IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1089 OF 2014
WITH
WRIT PETITION NO.1091 OF 2014
WITH
WRIT PETITION NO.1092 OF 2014

1 Mr. J.D. Orgochem Limited,
(Formerly known as Jaysynth Dyechem Ltd.
Having Registered Office at 301/302,
Sumer Kendra, Worli, Mumbai – 400 018

2 Mr. Sharadbhai S. Kothari
Chairman and Managing Director,
Having his office at 301/302,
Sumer Kendra, Worli, Mumbai – 400 018

3 Mr. Mahendrabhai K. Kothari
Director,
Having his office at 301/302,
Sumer Kendra, Worli, Mumbai – 400 018 .... Petitioners

Vs.

Dyes & Chemical Workers Union
17, Dalvi Building,
Parel, Mumbai – 400 012 .... Respondent

Mr. Sudhir K. Talsania, Senior Advocate alongwith Mr. A.K. Jalisatgi i/by Mr. C.M. Lokesh, Advocate for the Petitioners in W.P. No. 1089 of 2014.

Mr. A.V. Bukhari, Senior Advocate alongwith Mr. A.K. Jalisatgi i/by Mr. C.M. Lokesh, Advocate for the Petitioners in W.P. No. 1091 of 2014 and 1092 of 2014.

Ms. Gayatri Singh, Advocate for the Respondent.

Coram : Smt. R.P. SondurBaldota, J.
Date : 25th March, 2015

JUDGMENT :

1 The above three petitions are being disposed off by a common order, since the facts alleged therein and issues arising for consideration thereunder are identical. The parties to the petitions are also same except for the individual workmen represented by the respondent-Union. The first petition concerns 39 workmen, the second petition concerns 20 workmen and the third petition concerns 17 workmen of respondent no.1- Company, the employer. The petitioners no. 2 and 3 are the Chairman and Managing Director and a Director of the Company.

2 The first petition arises out of the order dtd. 30th October, 2013 passed by the Industrial Court, Thane, on Complaint (ULP) No.187 of 2007. The order directs the Company to allow the 39 workmen to work at Viramgam, District Ahmedabad (Gujarat State) and to pay them wages from 27th July, 2007.

3 The second petition arises out of the order also dtd. 30th October, 2013 passed by the Industrial Court, Thane on Complaint (ULP) No. 188 of 2007 directing the Company to allow the 20 workers to work and directing it to pay wages from 23rd July, 2007.

4 The third petition arises out of the order dtd., 30th October, 2013 passed by the Industrial Court, Thane on Complaint (ULP) No.186 of 2007 directing the Company to allow 17 workers to work and directing it to pay wages to them from 23rd July, 2007.

5 The factual background of the petitions is as follows:

Petitioner no.1 ("the Company" for short) was engaged in the business of manufacturing Dyestuff, Dyes Intermediates and Auxiliaries. It had its manufacturing Units at Industrial Area, Thane-Belapur Road, Navi Mumbai and Patalganga, District Raigad. In the year 1997-1998, the Company suffered economic setback on account of globalisation of the market and was unable to compete cheaper productions available in the market from China and other far East Asian countries. This led the Company into taking several steps which have resulted into number of litigations including the present litigation.

6 The Company gave notice dtd. 21st May, 1999 of change under Section 9A of Industrial Disputes Act for reduction in the rate of gratuity payable to the employees at Turbhe. After failure of the

conciliation proceedings, the Government referred the matter for adjudication to the Industrial Tribunal.

7 Later the Company was compelled to take steps to reduce it's workforce and made an application to the Government of Maharashtra under Section 25N of the Industrial Disputes Act ("ID Act" for short) to retrench 210 out of 219 employees. The Government, by it's order dtd. 4th January, 2000 allowed the Company to retrench 175 employees w.e.f. the date of the order. Accordingly, the Company retrenched 175 employees w.e.f. 1st January, 2000. Thereafter, the respondent-Union sought review of the order of the Government and the matter stood referred to the Industrial Tribunal for adjudication and registered as Reference (IT) No. 25-N (1) of 2000. In March, 1999, the Company discontinued the manufacturing activities at Turbhe. It, however, continued to pay the workmen in service.

8 In order to tide over it's difficulties, the Company explored the possibility of manufacturing of Dye Stuff, Optical Whitening Agent, Acid Dye, Solvent Dyes and Pigments at low cost at other locations. It located such manufacturing facilities at a running factory at Viramgam, which belongs to M/s Bhavani Dye Chem Industries and M/s Venus Industries. Considering all the factors for viability of profitable manufacture, the Company decided to manufacture the produces at the two factories and entered into Leave and License Agreement dtd. 3rd June, 1999 with the owners. The Company was put in possession

on 1st March, 2000. With discontinuance of manufacturing activities at Turbhe, most of the employees employed there were sitting idle and the Company had been paying wages to them. It therefore decided to utilise the manpower available at Turbhe factory at Viramgam factory and decided to shift 133 such personnel from Turbhe plant to Viramgam plant. The company issued orders of transfer dtd. 25th March, 2000 to 133 employees. The transfer was effected from 3rd April, 2000. Out of 133 persons, 77 were from Supervisory cadre.

9 The respondent then, filed Complaint (ULP) No.196 of 2000 before the Industrial Court at Thane to challenge the orders of transfer. The Industrial Court, vide it's order dtd. 31st March, 2000 granted interim relief restraining the Company from giving effect to the order of transfer. That interim order was challenged by the Company by filing Writ Petition No.3083 of 2000 in this Court. The petition came to be disposed off without any orders, in view of the statements made by both the sides. The respondent made a statement that it will not enforce the order of the Industrial Court dtd. 31st March, 2000 and the Company made a statement that it will not enforce the transfer order. Since then, the employees under transfer did not report at Turbhe factory and the Company did not pay any wages to them. Later the Industrial Court, by it's order dtd. 30th September, 2003 allowed the complaint and set aside the transfer orders. The Company challenged the order of the Industrial Court by filing Writ Petition No.7193 of 2003. By the order dtd. 3rd February,

2004, the petition was admitted and interim relief of stay of the order of the Industrial Court was granted to the Company, subject to the Company depositing in Court wages of the concerned employees from 23rd May, 2003 till the date of the order. Liberty was given to the employees to withdraw 50% of the deposit without any security and the remaining amount by furnishing security. This order was challenged by both the sides by filing Letters Patent Appeals. The Company preferred Letters Patent Appeal No.83 of 2004, which was partly allowed directing the employees to furnish bank guarantee to the extent of 50% amount deposited by the petitioner, if they desired to withdraw the entire amount. The Letters Patent Appeal No. 411 of 2004 preferred by the Union contending that the order of stay had an effect of compelling the workers to report for work at Viramgam was disposed off on 21st February, 2005 on the statement of the respondent that the transferred employees were ready and willing to report on work at Viramgam factory. In compliance of the order passed in it's petition, the Company deposited the wages in this court. The employees have withdrawn the amount as per the liberty granted to them. In the meantime about 94 employees from amongst 133 employees transferred to Viramgam had settled the matter with the Company and received their full dues and claims. This left only 39 employees, who had to report to Viramgam for work in compliance with the statement made before the court. The Company, therefore, by it's letter dtd. 10th July, 2004 asked the 39 employees to report for work at Viramgam. When the employees failed to report, it sent reminders dtd. 21st September, 2004 and 22nd September, 2005. On failure even thereafter in reporting for duty at Viramgam factory, the Company served charge-sheet for misconduct and dismissed them from service by the order dtd. 15th April, 2005. The respondent challenged the order by filing Complaint under Section 28 read with Items 1(a)(b)(d) (e) (f) and (g) of Schedule IV of MRTU and PULP Act registered as Complaint (ULP) 107 of 2005. The Company filed its written statement raising objections to maintenability of the Complaint as also on merit. It claimed that the Labour Court at Thane did not have territorial jurisdiction to entertain the Complaint since the employees were at Viramgam factory and dismissal orders had been issued from Viramgam (Gujarat). It also alleged that 32 out of 39 employees were from Supervisory cadre and hence not workmen within the meaning of Section 2(s) of the I.D. Act and 3(15) of MRTU and PULP Act.

10 Two years thereafter the respondent filed yet another Complaint being Complaint (ULP) No. 187 of 2007 under Section 28 read with Items 9 and 10 of Schedule IV of MRTU and PULP Act to again challenge the orders of dismissal in view of pendency of two references being Reference (IT) No.25 of 2000 and Reference (IT) No.25-N-01 of 2000, before the Industrial Tribunal at Thane. The Company contested the complaint raising various objections including objections to the maintenability of the second complaint on the same grounds as earlier i.e want of territorial jurisdiction of the Labour Court at Thane and the bar of limitation.

11 As regards the 20 workmen, concerned in the second petition, the Company issued charge-sheets from May, 1999 to October, 1999 alleging misconduct of making false medical claims on the basis of fraudulent documents. The Company appointed an independent person, one Mr. Arjun Patil as the Enquiry Officer to hold enquiry into the charges. But the Enquiry Officer and the witnesses of the Company started receiving threats to their life and hence withdrew themselves from the enquiry. Thereafter the Company was unable to get any other Enquiry Officer and no witness was willing to depose in the enquiry on account of the threats. The Company, therefore was constrained to discontinue the enquiry. On the basis of the material available, it passed the order dtd. 23rd February, 2000 for dismissal of 19 employees and the order dtd. 23rd May, 2000 for dismissal of 28 employees. In respect of the 19 employees, the respondent filed Complaint (ULP) No. 184 of 2000 and in respect of the 28 employees, it filed Complaint (ULP) 3000 of 2000. On account of pendency of those complaints, the respondent filed Complaint (ULP) No.188 of 2007 under Section 28 read with Items 9 and 10 of Schedule IV of MRTU and PULP Act on the ground of non-compliance with Section 33(2)(b) of the I.D. Act. The Company has contested all the complaints on the grounds identical to the complaints in respect of the 39 workmen.

12 The facts relating to the 17 workmen involved in the third petition are that on 20th November, 1998, though it was declared a

holiday, the employees forcibly entered into the factory premises and squatted there. On the next date, which was a working day, they did not report to the duty. Therefore, the Company displayed a notice stating that they were not entitled to wages and were also liable for disciplinary action because of collective abstinence from work. On 23rd November, 1998, the Committee members of the respondent went from one department to another and instructed the workmen to stop the work immediately. On the same day, the employees forcibly entered into the cabins of the Chief Manager -Mr. G.Y. Kadam, the Security Supervisor, Mr. R.A. Pandey, Mr. P.K. Karnani, Mr. K.V. Ramchandran, Deputy Production Manager and the cabin of Plant Manager where Deputy Production Manager, Mr. Pandey was sitting. They dragged all these persons outside and assaulted them with fist blows and kicks. Mr. Karnani and Mr. Ramchandran had to be hospitalised for the injuries sustained by them and the others treated at the hospital. Later on the same day, they assaulted Mr. R.G. Udyawar, who had witnessed the incidents of assault on the General Manager (Works). Mr. Udyawar was assaulted with fist blows, kicks, sticks and rods. After the assault, all the committee members of the respondent left the factory without gate-pass and after about an hour, forcibly entered into the factory. The five injured Executives/ Managers had to be taken to the hospital under Police assistance. A complaint came to be lodged with the Police. On that day, the employees of the first and the general shift did not perform any work throughout their shift hours. The Company served charge-sheets upon

26 workmen, who were reported to be involved in the incidents of assault and mayhem. It held enquiries against the workmen. After holding enquiry, the Company dismissed 17 workmen against whom the charges were proved by the order of dismissal dtd. 6th October, 2000. The respondent challenged the order of dismissal by filing Complaint (ULP) No.10 of 2001. The Company has contested the Complaint on the same grounds as the earlier complaints. In the year 2007, the respondent filed the second complaint for the same cause of action i.e. to challenge the order of dismissal from service of the 17 workmen by filing Complaint (ULP) No.186 of 2007 under Section 28 read with Items 9 and 10 of Schedule IV of MRTU and PULP Act on the ground of violation of Section 33(2)(b) of the Industrial Disputes Act, which is contested by the Company on the same grounds as the earlier complaints.

13 The respondent examined the same witness, Shashikant Laxman Gavde in all the three complaints. He was working as a Chemist in the Company and whose services had been terminated.

14 By the time, the complaints had been heard finally, 17 out of 20 workers in the second petition had settled the dispute and the complaint was prosecuted in respect of 3 persons. Similarly out of 17 persons in the third petition, 8 have settled the dispute and the complaint was considered only in respect of 9 persons. On appreciation of the evidence and submissions of the parties before it, the Industrial

Court passed the orders impugned in the petition, as described hereinabove.

15 It would be necessary to mention at this place some more developments in respect of the business of the Company. As stated in the petitions, the Company had taken loan from various financial institutions for the purpose of business. Since it was not in a position to repay the loans, the creditors had proceeded against the Company under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Securitisation Act" for short), M/s Assets Reconstruction Company (India) Limited ("ARCIL" for short), the Securitisation Company issued notice dtd. 5th September, 2006 to the Company for repayment of loan on behalf of Bank of India, Industrial Development Bank of India, Bank of Baroda and Export-Import Bank of India. As the Company was unable to satisfy the demand in the notice, the ARCIL issued possession notice under Section 13(12) and 13(4) of Securitisation Act on 29th December, 2006. It took possession of the entire factory premises including land, factory structure and the other structures at plot nos. D-54/2, D-54/3, D-55 and D-56. ARCIL sold the suit premises alongwith all the assets therein. Thus, since 29th December, 2006, the Company is not in a position to run it's factory. The respondent had challenged action of ARCIL by filing Writ Petition No.2626 of 2007, which was dismissed by this Court by it's judgment and order dtd. 1st August, 2007. The respondent has challenged that order in the Apex

Court, which challenge is pending. Because the respondents had not reported to the factory at Viramgam, no manufacturing activity could commence at Viramgam at any point of time. Consequently, the Company did not renew the leave and license agreement with M/s Bhavani Dye Chem Industries and M/s Venus Industries after since March, 2006. This is the background against which directions in the three petitions for reinstatement with backwages are to be considered.

16 The petitioner had contested the complaints on the grounds (a) the complaint was time-barred, (b) the complaint was not maintainable on account of multiplicity of proceedings, (c) the Industrial Court had no territorial jurisdiction and (d) in any case, Section 33(2)(b) of the Industrial Disputes Act, 1947, had no application since the concerned employees were transferred on 25th March, 2000 on the same terms and conditions as applicable to them in Mumbai, whereas the order of reference concerning gratuity was made on 29th September, 2000 i.e. much after the order of transfer.

17 The issues framed by the Industrial Court on the pleadings between the parties, which are identical in all the three complaints and the findings thereon read as follows:

No.	**Issues**	**Findings**
1	Whether the complaint is within limitation?	In the Affirmative

2	Do the respondents prove that the complaint is not maintainable on the principle of multiplicity of the litigations?	In the negative
3	Does the complainant prove that the dismissal/ termination of services was in violation of Section 33 of the I.D. Act, 1947 and therefore, amounted to unfair labour practices under Items No.9 and 10 of Schedule IV of the MRTU & PULP Act, 1971?	In the Affirmative
4	Whether the complainant is entitled to the reliefs, as claimed?	In the affirmative Partly.

18 By the impugned order, the Industrial Court directed the petitioner to reinstate the concerned workmen at Viramgam with backwages from the date of filing of the complaints. It held that the complaints filed were not barred by limitation because there was continuing wrong. As regards the maintenability of the petition, the Industrial Court found that the subsequent complaints were maintainable since the issue of Section 33(2)(b) was not raised in the previous complaints. The Court also considered the objection to the jurisdiction though no specific issue was framed in that regard. It held that because earlier the concerned employees were employed at Turbhe and they had never reported to the place of work at Viramgam, it had jurisdiction to entertain the complaints. The next finding was on merit, i.e. on the applicability of Section 33(2)(b) of the Industrial

Disputes Act. Mr. Talsania, the learned Senior Counsel appearing for the petitioner in the first petition and Mr. Bukhari, the learned Senior Counsel appearing for the petitioners in the other two petitions submit that the impugned order is ex-facie illegal and bad in law and that the Industrial Tribunal has completely misread the material on record, misconstrued the law and mis-directed itself to reach wholly unsustainable conclusions.

19 Mr. Talsania submits that the complaints filed by the respondent were hopelessly barred by the limitation provided under Section 28 of the MRTU & PULP Act. He points out that the cause of action pleaded in the complaints was of dismissal from service of the workmen by the order dtd. 15th April, 2005 and the subsequent non-compliance with Section 33(2)(b) of the Industrial Disputes Act. The complaints were filed on 21st July, 2007 i.e. about 2 years and 3 months after the order of dismissal. The period of limitation provided by Section 28 of MRTU & PULP Act for filing complaints thereunder is of 90 days of occurrence of the unfair labour practice. The complaints, therefore, were hopelessly barred by limitation and there was no case made out for condonation of the delay much less good and sufficient. The respondent, on the other hand contended that the cause of action to file the complaint of unfair labour practice is a continuous cause of action and recurring in nature, therefore, there was no question of delay in filing the complaint.

20 In the impugned orders, the Industrial Tribunal has given two reasons for holding that the complaints filed are not barred by limitation. At para 7 it says "needless to say that, as per law laid down of our Bombay High Court, the cause of action for the complaint of unfair labour practice under Item No.9 of Schedule IV of the MRTU & PULP Act is continuous and recurring in nature and it continues till breach of violation continues" without even so much as naming the decision much less discussing the same.

21 The second reason stated at para 6 of the order is a strange reason. By placing reliance upon the decision of the Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Shri Ram Gopal Sharma and Ors., reported in 2002 I CLR, page 789, and in particular, upon paragraph 14 thereof, the Industrial Tribunal holds that the order of dismissal was ineffective and that the relationship of employer and employee had not come to an end. The observations from the decision of Jaipur Zilla case relied upon and quoted in the impugned orders read as follows:

> "The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to

be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed, consequence of its is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position, there is no need of a separate or specific order for his reinstatement."

22 Mr. Talsania submits that by no stretch of imagination, termination from service can be a continuous and recurring wrong. The act of termination from service would occur only once though the effect or the consequence of the act of termination would continue. For the meaning of the term continuing wrong, he relies upon decision of the Apex Court in Balakrishna Savalram Pujari Waghmare and others vs. Shree Dnyaneshwar Maharaj Sansthan and Others, reported in A.I.R. 1959, Supreme Court, page 798. The Apex Court was, therein, considering Article 120 and Section 23 of the Limitation Act (1908). Section 23 of the old Limitation Act provides for. The relevant observations of the Apex Court at paragraph 31 read as under:

> "It is then contended by Mr. Rege that the suits cannot be held to be barred under Article 120 because S.23 of the Limitation Act applies; and since, in the words of the said section, the conduct of the trustees amounted to a continuing wrong, a fresh period of limitation began to run at every moment of time during which the said wrong continued. Does the conduct of the trustees amount to a continuing wrong under S.23? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants?

> In dealing with this argument, it is necessary to bear in mind that S. 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. It, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that S.23 can be invoked. Thus considered it is difficult to hold that the trustees act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong".

The essence of a continuing wrong is thus seen to be an act which creates a continuing source of injury and renders the doer of the act responsible and liable for continuance of the said injury. In case of the act of dismissal from service, the wrongful act causing the injury is complete on the dismissal being effective. What continues is the damage caused to the employee by the injury of dismissal. Therefore the view taken by the Industrial Tribunal that the cause of action available to the respondent is a continuous cause of action cannot be justified. It would also be worthwhile to note that in the facts of the decision cited, the Apex Court had observed that there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster.

23 Ms. Gayatri Singh attempted to distinguish the decision cited with submission that the dismissal from service in the case on hand cannot be said to be complete because the petitioners have not complied with Section 33(2)(b) of the Industrial Disputes Act. There is no merit in the submission because the non-compliance would at the highest affect legality of dismissal, which may enable the employee to challenge the dismissal on that ground.

24 A somewhat similar argument had been advanced before the Apex Court in the other decision cited by Mr. Talsania i.e. the decision in <u>Union of India and others vs. Nandlal Raigar</u>, reported in <u>Judgments Today 1996 (5) Supreme Court, page 420</u>. The respondent before the Apex Court had been dismissed from service in 1973 after disciplinary enquiry. He challenged the order of dismissal by filing suit in the year 1980. It was contended on behalf of the respondent that the order of dismissal not being made in accordance with law, it had no legal existence. Therefore, it was not necessary for the respondent to have the order set aside. The Apex Court rejected the contention with following observations:.

> “If the dismissed delinquent employee does not avail of the remedy by impugning the order of dismissal within limitation, then it would not be open to him to challenge in the suit that the order of dismissal is in violation of the Rules, that he could ignore the order and then file the suit at any time at his pleasure. If that contention is given acceptance, startling consequences would follow. Under these circumstances, this Court did not intend to lay down that even in a case of dismissal after due enquiry and where the order is allowed to become final, it would be ignored by the delinquent employee and contended that the limitation does not stand as a bar to him.”

25 Applying the above principles to the facts of the case, it must be held that the complainants are barred by limitation and dismissed on that ground.

26 As regards the jurisdiction of the courts at Thane to entertain the complaints, Mr. Talsania submits that the Industrial Court erred in assuming the territorial jurisdiction. The employees, pursuant to their transfer had become employees of the Viramgam factory. In view of the order dtd. 3rd February, 2003 passed by this Court in Writ Petition No.7193 of 2003, they were required to report at Viramgam factory. Furthermore in the Letters Patent Appeal No.411 of 2004, the respondent had given an assurance that they would resume duty at Viramgam. Hence, the Court having territorial jurisdiction over Viramgam alone had jurisdiction to entertain the complaints. The

Industrial Tribunal, however, for the reasons reproduced below held that, it has jurisdiction to entertain the complaint.

> "Admittedly, the persons concerned i.e. the employees involved in the complaint are the employees of the respondents Company, which is situated in Navi Mumbai, Maharashtra State, the Order of transfers of those employees were issued by the respondents Company situated at Navi Mumbai. These transfer orders were challenged by the complainant Union in complaint of unfair labour practices before Industrial Court, Thane. After transfers, the concerned employees never reported at Viramgam and their services have been dismissed by the Company situated in Maharashtra, therefore the employees concerned being the employees of the Company situated in Maharashtra State, certainly governed by laws applicable to the State of Maharashtra, such as ULP Act, as such this Court has jurisdiction to entertain the complaint under law."

27 Mr. Talsania, relying upon decision of division bench of our High Court in <u>Glaxo Smithkline Pharmaceuticals Limited vs. Abhay Raj Jain and Anr</u>., reported in <u>2008(6) Bom. C.R. Page 602</u>, submits that, the relevant factor to decide the place of cause of action for initiating legal proceedings would be the situs of the employment and not the place of issuance of the order. According to him, therefore the Industrial Tribunal was incorrect in holding that it has jurisdiction for the reasons quoted above.

28 In the facts of the case cited, the employee had been transferred from Udaipur to Imphal. That order was challenged as an

unfair labour practice by filing complaint under the MRTP & PULP Act in the Industrial Court at Mumbai with an argument that an order having effect of unfair labour practice, was issued from a place situate within the territory of the State of Maharashtra. Our High Court, rejected the justification for jurisdiction holding that, in case of unfair labour practice which is sought to be employed by the employer on account of transfer of the employee from one place to another, the actual adoption of the unfair labour practice would be either at the place from where the employee is sought to be transferred or at the place to which 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 he is actually transferred under such order. Mr.Talsania, submits that, therefore the Industrial Tribunal at Thane has erred in considering the circumstance that the transfer orders were issued by the petitioner- Company situate at Navi Mumbai.

29 In the case of hand, the place of issuance of order is the only circumstance considered by the Industrial Court for holding that it has jurisdiction to entertain the complaint. It has failed to consider the

other facts of the case, which if taken into consideration, will take away the jurisdiction of the Court at Thane. As has, already been noted above, in view of the order passed by this Court in the writ petition filed by the employees and the statement made on their behalf in the Letters Patent Appeal, they had ceased to be the employees of Turbhe factory and had become the employees of Viramgam factory. After making the statements in both the proceedings, based on which the proceedings were disposed off, the employees cannot be permitted to say that, they continue to be the employees at Turbhe factory. Consequently, they could not have invoked the jurisdiction of the Court at Thane.

30 The other ground of maintenance argued by the petitioner before the Industrial Tribunal was of multiplicity of proceedings. The petitioner had contended before the Industrial Tribunal that, the complaints of unfair labour practices filed by the respondent were not maintainable, in view of pendency of Complaint (ULP) No. 107 of 2005 before the Labour Court, Thane. The cause of action pleaded in both the complaints being same, the subsequent complaint was not maintenable. The respondent had contended in reply that though both the complaints challenged the order of dismissal of the employees, the nature of the proceedings and the scope of their adjudication is different. The Industrial Court accepted the contention of the respondent with reasoning that the two complaints are different since the ground of violation of the provision of Section 33(2)(b) of the

Industrial Disputes Act is not taken in the earlier complaint. The reasoning of the Industrial Court is not correct. Merely because a party for some reason fails to plead a particular ground of challenge in the complaint, it cannot be permitted to file another complaint for the same cause of action on account of such failure. If a party fails to plead a particular ground of challenge, it must be deemed to have given up that challenge. Otherwise there would be no end to the litigation. A party may file series of complaints, each on a different ground for the same challenge. The law abhors multiplicity of proceedings. The respondents could have and ought to have taken the ground of breach of Section 32 (2)(b) in the earlier complaint.

31 This brings us to the merit of the case. It is the contention of the respondent that the petitioners were required to fulfil the conditions under Section 33(2)(b) of the Industrial Disputes Act, since on the dates of the orders of dismissal of the employees represented by the respondent in the three petitions, there were two references pending, being Reference (IT) No.25/2000 and Reference (IT) No.25-N-01 of 2000. The petitioners, on the other hand, denied that there was violation of Section 33(2)(b) of the Industrial Disputes Act. According to them, the said provision was not attracted to when the orders of dismissal passed against the concerned employees. As regards Reference (IT) No.25-N-01 of 2000, the petitioners contend that the same is not an industrial dispute as contemplated within the meaning of Section 33(2)(b) of the Industrial Disputes Act since it is

not in consequence of any industrial dispute, individually or collectively raised by the respondent-union. The reference made under Section 25-N is natural consequence of an application of the petitioners seeking permission to retrench the workmen and not an industrial dispute in true sense of the term. Consequently the requirement of Section 33(2)(b) of the Industrial Disputes Act was not attracted. As regards the dispute in Reference (IT) No.25 of 2000, the petitioners claim that the employees in the first petition are not concerned with it and it was not pending at the time of dismissal of the employees in the other two petitions.

32 In view of the above rival pleadings, the two questions that need to considered are whether the provision of Section 33(2)(b) of the Industrial Disputes Act is attracted to the orders of the termination of the employees represented in three petitions and what is the efficacy of challenge to the order of termination on the limited ground to violation of Section 33(2)(b), when the challenge to the same order on larger grounds is pending for consideration.

33 Mr. Talsania submits that unless the proceeding pending before any of the authorities mentioned in Section 33(1) of the Industrial Disputes Act, is in respect of an “Industrial dispute”, the condition imposed under Sub-Section 2(b) thereunder cannot be attracted. He argues that the application of the petitioners under Section 25-N of the Industrial Disputes Act was for fulfilment of the

statutory requirement and hence any reference arising out of such application is not an industrial dispute. In my considered opinion, this argument of Mr. Talsania cannot be accepted for the reasons forthcoming.

34 The definition of "Industrial Disputes" in Section 2(k) of the Industrial Disputes Act reads as under:

> 2(k) "**industrial dispute**" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person"

The above definition can conveniently be divided into four parts i.e. :

i) Factum of dispute,

ii) Parties to dispute

   (a) employers and employers or employers and workmen or workmen and workmen.

iii) Subject matter of dispute, the dispute should be connected with.

   (a) the employment or non-employment

   (b) Terms of employment or

   (c) Conditions of labour of any person

iv) Industry and industrial dispute i.e. the dispute should be related to an industry.

For any dispute to be an industrial dispute, obviously, each of the above four parts must be reflected therein. Section 25-N of the Industrial Disputes Act provides for conditions precedent to be complied with, by the employer for retrenchment of workmen, one of the conditions being prior permission of the appropriate government. The petitioners had accordingly, in compliance with the requirement applied for permission of the appropriate government to retrench 210 employees. The government, by its order dtd. 4th January, 2000 allowed the company to retrench 175 employees with effect from the date of the order. Until this time, it cannot be said that any of the parts of the definition of industrial dispute were present in the proceeding of the application. But then the respondent sought review of the order of the government and the matter was referred to Industrial Tribunal for adjudication, which was registered as Reference (IT) No.25-N-01 of 2000. Once the respondent-union sought review of the permission granted by the government, for retrenchment of the employees, the same assumed the character of industrial dispute, it being the dispute or difference between the employer and the workmen connected with their employment/non-employment. Therefore, it cannot be said that pendency of this reference was irrelevant for the action of dismissal taken by the petitioner for the reason alleged.

35 Reference (IT) No.25 of 2000 arose out of notice of change dtd. 21^{st} May, 1999 issued under Section 9-A of Industrial Disputes Act for reduction of gratuity from 30 days to 15 days for each completed year of service or part thereof. The Conciliation Officer had admitted the dispute in conciliation on 31^{st} May, 1999. There were two more Notices of Change given by the petitioners dtd. 21^{st} June, 1999 and 24^{th} June, 1999 for reduction and sealing of variable dearness allowance and for reduction of leave facilities. The challenge by the respondent to these notices was admitted in conciliation on 7^{th} July, 1999. The conciliation proceedings later came to be closed in the month of October, 1999. Thereafter, the order of reference came to be made as late as 29^{th} September, 2000 to the Industrial Court at Thane for adjudication. The order of reference was received by the Industrial Tribunal on 10^{th} September, 2000 and the order of issuance of notice thereon came to be passed by the Industrial Tribunal on 9^{th} February, 2001. The Industrial Tribunal issued notices on 23^{rd} February, 2001. The orders of dismissal of the employees are dtd. 23^{rd} February, 2000, 23^{rd} May, 2000, 6^{th} October, 2000 and 15^{th} April, 2005.

36 It is submitted on behalf of the petitioners that at the time the orders of dismissal in respect of the employees concerned in the second and third writ petitions were passed on 23^{rd} February, 2000 and 23^{rd} May, 2000 neither any conciliation proceedings were pending, same being closed in October, 1999 nor any industrial dispute was pending for adjudication because the order of reference was made on

6th October, 2000 and the reference proceedings commenced on 9th February, 2001. As regards the employees concerned in the first petition, according to the petitioners, they being the employees at Viramgam factory are strangers to the two references.

37 The Industrial Tribunal by the order impugned in the first petition has held that the provision of Section 33(2)(b) of the Industrial Disputes Act is applicable to the dismissal of the employees concerned therein with an observation that because these employees did not report at Viramgam, they continued to be the employees at Turbhe plant and hence attached to the references pending. It has already been held above that the observation that they are the employees at Turbhe factory is not correct and that they are the employees at Viramgam factory. As such these employees are not concerned with any of the two reference. Hence, it must be held that their dismissal was not in violation of Section 33(2)(b) of the Industrial Disputes Act.

38 The employees and the second and third petition are from Turbhe factory and have been dismissed on 23rd February, 2000 and 23rd May, 2000. It is to be seen whether as on that date any proceedings as contemplated by Section 33(1) were pending so as to attract the provision of Section 33(2)(b). The pendency contemplated is in respect of an industrial dispute before i) Conciliation Officer, ii) a Board, iii) arbitrator, iv) Labour Court, v) Tribunal or vi) National

Tribunal. Out of them, the authorities concerned in the case on hand for Ref. (DT) No.25 of 2000 are Conciliation Officer and the Industrial Tribunal. As regards the Conciliation Officer, the record shows that the proceedings before him were closed in the month of October, 1999. And as regards the Industrial Tribunal, the proceedings commenced on 9th February, 2001 when it passed the first order of issuance of notice.

39 Ms. Singh, the learned counsel for the respondent relying upon decision of the Apex Court in M/s Lokmat Newspapers Private Limited Vs. Shankar Prasad, reported in (1999) 6 Supreme Court Cases, page 275 submits that the conciliation proceedings cannot be held to have been concluded until the report under Section 12(6) is made by the Conciliation Officer and that report is received by the appropriate government. Therefore, according to her, on the date of dismissal of the employees in the second and third petition, the industrial dispute was pending for conciliation before the Conciliation Officer. In the facts of the case before the Apex Court, the Conciliation Officer on 22nd June, 1982 by 4.35 pm. had declared that settlement was not possible between the parties and closed the investigation. On the same day, at 5.00 pm., the employer had issued orders of dismissal. It was contended by the employer before the Apex Court that with the declaration by the Conciliation Officer that settlement was not possible between the parties, the conciliation proceedings had come to an end. The Apex Court after taking note of Section 12(4) of the Industrial Disputes Act held :

"The aforesaid statutory requirements leave no room for doubt that after closing the investigation and after having arrived at the conclusion that no settlement is possible between the parties, the Conciliation Officer has to spend some more time before submitting his detailed written report about failure of consideration for information and necessary action by the State Government. In the very nature of things, therefore, such requirement will take at least a couple of days, if not more, for the conciliator after closing the investigation to enable him to send an appropriate report to the State Government. It is, therefore, obvious that on 22.6.1982 when by 4.35 pm., the Conciliation Officer declared that settlement was not possible between the parties and he closed the investigation, neither his statutory function did not come to an end nor did he become functus officio. His jurisdiction had to continue till he submitted his report as per Section 12(4) to the appropriate Government. Even such preparation of the report and sending of the same from his end to the appropriate Government would obviously have taken at least a few days after 22.6.1982. It must, therefore, be held that the conciliator remained in charge of the conciliation proceedings at least for a couple of days after 22.6.1982. It is, therefore, difficult to appreciate how within half an hour after the closing of investigation by the conciliator and before his getting even a breathing time to prepare his detailed written report about failure of conciliation to be sent to the Government as per Section 12(4), the appellant could persuade itself to presume that conciliation proceedings had ended and, therefore, it was not required to follow the procedure of Section 33(1) and straight-away could pass the impugned order of retrenchment within 25

> minutes of the closing of the investigation by the conciliator on the very same day."

The Apex Court thereafter referred to Section 20 of the Industrial Disputes Act, which provides for the commencement and conclusion of the proceedings to hold :

> "But when we come to Section 20(2), it becomes obvious that the legislature has introduced by way of legal fiction an irrebuttable presumption as per Sub-Section (b) of Section 20(2) that when during conciliation proceedings no settlement is arrived at between the parties, the conciliation proceedings shall be deemed to have concluded when the failure report of the Conciliation Officer is received by the appropriate Government. Consequently, the legislative intention becomes clear that conciliation proceedings initiated under Section 12(1) whether of a discretionary nature or of a mandatory nature shall be treated to have continued and only to have concluded when the failure report reaches the appropriate Government."

40 The date of conclusion of the conciliation proceedings is thus the date of receipt of the failure report by the appropriate Government. The respondent in it's complaint has not specified this date. It has stated only the subsequent date i.e. the date on which the appropriate Government referred the dispute to the Industrial Tribunal. That date is 29th September, 2000. In these circumstances, considering the time gap between the closing of the conciliation by the Conciliation Officer and the date of dismissal i.e. between October,

1999 to 23rd February, 2000 / 23rd May, 2000, it can be safely concluded that report of failure of the conciliation had been received by the appropriate Government thereby concluding the proceedings before the Conciliation Officer prior to the dismissal order. In the circumstances, the provision of Section 33(2)(b) of the Industrial Disputes Act is not attracted to the dismissal of the employees concerned with the 2nd and 3rd petition.

41 The employees in the 2nd and 3rd petition will obviously not be concerned with the application of permission for retrenchment though the respondent as the trade union would be concerned with it. Consequently pendency of Ref.(IT) No.25-N-01 of 2000 is of no relevance to them. Therefore, Section 33(2)(b) of the Industrial Disputes Act cannot be attracted.

42 This bring me to the second question of efficacy of the challenge to the order of dismissal on the ground of violation of Section 33(2)(b) of the Industrial Disputes Act when the challenge to the order on other grounds is already filed and pending for consideration. For answering this question the factors relevant would be the object of Section 33(2)(b) of the Industrial Disputes Act and the scope of the proceeding thereunder.

43 The object of Section 33(2)(b) obviously is to ensure the interest of healthy growth and development of trade union movement.

It protects the workmen concerned during the course of industrial conciliation, arbitration and adjudication, against employer's harassment and victimisation, on account of their having raised the industrial dispute or their continuing the pending proceedings. In other words, the provision made is for the protection of the workman concerned in the dispute against victimisation by an employer on account of his having raised an industrial dispute or his being a party to a pending industrial proceeding and to ensure that the pending industrial disputes are brought to an expeditious determination in a peaceful atmosphere, without being disturbed by any subsequent cause tending to accelerate or deteriorate the already strained relationship. But at the same time the section recognises the right of employer to take necessary action like discharge or dismissal on justified grounds. Considering this object, the enquiry contemplated by Section 33(2)(b) with respect to the validity and legality of dismissal or discharge is of a limited nature. The Authority before which the proceedings are pending does not exercise appellate jurisdiction over the decision of the employer of which approval is sought. The jurisdiction is limited to finding whether the grounds for dismissal/discharge are perverse and whether there is prima facie evidence to support it. As against this in the other proceedings filed to challenge the order of dismissal/ discharge the entire matter is open before the authority, which will have jurisdiction not only to go into the limited question of validity of the enquiry conducted by the employer against the workman and the bona-fides of the employer but also to satisfy itself, on the facts before it, whether the action was justified. This jurisdiction is full-fledged adjudicatory jurisdiction to come to it's own conclusion on consideration of the material before it. In such circumstances, there was no propriety in filing the complaints in question.

44 For all the above reasons, the petitions are allowed in terms of prayer clause (a).

(Smt. R.P. SondurBaldota, J.)