

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2846 OF 2013

Ralli Group Employees' Union
C/o. Mr. R. A. Parab, General Secretary, RGEU ... Petitioner
Vs.
M/s. Rallis India Limited and another ... Respondents

Mr. M. D. Nagle for Petitioner.
Mr. Bharat Goyal i/b. Haresh Mehta & Co. for Respondents.

CORAM : R. G. KETKAR, J.
Reserved on: **12TH JANUARY, 2015**
Pronounced on: **19TH JANUARY, 2015**

ORDER :

Heard Mr. Nagle, learned Counsel for the petitioner and Mr. Goyal, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 226 of the Constitution of India, the petitioner-Union has challenged the judgment and order dated 15.07.2013 passed by the learned I/c. Member, Industrial Court, Mumbai in Complaint (ULP) No.203 of 2001. By that order, the Industrial Court disposed of the complaint filed by the petitioner with directions to respondent No.2 herein to protect the services of employees whose services are transferred to respondent No.2 and not to change their service conditions which are less favourable to their employment which they were getting with respondent No.1 prior to the transfer of Pharma Division without following due process of law. In so far as the claim of 36 medical representatives who had already approached the Labour Court, the Labour Court decided their matters and now the matter/s is / are pending before this Court and their rights and entitlement will be subject to the outcome of the decision of this Court.

3. In support of this Petition, Mr. Nagle strenuously contended that Writ Petition No.2477 of 2010 raising identical controversy as raised in this Petition is already admitted by issuing rule. He submitted that this Petition also may be admitted and may be clubbed with that Petition. No prejudice will be caused to the respondents.

4. He further submitted that the petitioner has instituted Complaint (ULP) No.203 of 2001 under Section 28 read with Items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act'). The petitioner has challenged i) the transfer of Pharmaceutical business undertaking of respondent No.1 to respondent No.2 and ii) the transfer of services of 106 workmen from respondent No.1 to respondent No.2. He has invited my attention to the complaint filed by the petitioner, and in particular paragraph 3(I) wherein the unfair labour practices committed by the respondents are set out in detail. He also invited my attention to the amended portion of the complaint as also the prayers made in the complaint.

5. Mr. Nagle submitted that in terms of subsisting settlement dated 09.01.1997, respondent No.1 has no right to transfer the services of the workmen concerned either to respondent No.2 or any other party. Under that settlement, respondent No.1 has undertaken to continue to employ the workmen concerned and pay them their wages. Any deviation in this behalf amounts to an unfair labour practice under Item 9 of Schedule IV of the Act. Under the guise of transferring the services of these workmen, respondent No.1 is refusing to implement settlement dated 09.01.1997. The failure on the part of the respondents to implement the settlement amounts to an unfair labour practice under Item 9 of Schedule IV of the Act. The workmen cannot be transferred

unilaterally by the respondent No.1 without their consent either to respondent No.2 or any other employer. None of the workmen consented for transferring their services either to respondent No.2 or any other party. He submitted that the Pharmaceutical Division of respondent No.1 though colloquially is known as Pharma Division / Pharmaceutical Division, it is / was never an independent, distinct and / or separate activity which can be culled out from or severed from the respondent No.1 company's activities so as to enable label or call it as an 'undertaking'. There is no separate, independent and distinct undertaking much less Pharma Division / undertaking which has its own corporate personality, entity / existence, independent of the respondent No.1, which can be transferred by invoking the provisions of Chapter V-A of the Industrial Disputes Act, 1947 (for short 'I.D.Act').

6. He submitted that the respondents by camouflaging and subterfuging the records and by making some paper records by giving them various labels have transferred the services of 106 workmen to respondent No.2. Respondent No.1 company is an industrial establishment under Chapter V-B of the I.D. Act and more particularly Section 25(1) thereof. Shri K. T. Alva, Manager, Administrative services of respondent No.1 had filed affidavit-in-reply on 05.06.2000 in Complaint (ULP) No.348 of 2000 before the Industrial Court, Mumbai and in paragraph 3(a) thereof, he had set out various activities of the respondent No.1 company including the manufacturing activities and the places where these activities are carried on. From the perusal of that affidavit, it is clear that the respondent No.1 company is amenable to the provisions of Chapter V-B of the I.D. Act. They have no right to terminate the services of the concerned workmen or to retrench them without following due process of law, that is, without complying the mandatory provisions under Section 25-S of the I.D. Act. The action of

the respondents in giving complete go-by to the provisions of Chapter V-B amounts to unfair labour practice under Item 9 of Schedule IV of the Act. He further submitted that the action of the respondent No.1 company in transferring Pharmaceutical Division to respondent No.2 amounts to change in the conditions of service. The said change is effected without issuing notice as contemplated under Section 9-A of the I.D. Act. Finally, he submitted that if this Court is not inclined to interfere with the impugned order, in that case, nothing will survive in the complaint.

7. On the other hand, Mr. Goyal submitted that respondent No.1 has been engaged in the business of manufacture of pesticides and has its establishments located at several locations across the country, namely, Akola and Lote Parsuram in Maharashtra, Ankleshwar in Gujarat, Derabassi in Punjab, Kilavalam and Cudalore in Tamil Nadu and Howrah in West Bengal. Prior to 30.06.2001, the respondent No.1 was also manufacturing bulk drugs and formulations at its pharmaceutical unit located at Aurangabad, Maharashtra. The Pharmaceutical Division of the respondent No.1 was a distinct and separate business altogether and was not dependent upon any other plant or unit of respondent No.1. Each of the business divisions namely (i) Agro Division manufacturing pesticides, fertilizers and seeds, (ii) Fine Chemicals Division, (iii) Export Division and (iv) Pharmaceutical Division had separate divisional heads.

8. He submitted that on or about 12.02.2001, the respondent No.1 entered into an agreement for sale with the respondent No.2 for sale of its pharmaceutical undertaking. The entire sale process was to be completed between a period of 90 and 120 days from signing of the agreement and in any case, not later than 11.06.2001. On 12.02.2001,

the Board of Directors accorded approval and sanction for the sale of pharmaceutical business undertaking by respondent No.1 to respondent No.2. The Board of Directors also passed resolution to the effect that all the employees of pharmaceutical undertaking would be taken over by the respondent No.2 on the same terms and conditions on which they were employed with the respondent No.1 at that time, with full benefits of continuity and without any break in service, except those employees, who had less than 12 months of service left on the date of transfer. Respondent No.1 had also convened an Extra-ordinary General Meeting of its shareholders on 14.03.2001 for granting approval in respect of the sale of pharmaceutical undertaking to the respondent No.2.

9. He submitted that the petitioner union challenged the action of transfer of pharmaceutical undertaking by filing complaint alleging unfair labour practice before the Industrial Court, Mumbai being Complaint (ULP) No.203 of 2001. Along with that complaint, application for interim relief was filed. By order dated 27.04.2001, the Industrial Court rejected the application. The petitioner challenged that order by instituting Writ Petition No.1228 of 2001. In the order dated 12.06.2001, this Court recorded assurance made by the Counsel appearing for the respondent No.1. He submitted that after the order was passed by this Court, about 57 medical representatives expressed their desire to be transferred to the respondent No.2 with full protection of their existing service conditions. Accordingly, on 16.06.2001, respondent No.1 issued transfer letters to the concerned 57 medical representatives. 36 medical representatives declined to accept the transfer despite the fact that respondent No.2 had offered them gainful employment with full protection of their existing service conditions. In view thereof, their services came to be terminated under the provisions of Section 25-FF of the I.D. Act and each of the concerned 36 medical

representatives was paid one month's notice pay and retrenchment compensation in accordance with that provision. He submitted that 57 medical representatives accepted their transfer to the respondent No.2 with full protection of their existing service conditions vide letter dated 01.07.2001 issued to them by the respondent No.1 and joined the services of the respondent No.2.

10. He submitted that 36 medical representatives challenged termination dated 30.06.2001 by filing complaint being Complaint (ULP) No.379 of 2003. The Labour Court dismissed the complaint on the ground of territorial jurisdiction. The Revision Application preferred by the petitioner under Section 44 of the Act was dismissed on 09.08.2010. The petitioner instituted Writ Petition No.2477 of 2010 in this Court, which is admitted and is pending for final dismissal. He submitted that as far as the transfer of pharmaceutical business undertaking is concerned, though initially, the petitioner had challenged that aspect, the same was given up as is evident from the order dated 12.06.2001 passed by this Court in Writ Petition No.1228 of 2001. In that order, this Court recorded the statement made on behalf of the respondent No.1 that 13 employees of Head Office shall continue to work in the Head Office. He submitted that out of 106 workmen, 57 have accepted transfer; 13 are working in the Head Office, leaving behind 36 medical representatives. He invited my attention to the affidavit-in-reply dated 03.04.2014 made by Nikhil Dineshchandra Bhatt, Head-Legal of the respondent No.1. He also invited my attention to the operative part of the impugned order. He submitted that it is in that context, the Industrial Court disposed of the complaint, and therefore, no case is made out for interference with the impugned order.

11. I have considered the rival submissions made by the learned

Counsel appearing for the parties. I have also perused the material on record. The petitioner has instituted complaint challenging the transfer of 106 workmen whose particulars were set out in the list enclosed with the list of documents as also the transfer of Pharmaceutical Division of the respondent No.1 to the respondent No.2. During the pendency of the complaint, the petitioner filed application for interim relief. By order dated 27.04.2001, the Industrial Court rejected that application. Aggrieved by that decision, the petitioner instituted Writ Petition No.1228 of 2001 in this Court. In the order dated 12.06.2001, this Court recorded the assurance made by the Counsel representing respondent No.1, which is as under:

“(i) that the fifth respondent (respondent No.2 herein) is ready and willing to take on its roll all those employees of the Pharmaceutical Business Undertaking of the first respondent without interruption in service and on conditions of service which are no less favourable than those which are applicable to them at present;

(ii) that those employees who do not wish to accept a transfer to the fifth respondent (respondent No.2 herein) as an employer, shall continue in the service of the first respondent subject to the rights, if any, of the first respondent to have recourse to the Industrial Disputes Act, 1947;

(iii) the 13 employees in the Head Office shall be permitted to continue therein during the pending of the complaint, with these observations, the Writ Petition is disposed of. No order as to costs.”

12. This Court recorded the said assurance and disposed of the Petition by observing thus:

“In so far as the 13 employees of the Head Office are concerned, the Ld. Counsel appearing on behalf of the First Respondents has stated that these employees shall continue to work in the Head Office of the First Respondent during the pendency of the complaint in the Industrial Court.

In the circumstances, the Writ Petition is disposed of, incorporating the statement and assurance of the Ld. Counsel

appearing on behalf of the First Respondent to effect (i) that the Fifth Respondent (respondent No.2 herein) is ready and willing to take on its roll all those employees of the Pharmaceutical Business Undertaking of the First Respondent without interrupting in service and on conditions of service which are no less favourable than those which are applicable to them at present: (ii) that those employees who do not wish to accept a transfer to the Fifth Respondent (respondent No.2 herein) as an employer, shall continue in the service of the First Respondent subject to the rights, if any of the First Respondent to have recourse to the Industrial Disputes Act, 1947. (iii) the 13 employees in the Head Office shall be permitted to continue therein during the pending of the complaint. With these observations, the Writ Petition is disposed of. Nor order as to costs.”

13. It is material to note that insofar as the transfer of Pharmaceutical Business Undertaking is concerned, the statement made by the learned Counsel for the petitioner Union that the Union does not challenge the business decision of the respondent No.1 to transfer the ownership of the undertaking to the respondent No.2 was specifically recorded. It was observed thus:

“In so far as the transfer of the Pharmaceutical Business Undertaking is concerned, the Ld. Counsel for the Petitioner union expressly states that the Union does not challenge the business decision of the First Respondent to transfer the ownership of the undertaking to the Fifth Respondent (respondent No.2 herein). The agreement which has been entered into between the First and Fifth Respondents is not, therefor, challenged. The Ld. Counsel, however, submitted that the provisions of Section 25-FF cannot be read to mean that existing employees of the First Respondent are under a compulsion to accept transfer to the new employer viz. the Fifth Respondent (respondent No.2 herein).”

14. The petitioner thereafter instituted Contempt Petition No.81 of 2001 alleging breach of order dated 12.06.2001 passed by this Court in Writ Petition No.1228 of 2001. This Court disposed of the Contempt Petition on 19.11.2005. Before this Court, grievance was made on behalf of the petitioner that this Court had directed the respondent No.1 to continue the services of the petitioners, who did not wish to accept the

transfer to the respondent No.2 herein as an employer. Despite this, respondent No.1 terminated their services. The Court dealt with this grievance and it was observed in paragraph 5 thus:

“5. There is no dispute that the Pharmaceutical Business Undertaking which is belonging to the First Respondent was transferred to the Fifth Respondent (respondent No.2 herein). By clause (i) of the order the Fifth Respondent (respondent No.2 herein) being ready and willing to give on its own all those employees of the Pharmaceutical Business Undertaking of the First Respondent without interruption in service and on conditions of service which are no less favourable than those which are applicable to them at present. The services of the employees who were ready to take transfer were continued. However, those employees who did not wish to accept the transfer of services to the Fifth Respondent (respondent No.2 herein), the Court left their cases to be considered by the First Respondent / Respondents herein. He was directed to continue their services subject to rights of the First Respondent who have resorted to the Industrial Disputes Act. This being the position, on transfer of the undertaking, the services of the Petitioners who did not accept the transfer of service to the Fifth Respondent (respondent No.2 herein), the Respondent had come to an end. For this the reliance can be placed on observations of the learned Single Judge of this Court in the case of Suresh Baburao Bhandare Vs. Administrator, Saswad Mali Sahakari Sakhar Karkhana Ltd. Malinagar & Anr. reported in 1992 I CLR, Page 309. The relevant observations are as under:

In such a contingency, section 25FF provides that unless the three conditions stipulated in the proviso are simultaneously fulfilled, the service of the employee shall be deemed to have come to an end on the date of transfer and the workman shall be entitled to notice and compensation under Section 25-F of the Act, as it retrenched.

Thus, the petitioner having not accepted the transfer of service, the effect was that their services had come to an end and the liability of the Respondent No.1 was only to pay to them the compensation as contemplated in section 25FF of the Industrial Disputes Act.

15. Thus, in the present case, earlier petitioner had challenged the transfer of Pharmaceutical Division of the respondent No.1 to the respondent No.2. During the course of hearing of Writ Petition No.1228

of 2001, the petitioner specifically gave up its challenge to the business decision of the respondent No.1 to transfer the ownership of the undertaking to the respondent No.2. As far as the transfer of 106 workmen is concerned, 57 workmen accepted the transfer and accordingly reported on duty of the respondent No.2. Respondent No.1 assured that 13 workmen in the Head Office will be allowed to continue to work in the Head Office during the pendency of the complaint in the Industrial Court. The dispute, therefore, remained in respect of 36 workmen. These workmen challenged their termination dated 30.06.2001 by filing Complaint (ULP) No.379 of 2003. The Labour Court dismissed the complaint on the ground of territorial jurisdiction. The Revision Application was dismissed by the Industrial Court on 09.08.2010. Writ Petition No.2477 of 2010 instituted by the petitioner in this Court is admitted and is pending for final disposal. It is in that context, the Industrial Court passed the impugned order and Clauses 1 and 2 of the operative part of the order read as under:

“1. The complaint filed by the complainant is disposed off with directions to the respondent No.5 (respondent No.2 herein) to protect the services of employees whose services are transferred to respondent No.5 (respondent No.2 herein) and not to change their service conditions which are less favourable to their employment which they were getting with respondent No.1 prior to the transfer of Pharma Division without following due process of law.

2. In respect of claim of 36 employees who had already approached to the Labour Court, the Labour Court decided their matters and now matter is / are pending before the Hon'ble High Court and now their rights and entitlement shall be subject to outcome of the decision of the Hon'ble High Court.”

16. In view of the orders passed by this Court in Writ Petition No.1228 of 2001 as also Contempt Petition No.81 of 2001, I do not find any merit in the submission of Mr. Nagle that by transferring Pharmaceutical Division of the respondent No.1 to the respondent No.2 any unfair labour practice is committed. Equally, there is no merit in the

submission of Mr. Nagle in so far as 57 workmen are concerned as they have voluntarily accepted their transfer of services from respondent No.1 to respondent No.2. The Industrial Court has also protected their interest as is evident from clause 1 of the operative part of the order. As far as the remaining 36 workmen are concerned, the matter is subjudice before this Court, and therefore, their rights and entitlements are subject to the outcome of the decision of this Court in the pending Petition. I also do not find any substance in the submissions of Mr. Nagle that since Writ Petition no.2477 of 2010 is admitted, this Petition should also be admitted and if this Petition is dismissed, nothing will survive in the complaint.

17. For all these reasons, in my opinion, no case is made out for invoking Article 226 of the Constitution of India. The Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab