

(2008) 12 BOM CK 0108
In the Bombay High Court
Case No : Writ Petition No. 1072 of 2005

Torrent Pharmaceuticals Ltd.	Vs	APPELLANT
Member, Industrial Court and Another		RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2), 7

Citation : (2009) 3 BomCR 405 : (2009) 121 FLR 200 : (2009) 2 MhLj 331

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : G.G. Modak, for the Appellant; A.G.P. for Respondent No. 1, U.A. Gosavi Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari B.P., J.—Question whether the Industrial Court functioning u/s 7 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act of 1971") has territorial jurisdiction to try the U.L.P. (Complaint) filed before it by present respondent working in its jurisdiction against the petitioner-employer having its head office at Ahmadabad in Gujarat and no establishment at Chandrapur.

2. The petitioner has pointed out that it is a company registered under the Companies Act, 1956 having its Corporate Office and Head Office at Ahmadabad in Gujarat State. It is engaged in business of manufacturing and marketing of pharmaceutical products. It has got its centres at New Delhi, Mumbai, Banglore, Chennai, Hyderabad and Kolkata. These centres have been stated to be created in order to co-ordinate the general marketing activity and for sending/receiving the general information/documents, sending/receiving material etc. The respective Managers in charge of those centres report to the Head Office at Ahmadabad and all decisions in relation to business of the Company including

those pertaining to the administration and management of the employees, rest with registered office are taken there only. Respondent No. 2 was employed on probation on 15.5.1993 as Medical Representative and his first posting was at Akola i.e. in Maharashtra State. He was confirmed in due course and on 18.4.2003 he was transferred from Akola to Chandrapur. It is not in dispute before this Court that neither at Akola nor at Chandrapur the petitioner has got their establishment. On administrative grounds, the petitioner transferred respondent No. 2 from Chandrapur to Ahmadabad on 10th May, 2004. Respondent No. 2 avoided to report on duty and sent some letters. The petitioner issued him reminders and when no alternative was left, the petitioner served upon him a charge sheet-cum-inquiry notice on 24.6.2004. The inquiry was scheduled to take place at Ahmadabad and was accordingly completed by the petitioner at Ahmadabad. On 3/8/2004 the petitioner forwarded to respondent No. 2 by post, the copy of inquiry proceedings, which he received on 6th August, 2004. Thereafter he appeared for further inquiry on 21.9.2004 and requested for grant of adjournment. The inquiry proceeded further, signature of respondent No. 2 was obtained on inquiry proceedings and thereafter on 11th October, 2004 he filed U.L.P. (Complaint) No. 118/2004 invoking Items 9 and 10 of the Schedule IV of the Act, of 1971. He sought relief in relation to the inquiry proceedings contending that the Inquiry Officer had not acted impartially and the employee was not given necessary opportunity. Along with the complaint, he also moved an application u/s 30(2) for grant of interim relief and sought stay of his termination from the service. The petitioner appeared before the Industrial Court at Chandrapur filed their reply and raised objection about territorial jurisdiction pointing out that they have no establishment at Chandrapur and that the events complained of occurred only at Ahmadabad. The Industrial Court granted interim protection to respondent No. 2 and framed preliminary issue at Exhibit 21 to ascertain whether it has jurisdiction to take cognizance of the dispute. After hearing the parties, it passed the impugned order on 4th February, 2005 holding that it possessed necessary territorial jurisdiction. The said order has been questioned by the petitioner in the present writ petition. This Court on 16.3.2005 has stayed the proceedings in U.L.P. (Complaint) No. 118/2004.

3. It is in this back ground that I have heard Advocate Modak for the petitioner, Advocate Gosavi for respondent No. 2 and the learned A.G.P. for respondent No. 1.

4. Advocate Modak, after mentioning the facts has pointed out that the learned Member of the Industrial Court has lost sight of the fact that the dispute in the present matter arose only at Ahmadabad and no part of it has any connection with Chandrapur. He points out that though while narrating the facts, the order of transfer dated 10th May, 2004 has been mentioned, there is no prayer for quashing or setting aside the said transfer order and relevant item of unfair labour practice namely Item No. 3 of Schedule IV is also not invoked. He, therefore, states that what is essentially challenged before the Industrial Court is only the mode, manner and conduct of the departmental inquiry by the petitioner

at Ahmadabad. He states that in these circumstances, the conclusion of possessing territorial jurisdiction reached by the Member of the Industrial Court is misconceived and unsustainable. He relies upon the various judgments in support of his contention that the situs of employment in the present case was not Chandrapur but Ahmadabad and the learned Member of the Industrial Court has incorrectly appreciated the questions placed before it for consideration with the assistance of those judgments. He relies upon the judgment of the learned Single Judge of this Court to point out that even in case of transfer it was held that the place where the order of transfer is made is relevant for deciding the place of accrual of cause of action. He also states that though in subsequent Division Bench judgment, a different view has been taken, the different view, according to him, is not very correct because then the employee can file proceedings against his employer at the place where he was working or then at the place where he was transferred. According to him, the situs of employment has to be fixed place so as to be regulated by a particular specific law and the application of law cannot be left at the discretion either with the employee or the employer.

5. Advocate Gosavi, in his argument, has relied upon the plea which has been considered by the learned Member of the Industrial Court. He states that all the judgments cited before this Court are appreciated by the learned Member of the Industrial Court. He points out that the petitioners have got Regional Office at Mumbai and, in fact, earlier transfer order from Akola to Chandrapur is issued by Mumbai office. He states that thus situs of employment of present respondent No. 2 is in State of Maharashtra only and the learned Member of the Industrial Court has correctly appreciated the controversy. He relies upon the Division Bench judgment reported in 2008 (III) C.L.R. 894 (Glaxo Smith Kline Pharmaceuticals Ltd. v. Abhay Raj Jain and Anr. and argues that the said judgment clinches the controversy herein and the order of the Industrial Court does not call for any interference.

6. In his brief reply, Advocate Modak has pointed out that the order of transfer from Akola to Chandrapur was issued because of authorization issued by Ahmadabad office and not independently by the Regional Office at Mumbai. He states that this fact could not be pointed out to the Industrial Court as the copy of the rejoinder pointing out existence of Regional Office at Mumbai or then the copy of the said transfer order was not served upon the Counsel for the petitioner, as required by the provisions of Act I of 1972 and Rules thereunder. Advocate Gosavi states that the transfer order has been issued by the General Manager, H.R.D. at Mumbai office and it is not on authorization from Ahmadabad office. He further states that the copy of the rejoinder, as also the copy of the document for use by the present petitioner were filed before the Industrial Court, Chandrapur while filing the application and documents as per the procedure.

7. The facts mentioned above necessary for present adjudication are not much in dispute & question is only of availability of jurisdiction to Chandrapur Industrial

Court under Act No I of 1972. It needs to be addressed in the light of the judgments on which parties have placed reliance. Respondent No 2 has relied upon recent Division Bench judgment of this High Court in case of Glaxo Smith Kline Pharmaceuticals Ltd v. Abhay Raj Jain, 2008 (III) C.L.R. 894 which is Letters Patent Appeal from and in terms sets aside judgment of learned Single Judge reported at Glaxo Smith Kline Pharmaceuticals Ltd. v. Abhay Raj Jain 2002 (Supp. 2) Bom. C.R. 157 (O.S.) : 2002 (11) C.L.R. 1051, on which petitioner placed reliance. The Division Bench also distinguishes another judgment of learned Single Judge of this High Court in case of Mohan R. Mhatre Vs. Udaipur Distillery Co. Ltd. and Others, . Learned Single Judge who delivered this 2003 judgment has also delivered the above Division Bench judgment. Petitioner has relied upon Division Bench judgment of Hon tie M.P. High Court in case between Association of Medical Representatives (M and V) Vs. The Industrial Tribunal and Others, and judgment of Hon"ble Apex Court reported at Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, in case between Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, . This judgment of Hon"ble Apex Court is also considered by Division Bench judgment (supra) of this Court.

8. I, therefore find it appropriate to begin the consideration with judgment of Division Bench (supra) of this Court as it is last in point of time. Not only this but it also considers the other judgments on which petitioner has placed strong reliance. The aspect of territorial jurisdiction has been considered in the light of challenge to transfer order as an unfair labour practice falling in Item 3 of Schedule IV of Act No. I of 1972. The appellant/employer had registered office at Mumbai with factories at two places in Maharashtra and at one place in Gujrath. Respondent No 1 Abhay was one of the medical representatives engaged by it and he was at the relevant time working at Udaipur in State of Rajasthan. He was sought to be transferred to Imphal in Manipur State by tendering him transfer order during sales meeting at Delhi. As he refused, it was forwarded to him by RPAD. He then filed U.L.P. Complaint invoking item 4(a) of Schedule II and item 3 of Schedule IV of Act No I of 1972 before Industrial Court at Mumbai. Employer raised point of lack of jurisdiction. After hearing parties Industrial Court confirmed stay order in favour of employee and Employer then filed writ petition 760/2002 which came to be dismissed. This judgment of dismissal formed subject matter of L.P.A. After considering various judgments cited before it, the Hon"ble Division Bench noticed that test to be applied was determination of place where dispute substantially arose and situs of employment would be the relevant factor to decide the place of cause of action for initiating any legal proceedings. Paragraph 28 and 29 of this Division Bench judgment are important. It was noticed that situs of employment of employee was sought to be changed from Udaipur to Imphal and both the places were beyond the territory of State of Maharashtra. In case of transfer the place of occurrence of the unfair labour practice is held to be the place from which the employee is sought to be

transferred or at the most the place where he is sought to be posted upon transfer. The place from which the transfer order is issued is held to be irrelevant as consequences of transfer order only result in to unfair labour practice. In para 18 the Division Bench also considers judgment of Hon''ble Apex Court in case of Rangavilas Motors Private Ltd (supra). Hon''ble Apex Court's judgment shows that workmen working at Bangalore branch was transferred by orders of Employer's head office at Madras. The reference of industrial dispute was made by State of Mysore. It was held to be proper as dispute arose at Bangalore where the concerned employee was working and it was ruled that there should be clearly some nexus between the dispute and the territory of the State and not necessarily between the territory of the state and the industry concerning which the dispute arose. Mohan M. Mhatre v. Udaipur Distillery Co Ltd. (supra) is clarified and distinguished in paragraph 27 by Division Bench. In said judgment, learned Single Judge had found that place of issuance of order of transfer also formed part of cause of action for initiating action under Act No I of 1972. Division Bench points out that the test to be applied in such matters as noticed by Single Judge was the place where dispute substantially arose or where both the parties resided. It was pointed out that there material on record did not disclose that dispute had arisen at Mumbai as employee was posted at Mumbai with the hope to commence the establishment/operations by employer and as such, there was neither an establishment nor any activity of employer at Mumbai. Division Bench has emphasised that learned Single Judge there expressed that "had the employer been successful in commencing the operations in State of Maharashtra, perhaps the position would have been different".

9. Association of Medical Representatives v. The Industrial Tribunal M.P., Indore (supra), Hon''ble Division Bench of M.P. High Court held the reference by M.P. Government in relation to dismissal of employee working as sales representative of pharmaceutical company not having any office in M.P. to be invalid and found that dismissal was ordered by Bombay Office. The contention of employee that as he was carrying work of pushing the sales in M.P. the Industry of the employer/company was also located in M.P. was not accepted by observing that said activity in pushing the sales by itself, without their being any establishment of the company in the State, was not an activity amounting to an undertaking of the company within meaning of Section 2(j) of Industrial Disputes Act according to the "working Principle" laid down by the Hon''ble Supreme Court in The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, . Division Bench held that dispute wholly arises in such circumstances at the place where the office of company/industry is situated, whether or not in fact the workman works at the place of the office or in the State outside the limits of that State where said office is situated. It is to be noted that his decision of Hon''ble M.P. High Court is prior to judgment of Hon''ble Apex Court in case of Rangavilas Motors Private Ltd. (supra) which rules that there should be clearly some nexus between the dispute and the territory of the State and not necessarily between the territory of the state and the industry concerning which the dispute arose. In

view of this subsequent Apex Court ruling, I am not in position to rely upon this judgment of Hon"ble M.P. High Court.

10. The judgments above leave no manner of doubt that it is the place of occurrence of unfair labour practice which is important to find out the territorial jurisdiction. The place at which such decision is taken is not wholly relevant if that decision is meant to operate at some other place. It is the actual implementation of that decision at the place where it is intended to have impact which may result into an unfair labour practice. In the facts before me the transfer order dated 10/5/2004 though issued from Ahamadabad in Gujrath State is to operate and has in fact operated at Chandrapur in Maharashtra. The departmental inquiry conducted at Ahamadabad is for disobedience to that transfer order which shifts present respondent No. 2 from Chandrapur to Ahamadabad. In U.L.P. Complaint as filed, respondent No. 2 has not challenged transfer order at all and he has only challenged the conduct of departmental inquiry against him by petitioner in particular manner and on some grounds. His grievance is he did not get necessary or proper opportunity to defend himself. The inquiry and alleged lacunae therein are at Ahamadabad but then inquiry is for misconduct which has taken place at Chandrapur. Though there is some dispute between petitioner and respondent No. 2 about filing of rejoinder by respondent No. 2 along with copy of earlier transfer order before Industrial Court, it is not in dispute that earlier transfer order of respondent No. 2 from Akola to Chandrapur was issued from Mumbai. Whether it was issued by Manager (HRD) of petitioner then stationed at Mumbai upon authorisation of head office at Ahamadabad or otherwise is not very material for present purposes. The petitioner itself has in its petition before this Court stated that it has also a centre at Mumbai for co-ordinating the general marketing and for sending and receiving of general information/documents, material etc. and its such centres are headed by Managers. It cannot therefore be said that petitioner does not have any establishment in State of Maharashtra. The relationship of employer and workman between parties is not in dispute and it is not the defence that petitioner is not an "industry". Thus work of respondent No. 2 at Chandrapur forms integral part of systematic activity of petitioner. Petitioners carry out its industrial operations through petitioner at Chandrapur and none of the judgments cited supra hold that formal existence of establishment of employer in such area is essential. Operations or activity of Industry in Chandrapur is not being denied here. Petitioner, while raising objection to territorial jurisdiction of Chandrapur Industrial Court, has not contended that provisions of Act No. I of 1972 are not applicable in the matter at all. Burden was upon petitioner to show why Industrial Court at Chandrapur has no jurisdiction and for that purpose, it also should have placed on record the details of its other sales representatives & manner of their functioning in State of Maharashtra. It is difficult to comprehend how centre of petitioner at Mumbai co-ordinates its marketing or gathers information or forwards/receives material without help of feedback, either direct or indirect, from respondent No. 2 and his other colleagues spread over in

Maharashtra. In present situation, misconduct is at Chandrapur, service of charge sheet upon respondent No. 2 is at Chandrapur and consequences of punishment, if any, shall also be suffered by him at Chandrapur. In view of the judgments, it is apparent that dispute about misconduct has substantially arisen at Chandrapur. It cannot be said that it arose only at Ahamadabad. The situs of respondent No. 2's employment is in State of Maharashtra at Chandrapur and his service conditions are subject to provisions of Act No. I of 1972. In view of this position emerging on record, objection of petitioner to the cognizance of U.L.P. Complaint by Chandrapur Industrial Court is misconceived and without any merit.

11. During arguments, petitioner has invited attention to the fact that Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices (Amendment) Bill, 2005; (i.e. L.A. Bill No. LXXVIII of 2005) seeking deletion of sales promotion employees from application of Act, No I of 1972 is still pending. He invites attention to statements of objects and reasons for this exercise where in State Government mentions that as a result of protection of said Act, number of litigations is on the rise and Medical Representatives are unfairly adopting restrictive labour practices thereby affecting the business efficiency and competitiveness in the pharmaceutical industry. Because of this many pharmaceutical companies have shifted to neighbouring states like Gujrath, Andhra Pradesh and Goa. The argument itself demonstrates that above Bill introduced in 2005 has yet not been cleared by State Legislature and hence, as on today, provisions of Act, No. I of 1972 continue to apply and govern the relationship between petitioner and respondent No. 2.

12. I am, therefore, satisfied that no case is being made out warranting any interference. The impugned order of Industrial Court does not suffer from any perversity or jurisdictional error. Writ petition is therefore dismissed. Rule discharged.

13. However in the circumstances of the case there shall be no order as to costs.