / employees was to report for duty at Baddi without prejudice to their right to challenge the decision of the Company. In the present case, the employees have failed to report for duty since March, 2008 and moved the Industrial Court by filing a Complaint. Even after the Industrial Court declined to grant stay, the employees failed to report for duty at Baddi. In these circumstances, the employees are not entitled to any relief and the petition filed by the Union is liable to be dismissed.

29. I have carefully considered the rival submissions.

30. The short question to be considered in these two writ petitions is, whether the Industrial Court was justified in holding that, prima facie, strong case is not made out for staying the transfer order during the pendency of the Complaint and at the same time direct the Company to accommodate 7 employees in other establishments of the Company at Mumbai / Thane region.

31. Taking up the petition filed by the Company to challenge the decision of the Industrial Court to the extent it directs the Company to absorb 7 employees in its other establishments in the Mumbai / Thane region, it is pertinent to note that the Company has not pressed its case against one permanent employee who is due to retire in the first week of July, 2008. In respect of the remaining 6 permanent employees, the Industrial Court has directed the Company to absorb them in its establishments in the Mumbai / Thane region on the ground that out of the six employees, three are lady members who have put in more than 35 years of service and the remaining three employees are heart patients. The fact that the three lady employees have put in more than 35 years of service, cannot be a ground to stay their transfer. Nowhere, in the service conditions of these employees it is stated that they would not be transferred on completion of 35 years of service. Moreover, the type of difficulties faced by the three lady

members which could be said to be exceptional circumstances so as to stay their transfer have not been elucidated in the impugned order. As per the service conditions, it was not obligatory on the part of the company to provide accommodation at the transferred place. However, in the present case, the Company has offered temporary accommodation to these employees at Baddi. In these circumstances, the transfer could not have been stayed on the ground that the Company has not provided guaranteed accommodation.

32. Similarly, in the case of three employees who are said to be heart patients, the Industrial Court has directed the Company to absorb them in other establishments in the Mumbai / Thane region without discussing the type of their sickness and without recording any finding as to why they could not be transferred. In the absence of any finding that it was not medically feasible to transfer these three employees to Baddi, the decision of the Industrial Court to the above effect cannot be sustained.

33. In the result, the direction to absorb the employees in other establishments of the Company in the Mumbai / Thane region, except in the case of one employee who is due to retire in the first week of July, 2008 is quashed and set aside.

34. The question now to be considered is whether the Industrial Court was justified in holding that no prima facie case of malafides has been established so as to decline stay of the transfer order during the pendency of the Complaint?

35. The principle argument canvassed by the Counsel for the Union is that as per the clause in the service conditions the Company could not have transferred the employees from Mulund unit to Baddi in H.P. and, therefore, the transfer order suffers from legal malafides. The transfer contained in the appointment letter of these 26 employees contained a clause which reads thus:

Transfer : You should note that your service will be subject to interdepartmental 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.

From the aforesaid clause, it is clear that the Company could transfer the employees inter-departmentally or from one establishment to another establishment. The question is, whether shifting the plant and machinery from Mulund to Baddi and consequently transferring the employees to Baddi constitutes transfer from one establishment to another establishment ?

36. Where the Plant & Machinery in an establishment are shifted from one place to another, it would not be a case of establishing a new unit but a case of shifting the existing unit to a new place. In other words, the existing unit continues but at a new place. In such a case, actually there is no transfer but only shifting the employees to the place where the existing Unit has been shifted. Therefore, the argument of the Union that the transfer constitutes transfer to a new

establishment set up after they were employed cannot be accepted. Once it is held that the transfer is to the existing unit but at a new place, then such a transfer, would prima facie be covered by the aforesaid service conditions.

37. Strong reliance was placed by the counsel for the Union on the decision of the Apex Court in the case of Kundan Sugar Mills (supra) and various other decisions of this Court where the aforesaid decision of the Apex Court has been followed. In my view, all those decisions are distinguishable on facts. In the case of Kundan Sugar Mills (supra) while continuing with the Sugar Mill at Amroha, the employees working therein were sought to be transferred to the new sugar mill started at Bulandshahr. In that context, the Apex Court held that in the absence of either express or implied condition of service, the employer cannot transfer the employees to a new concern started by him subsequent to the date of their employment. In the present case, admittedly 100% of the plant and machinery has been shifted from Mulund Unit to Baddi. Prima facie, shifting the Mulund Unit to Baddi would not constitute establishing a new Unit but it would be a case of transferring the employees to a place where the existing unit is shifted. Therefore, the facts in the case of Kundan Sugar Mills (supra) being totally different the said decisions would have no application to the facts of the present case. Similarly, in none of the decisions of this Court wherein the aforesaid decision of the Apex Court have been followed, the entire Unit has been shifted to a new place. In fact, in all those cases while continuing with the existing Unit wholly or partially, the employees were directed to report for duty at the newly established Unit, whereas in the present case, the Unit as a whole has been shifted to Baddi. Therefore, various decisions of this Court relied upon by the Counsel for the Union are distinguishable on facts.

38. The question, however, to be considered is, whether the commercial decision taken by the Company to shift the Mulund Unit to Baddi was a bonafide decision and whether the said decision constituted unfair labour practice is a question required to be gone into at the hearing of the complaint filed by the Union. Prima facie, the decision of the Company to shift the Unit to Baddi does not appear to be vitiated by malafides. The argument that the Company was running in profit and the argument that the Company could achieve the enhanced production at Mulund Unit would not be sufficient to arrive at a conclusion that the decision to shift the Unit is vitiated by malafides. Because, even if the Unit was running in profit, it was open to the Company to arrive at a bonafide conclusion that utilisation of the plant to its full capacity would be economically viable at Baddi than at Mulund. Therefore, merely on the basis of the argument that the Unit was running at a profit and that the plant could be used to its full capacity at Mulund, it cannot be inferred that the shifting of the Unit was vitiated by malafides. It is open to the Union to lead evidence before the Industrial Court at the hearing of the Complaint and establish that the decision to shift was in fact a decision to close the existing unit and establish a new unit at Baddi. In the absence of any statutory / contractual obligation, the argument of the employees that the Company has failed to give additional emoluments to the transferred

employees cannot be accepted.

39. The argument that in view of the statement made on oath while transferring these employees from Deonar Unit to Mulund Unit, the Company was bound to retain these employees at the Mulund Unit cannot be accepted, because, over the years if the Company bonafidely considers it necessary to shift the Unit due to business exigencies, then it cannot be said that because of the statement made in the year 2000, the Company cannot shift the employees in the year 2008 to the place where the existing unit is shifted.

40. The contention that in view of the order passed by this Court on 19-1-2004 in the earlier proceedings, the Company ought to have taken permission before transferring the employees to Baddi is also without any substance because the said order applies only in case of closure of Mulund Unit. As seen earlier the Mulund unit has not been closed but only shifted and, therefore, the order passed by this Court on 19-1-2004 has no relevance in the present case.

41. Similarly, the argument that the decision to shift the unit is a colourable exercise of power and various decisions relied upon by the Counsel for the Union to show that the transfer is unreasonable and unwarranted need not be adverted to at this stage because, all those questions would arise only at the final hearing of the Complaint. All that is required to be looked into at this stage is, whether the decision to shift the Mulund Unit to Baddi is ex-facie bad in law or vitiated by malafides ? In my view there is no such case made out and, therefore, the Industrial Court was justified in declining to grant interim relief to the Union.

42. However, the fact to be noted is that the Company has admittedly discontinued the technical staff who were engaged in the Mulund Unit on contract basis for all these years. As per Rule 79 framed under the Drugs & Cosmetics Act, 1940, it is the technical staff who are required to be present at the time when the authorities inspecting the unit for grant of licence to manufacture Haemaccel at Baddi. It is contended on behalf of the Company that although the services of the technical staff engaged in the Mulund Unit have been discontinued they have sufficient technical staff already working in the Baddi establishment and those technical staff can be employed in the shifted unit. If that be so, nothing prevented the Company from engaging the said technical staff and seek manufacturing licence from the Competent authority at Baddi.

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.