IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.2545 OF 2016

Federation of Medical and Sales Representatives' Associations of India and another .. **Petitioners**
Versus
M/s. Sun Pharmaceuticals Industries Ltd. and others ..**Respondents**

Mr. Sanjay Singhvi, Senior Advocate a/w Mr. Bennet D'Costa, Ms. Jignasha Pandya for the Petitioner.
Mr. Sudhir K. Talsania- Senior Counsel a/w Mr. R. N. Shah- Counsel, Mr. Sanjay Udeshi, Ms. Radha Ved and Mr. Netaji Gawade i/by Sanjay Udeshi & Co., for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 28th SEPTEMBER, 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 29.07.2016 passed by the Learned Member of the Industrial Court, by which order, the applications for interim relief being Exh.U-2 and U-9 filed by the Petitioners came to be partly allowed and consequently the directions as contained in the operative part of the impugned order came to be issued. The said operative part of the impugned order is reproduced hereinunder for the sake of ready reference :-

"1. Applications are partly allowed.

2. It is held and declared that the respondent have committed and/are committing the unfair labour practices under Item 9 of Schedule IV of the MRTU & PULP Act, 1971.

3. The respondent are directed to desist from continuing unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 in respect of non payment of salary slip and earned wages.

4. Interim relief about the protection of employment is allowed, respondent are directed not to terminate the concerned employees without following due procedure of law.

5. The respondent are directed to pay salary slips of the 86 employees who are not issued their salary slips of May, 2016.

6. The Respondent are directed to pay earned wages and to reimburse expenses of 86 employees who have not been paid earned wages and reimbursement from May, 2016.

7. Rest of the relief in applications are rejected."

2 In so far as the Petitioners are concerned, they have filed the above Petition challenging the impugned order. In so far as the other reliefs sought vide the said interim applications were rejected. The principal relief sought vide the said application was the relief against the introduction of the reporting system known as "Metis" by the Respondent No.1 replacing the "mprompt" system of reporting.

3 In that context a few background facts are required to be noted. The Petitioner Union is espousing the cause of Medical Sales Representatives (For short “MSRs”) and other sales promotion employees of the erstwhile Pharmaceutical Company i.e. Ranbaxy Laboratories Ltd. The said Ranbaxy Laboratories Ltd. has merged with the Respondent No.1 herein sometime in March 2015. By the present Complaint, the Petitioner Union is purportedly espousing the cause of about 588 MSRs. The cause for filing the Complaint was the stoppage of the payment on the basis of Revision in the Variable Dearness Allowance, the change of the reporting system from “mprompt” to “Metis” which the Petitioner Union has termed as a unilateral change without following the procedure as contemplated under Section 9A of the Industrial Disputes Act, 1947 (For short “the I. D. Act”). The reduction in wages and the reduction of the retirement age from 58 to 60 years. The Complaint was therefore filed invoking Items 7, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. In the said Complaint, the Petitioner Union as indicated above has filed the applications for interim reliefs being Exh.U-2 and U-9.

4 The Respondent No.1 herein filed its reply to the said applications for interim reliefs. In the said reply, a preliminary objection was raised as regards the maintainability of the Complaint having regard to the fact that the MSRs are working all over the country. In so far as the

introduction of Metis is concerned which relief was sought by the additional application for interim relief, the stand taken by the Respondent No.1 was that the said Metis system does not bring any change in the service conditions as applicable to the MSRs. It was further stated that it is upgrading daily activity reporting portal and that certain additional information is required to be added than the mprompt reporting system. In respect of the non-payment of the wages from May 2016 is concerned, the stand taken was that on account of the non-reporting on the Metis, the wages were not paid as there was absence of information as regards the attendance. The Learned Member of the Industrial Court considered the said applications for interim reliefs and has by the impugned order dated 29.07.2016 partly allowed the same.

5 The said applications as indicated above have been allowed to the extent of directing the Respondent No.1 to pay the salary of May 2016 by issuing the salary slips, the payment of wages and to reimburse the expenses of 86 employees who have not been so paid wages and reimbursement from May 2016. In so far as the relief of introduction of Metis is concerned, the Learned Member of the Industrial Court has rejected the same as also rejected the relief sought by way of continuing with the mprompt system. The gist of the reasoning of the Industrial Court as can be seen from the impugned order is that the agreement

dated 21.04.2011 between the erstwhile Ranbaxy Laboratories Ltd. and the Petitioner Union has been terminated and the Respondent No.1 has communicated that the Respondent No.1 would be using Metis system for reporting. The Learned Member of the Industrial Court has adverted to the fact that there was discussion with the CGC members in respect of introduction of the Metis system. The Learned Member of the Industrial Court observed that whether the same amounts to an unfair labour practice, could not be decided at the said stage as the same would require evidence to be led. The Learned Member has also rejected the said relief on the ground that the said Metis system being already started and the same being adopted by most of the employees except 86, the Petitioner Union had not made out prima-facie case and balance of convenience has been made out by the Petitioner Union. The Learned Member of the Industrial Court so holding against the Complainant has issued directions to the Respondent No.1 in respect of payment of wages and reimbursement to the 86 employees who have not been paid wages and reimbursement from May 2016. As indicated above, the Petitioner Union cannot be said to be aggrieved by that part of the impugned order.

6 The Learned Senior Counsel appearing on behalf of the Petitioner was at pains to demonstrate as to how there is a material change by the introduction of the Metis system of reporting from the

mprompt system. It was also the contention of the Learned Senior Counsel that once there is an agreement, under which the reporting was to be as per the mprompt system, it was not open for the Respondent No.1 to change over to the Metis system and that merely notice of termination would not result in the efficacy of the said agreement being done away with. In support of the said contention, the Learned Senior Counsel sought to place reliance on the judgment of the Apex Court reported in ***1981-I L.L.J. 1*** in the matter of ***Life Insurance Corporation of India Vs. D. J. Bahadur and others***. It was therefore the submission of the Learned Senior Counsel that the Industrial Court had erred in rejecting the other reliefs i.e. other than which have been granted by the impugned order.

7 Per contra, the Learned Senior Counsel Mr. Sudhir K. Talsania would point out that save and except the Stan Care Division and the Pharmaceutical Care Division (which is not subject matter of the instant proceedings), the other MSRs are reporting as per the Metis system which in so far as the original employees of the Respondent No.1 are concerned has been introduced as long back in the year 2001. The Learned Counsel would contend that the reliefs sought vide the applications are in the nature of the final reliefs. It was also the submission of the Learned Counsel that there is no breach of the

settlement by introduction of the said Metis system.

8 Having heard the Learned Counsel for the parties and also having gone through the impugned order with the assistance of the Learned Counsel for the parties. In my view, no case for interdiction in the writ jurisdiction of this Court under Article 227 of the Constitution of India is made out. The Learned Member of the Industrial Court as indicated above has for the reasons which can be said to be cogent in the context of the relief sought vide the said Exh.U-2 and U-9 has partly allowed the same and rejected the relief sought against the introduction of the Metis system in so far as the Stan Care Division is concerned. The contention raised by the Learned Senior Counsel appearing on behalf of the Petitioner involve larger issues which require evidence to be led and undoubtedly would be gone into by the Industrial Court at the hearing of the said Complaint. Having regard to the fact that the Metis system is uniformly applied by the Respondent No.1 across all divisions and is being used by the MSRs other than those involved in the present proceedings, the refusal of the Learned Member of the Industrial Court to grant the said reliefs cannot be found fault with.

9 In my view, the judgment of the Apex Court in the matter of *Life Insurance Corporation of India*'s case (*supra*), would not further the

case of the Petitioner in so far as Section 9A is concerned, as in the said case the stoppage of payment of bonus was involved, whereas in the instant case is concerned, a change in the reporting system. Hence, no case for interdiction in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

10 To facilitate the payment of the wages and the reimbursement of expenses, it would be necessary to direct the MSRs involved in the present proceedings to report under the Metis system without prejudice to their rights and contentions so that the payment can be made to them in terms of the order passed by the Industrial Court.

11 In so far as the observations made in respect of the applicability of Section 59 of the MRTU & PULP Act, 1971 are concerned, the observations being made at the prima-facie stage would not come in the way of the parties. The contentions of the parties are kept open in that regard, as also as regards the issue of the jurisdiction of the Industrial Court to try the Complaint under the provisions of the MRTU & PULP Act, 1971.

[R.M.SAVANT, J]