

(2007) 12 BOM CK 0024

In the Bombay High Court

Case No : Civil Application No. 7371 of 2007 in Writ Petition No. 4208 of 2007

Sanjay Kumar Sinha

APPELLANT

Vs

Mineral Exploration Corporation Ltd.

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Industrial Court Regulations, 1975 — Rule 100, 100(2), 100(3)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (2008) 2 ALLMR 262 : (2008) 2 MhLj 27

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : S.S. Sanyal, for the Appellant; M.D. Samel, instructed by N.M.
Motghare, for the Respondent

Judgement

A.H. Joshi, J.—This petition was listed on board in view of the Civil Application filed by the respondent for vacation of stay.

2. Being unmindful as to the year of filing of petition, learned Advocates of the parties were asked whether the petition could be taken up for final disposal. Learned Advocates answered in the affirmative. The petition was, therefore, heard at length believing it to be heard for final disposal. At the time of passing of the order, however, it has revealed that the final hearing of the present petition does not pertain to my roster though application is to be heard by me. Thereafter, on 17-12-2007, Civil Application was listed on board and Learned Advocates were called upon to argue the application and advance if any submissions are to be made on the Civil Application. Learned Advocates advanced brief submissions on the basis of the hearing conducted as referred to in foregoing para, and requested for deciding the Civil Application.

3. This Court, therefore, proceeds to decide Civil Application No. 7371 of 2007.

4. The petitioner who was aggrieved by the order of transfer dated 18-7-2007 transferring the petitioner temporarily for a period of three months from his

present posting to Jangareddygudem. He, therefore, approached the Industrial Court by filing the complaint u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972.

Industrial Court passed the order rejecting the petitioner's application on 17-8-2007. Hence, he has filed this writ petition.

5. Facts:

The complainant was posted at different places between 1986 to 2007. He has worked at different places as follows:

- i) Initial appointment at Nagpur (26-7-1986 to 1995)
- ii) Posted to Jhabua in 1997, in Madhya Pradesh;
- iii) Govindraopeth in Andhra Pradesh (October, 1997 to December, 2007).
- iv) Kanchanpally Project in Andhra Pradesh (January, 1998 to November, 1999)
- v) Reserve Pool Hyderabad (November, 1999 to September, 2002).

He was transferred from Reserve Pool Hyderabad to Nagpur.

[Quoted from complaint at page 30 of the Writ Petition Paper Book]

6. According to the petitioner:

- (a) he was involved in a one day strike as a Trade Union activist;
- (b) any declaration as to said strike being illegal was not made by any Court;
- (c) the employer, however, served on him a charge-sheet dated 3-10-2006;
- (d) he has challenged the said charge-sheet before the Industrial Court, who did not grant stay of the Enquiry;
- (e) he, therefore, approached this Court, and the High Court granted interim relief by way of stay of the departmental enquiry;
- (f) soon after this stay was ordered, he has been transferred to Jangareddygudem; and
- (g) person from common pool at Hyderabad could have been chosen for transfer which has not been done.

7. According to petitioner:

- (a) His transfer is the only transfer rather solitary transfer order issued i.e. he has been singled out.
- (b) He has been given the transfer order and relieving order simultaneously, and has not been given joining time.
- (c) Transfer order is a employer's reflex of part of stay order given by this Court

staying the charge-sheet and enquiry.

(d) Transfer Order is, therefore, mala fide.

8. Various documents were brought on record by the petitioner as well the respondent for the first time in this petition. Even the issues relating to existence of transfer policy are agitated. There are different documents relied upon by the parties as a transfer policy.

9. Learned Advocate Mr. Sanyal, therefore, submitted that petitioner has a strong case on merits, and the interim order be confirmed pending hearing, and disposal of the writ petition, and the Civil Application be rejected. According to him, mala fides underlying the transfer is the crux of the matter and petitioner has amply proved the mala fides, and the order of transfer is, therefore, proved to be by way of unfair labour practice.

10. Learned Advocate for the petitioner then argued that if the interim relief is not confirmed rather vacated, nothing would be left in the Writ Petition. The question is the fact of issuance of rule would connote a satisfaction of this Court to hear the petition, and therefore, interim relief.

11. The submission of the learned Advocate Mr. M. D. Samel is that:

(a) The admission of writ petition does not ipso facto act to have the interim relief granted till lasting of the final hearing.

(b) The very fact of granting ad interim relief pre-supposes a possibility of either vacation or confirmation of the interim relief.

(c) The vacation of the interim relief is one of the essential fall outs, and the said eventuality would exist during pendency of the complaint if interim relief is vacated, and this being known incidence in law, the submission that the Writ Petition would render infructuous, need not impress the Court.

(d) If on facts and in law the Court is satisfied that the petitioner has not made out a case for grant of interim relief.

According to the learned Advocate Mr. Samel, therefore, the interim relief deserves to be vacated, and can be vacated without being influenced by the fact that interim relief has been in operation for last few months.

12. The limited questions which are to be considered are:

(a) Whether, prima facie, from the averments contained in the complaint, and material placed on record in support, the conduct of employer was by way of Unfair Labour Practice while issuing the transfer order subject matter?

(b) Whether ad interim relief in terms of prayer Clause (c) should be confirmed?

13. After considering the contents of complaint, reply and documents on record, what emerges is as follows:

(a) The management's powers to transfer is in no way curtailed or is brought under an absolute embargo.

(b) Sum effect of all documents, is that rule of seniority at a station is to be adhered to as far as possible.

(c) Maximum joining time up to 10 days has to be given as far as possible.

(d) These matters are always subject to management's powers to effect transfer depending on the exigencies.

14. This Court has undertaken discrete scrutiny of pleadings, affidavits and documents on record. Nothing is found on record to show that there is any malice or acrimony of any particular Officer against the petitioner due to petitioner's Trade Union activities. Even the contents of the complaint do not attribute any particular act of any particular Officer.

15. This Court has to consider that a Corporation or a Company is a legal entity, and if the state of mind, which is the essential factor for foundation of the malice, which is to be attributed to an individual human mind, it has to be so demonstrated in the complaint u/s 28 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972. Under Rule 100(2) and 100(3) of Industrial Court Regulations 1975 framed under MRTU and PULP Act, 1971 the name of a particular person or persons is required to be named as a person who has committed the unfair labour practice complained of. Such person is also required to be argued as respondent.

16. The need of impleadment under Rule 100 has also received judicial approval as held in Maharashtra Industrial Development Corporation and Others Vs. Baban Nathaji Sarode and Another, , where this Court held as follows:

5. There is third aspect in the matter. The respondent had only pleaded that the petitioners engaged in favouritism and discrimination. He did not give any details or particulars. He ought to have spilled out what kind of favouritism and discrimination was practised by the petitioners. Secondly he ought to have given the names of all such employees or officers who were favoured by the petitioners as against the respondent. Thirdly he ought to have impleaded all of them in his complaint as they were likely to be adversely affected in the matter if the respondent would have succeeded in his complaint. In the absence of the necessary and proper parties the complaint ought to have been dismissed by the Industrial Court.

17. There cannot be a malicious act by a Corporation without a person holding such malice. In absence of such specific attribute if at the stage of ex parte relief or ad interim relief in absence of allegation of mala fides being demonstrated amply though not proved up to the hilt, it would be difficult to bring home the allegations of mala fides.

18. The issuance of charge-sheet which being served, and the petitioner being

transferred, are liable to be regarded as co-incidence, particularly, when the petitioner has not disputed the fact that there exists emergency of work at Jangareddygudem.

19. The questions, which essentially arise before it is held that malafides are proved are:

(i) Why some other employee should not have been chosen, and why petitioner ought not have been transferred?

(ii) Why it be accepted the person from any pool at Hyderabad alone should have been chosen without any averment that those in the pool are sitting idle and are not deployed anywhere?

(iii) Why the petitioner should not have been chosen to transfer?

20. If the questions posed in foregoing para are replied favourable to the petitioner-complainant, in that eventuality only, he would succeed in establishing this plea. Else all these are the matters relating to the prerogative of the management.

On facts, this Court finds that the petitioner has not demonstrated from record that questions posed in para 19 can be answered favourably to the petitioner.

21. In absence of positive proof of mala fides and allegations of personal nature against any particular person in taking the given decision or influencing for arriving at such a decision, the allegations turn out to be bald, and are even incapable of reply because there is no individual's state of mind which has been blamed. Therefore, there is no chance and opportunity available to the employer denying the allegations by an individual Officer coming before the Court and swearing that he has no mala fides.

22. In this background, there is no scope to conclude at this stage that the respondent has engaged in unfair labour practice. It cannot be forgotten that transfer is an inevitable incidence of employment. If transfer is to be held bad and unenforceable being vitiated due to mala fides to be so adjudicated on what appears prima facie in the interlocutory stage when the merits of the case are yet to be heard on facts and tested to cross-examination, the mala fides have to be so gross and writ large that no two opinions should be permissible. The facts must be such that the Court ought to hold that the transfer is mala fide. In absence of such a finding in favour of complainant, it would not be permissible to give an injunction against the transfer order.

23. As noted herein above, the facts of the case, as discussed, do not reveal anything so shocking and mala fide. In these premises, present is a fit case where the interim order deserves to be vacated. Interim relief granted by this Court while issuing rule is hereby. This Order, however, shall take effect after 14th January, 2008.

24. The question as to whether unfair labour practice is committed by the

respondent which may still remain open for hearing and disposal before the Industrial Court on merits, when the complaint would be heard.

25. This Court finds that taking brief resume of facts and recording of the reasons for the conclusions reached by this Court became necessary, and hence, those are briefly recorded. Needless to mention that these are the observations as to what appears to this Court prima facie. This would not in any manner have any effect on what could be found recorded after recording the evidence and hearing the case on merits which would be done by the trial Court in due course, and certainly being un-influenced by what this Court has recorded herein above which would certainly inevitable for deciding the issue. Similarly, these observations could in any manner would be open to be construed as expression of opinion on the merits of the Writ Petition which too could be heard and decided by appropriate Bench on its own merits.