

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11930 OF 2017

EXIDE INDUSTRIES LIMITED, AHMEDNAGAR
VERSUS
RASHTRAWADI MAHARASHTRA GENERAL KAMGAR UNION MUMBAI
AND OTHERS.

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Shri S.K.Talsania, Senior Advocate h/f Shri Upadhye Vinayak Narayan,
Advocate for the Petitioner.

Shri A.V.Patil, Advocate h/f Shri Joshi Arvind Ramakant, Advocate for
Respondent Nos.2 to 12.

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CORAM: RAVINDRA V. GHUGE, J.

Reserved on 09th October, 2017.

Pronounced on 13th October, 2017.

ORDER:

1 By this petition, the Petitioner/ Management seeks to challenge the interlocutory order dated 08.08.2017 passed by the Industrial Court, Ahmednagar below application Exhibit-U-2 in Complaint (ULP) No.62/2017, by which the transfer orders issued by the Petitioner/ Management thereby, transferring 11 workers from Ahmednagar to Bawal in Haryana, have been stayed.

2 I have considered the strenuous submissions of Shri S.K.Talsania, learned Senior Advocate for the Petitioner/ Management and

Shri A.V.Patil, learned Advocate on behalf of the Respondent Nos.2 to 12, who are the eleven employees transferred by the impugned orders.

3 The submissions of the Petitioner/ Management are summarized as under:-

- (a) The Management has its factory at Ahmednagar.
- (b) Another factory of the Management is said to be at Bawal in Haryana.
- (c) About six workers inclusive of four of the Respondents were transferred to Bawal on 09.01.2017.
- (d) Respondent No.13/ Union which is a recognized Union, issued a strike notice on 10.01.2017.
- (e) The Management negotiated with the recognized Union and the transfer of the six employees were put on hold.
- (f) Subsequently, the transfers of two persons, namely, Dipak Tukaram Parbhane and Amol Baba Ambule were cancelled as they have voiced personal hardships.
- (g) Transfer orders were issued again on 02.06.2017, 07.06.2017 and 03.07.2017 transferring the concerned eleven Respondent workers to the Bawal plant.
- (h) Transfer is a normal condition of service of these employees and they can be transferred anywhere in India.
- (i) Though these eleven workers alleged by their letter dated

02.06.2017 that they have formed a new Union by name Rashtravadi Maharashtra General Kamgar Union, they never informed the Management as to who are their members, what is the strength of their membership and who amongst the workers in the Ahmednagar Plant have been elected as Committee members or Office bearers.

- (j) The Management has no idea either about the formation of the Union or about the membership of Respondent No.1/ Union.
- (k) Respondent No.13 is a recognized Union in the Petitioner Establishment.
- (l) The Management is not allergic to union formation and has constantly interacted with the recognized Union.
- (m) The Management has respected the status of the recognized Union .
- (n) The eleven workers along with the new Union, have filed Complaint (ULP) No.62/2017 thereby, challenging the transfer of the said eleven workers under Item 1(a), 2(a), 3 and 4 of Schedule-II and Item 3, 5, 7, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU and PULP Act").

- (o) A false affidavit has been filed by one Mr. Jaydeep Digambar Badade, who claims to be the elected representative of Respondent No.1/ Union situated at Mumbai.
- (p) It was specifically contended in the Written Statement that the Management is not aware about the formation of an outside union and is not aware about the membership of the said Union.
- (q) The transfer of these eleven workers is exclusively for work exigencies, since trained workers/ operators are required at the Bawal Plant.
- (r) There can be no interference in the allotment of work by the Management on account of the work exigencies.
- (s) This Court has observed, in the matter of Dashrath Ramlal Garandwal, Aurangabad and others vs. Ahmednagar Forgings Limited, Aurangabad, 2017 II CLR 910, in paragraph 31 that transfer is a normal incidence of service and the transfer orders issued on account of work exigencies cannot be interfered with by the courts since the employer is the best judge for the utilization of the manpower and resources.
- (t) The Industrial Court has interfered with the transfer orders at an interim stage, without any justification.
- (u) The Industrial Court has failed to consider that in the matters

of work exigencies, the Industrial Court cannot judge as to whether, the workers were required at a particular place for the manufacturing activities of the plant.

- (v) The impugned order is perverse and erroneous.

4 The submissions of Shri Patil on behalf of the eleven workers are summarized as follows:-

- (a) The recognized Union, over the past few months, had lost the faith of the workers as the grievances of the workers and their demands were not being considered.
- (b) The resentment gradually led to the formation of a new Union.
- (c) A farce was created by the Management in transferring six workers to Bawal on 09.01.2017 and the recognized Union pretended to have espoused the cause of the said workers.
- (d) Pursuant to the notice of strike dated 10.01.2017, the strike was immediately called off and without there being any memorandum of understanding or minutes of the meeting, the recognized Union declared that its agitation was successful.
- (e) When the workers started realizing that the recognized Union had become a puppet of the Management, they joined

Respondent No.1/ Union and served a letter dated 02.06.2017 on the Management declaring that the Union had been formed.

- (f) As a counter blast, the Management immediately issued the transfer order dated 02.06.2017 to Rahul Jagdhane, who was an office bearer, to indicate it's retaliatory power.
- (g) Thereafter, three transfer orders were issued on 07.06.2017 to Abasaheb Sathe, Rajiv Dorage and Bhaskar Wagh, all of whom were the office bearers of the new Union.
- (h) Thereafter, the transfer orders dated 03.07.2017 were issued to seven workers who had taken a prominent part in the formation of the Union. The Management took one month to issue their transfer orders since it investigated the roles of other workers in the formation of the new Union.
- (i) The only reason cited in the transfer order is that the transferred workers were required at the Bawal Plant for the production activities of the Plant.
- (j) Besides the said solitary reason, no other reason was cited.
- (k) The Ahmednagar Plant in fact was closed down in 2004 and the Voluntary Retirement Scheme (VRS) was floated.
- (l) All the workers were discharged by giving VRS.
- (m) In 2010, the Ahmednagar Factory was restarted and

practically, all the workers presently in service, are freshly recruited workers.

- (n) The Bawal Plant is more than 15 years old and in fact, the operators in the Bawal Plant are more experienced than any of the workers working in the Ahmednagar Plant.
- (o) No correspondence between the Bawal Plant and the Ahmednagar Plant has been placed on record before the Industrial Court to indicate that a requisition has been moved by the Bawal Plant seeking assistance of trained operators from the Ahmednagar Plant.
- (p) Out of the 250 workers presently working at Ahmednagar, 199 workers have become the members of Respondent No.1/ Union.
- (q) Not a single worker out of the remaining 51 workers, who are members of the recognized Union, have been transferred to Bawal though some of them are senior to the transferred workers.
- (r) There are 300 permanent operators and 700 contract labourers at the Bawal Plant.
- (s) There are 600 to 700 contract labourers at the Ahmednagar Plant and though they are working on manufacturing activities at Ahmednagar, the Labour Department is turning a

blind eye to this exploitation.

- (t) Till the impugned transfer orders were issued, not a single worker from Ahmednagar has been ever transferred to Bawal in Harayana or vice versa.
- (u) Reliance is placed upon the judgments of this Court in the matters of Bajaj Auto Limited vs. Shrikant Vinayak Yogi and others, 2006 II CLR 614 and Delux Theatres Pvt. Ltd. vs. Bombay Labour Union, 1992 I CLR 256 and the judgment of the Honourable Supreme Court in the matter of Municipal Committee Tauru vs. Harpal Singh and another, 1998 (80) FLR 681.

5 I have recorded the contentions of the litigating sides as above. I would not be referring to the said contentions again in order to avoid repetition.

6 The following factors emerge from the submissions of the learned Advocates and the record:-

- (a) Not a single letter or email by way of a correspondence between the Petitioner factory at Ahmednagar and the Plant at Bawal, Harayana indicating that the Bawal Plant requires certain expert/ specialized operators for specific purposes at

Bawal, was placed before the Industrial Court or even before this Court.

- (b) The Bawal Factory is more than 15 years old and all of its permanent operators are senior to the workers at Ahmednagar.
- (c) When the Ahmednagar Factory was restarted in 2010 inducting fresh workmen, not a single trained operator from Bawal was deputed or transferred to Ahmednagar to train the new workers.
- (d) The record does not show the transfer of even a single worker from Ahmednagar to Bawal barring the impugned transfers.
- (e) It cannot be a coincidence that after the workers formed a new Union on 02.06.2017, the Management has suddenly issued the transfer order on the same day to one of their office bearers and followed by three transfers of the three office bearers on 07.06.2017.
- (f) In the face of a specific allegation by the Union that factually, there is no requirement at Bawal as the said plant is older than the Ahmednagar plant, the Management has not brought forth any correspondence indicating the requirement of expert operators at the Bawal Plant.

7 There can be no dispute that if the appointment orders of the workers indicate the transferability clause, the transfer would be a normal service condition. However, the transferred workers have specifically averred malafides against the Management in the backdrop of the formation of a new Union, which has become a threat to the recognized Union which obtained recognition from the Industrial Court with the cooperation of the Management.

8 The Industrial Court has extensively dealt with the contentions of the litigating sides. Considering the factors which I have recorded in paragraph 6 herein above, I find that the disputed questions raised by the litigating sides would be adjudicated upon by the Industrial Court while dealing with the complaint finally.

9 However, prima facie, it appears that the transfer of the eleven workers is a result of the formation of the new Union. 199 workers out of the 250 permanent workmen have joined the new Union. This appears to have threatened the status of the recognized Union and its bargaining power.

10 In my view, I could have ignored these aspects if a genuine case of the requirement of these 11 workers at Bawal in Haryana would have emerged from the record. Not a single letter or email or communication from the Bawal Plant indicating the need for requisitioning trained operators, appears on record. There is nothing to

indicate as to whether, these eleven persons are such highly qualified and trained operators that their assistance is required at the Bawal Plant. In fact, the employees of the Petitioner Establishment at Ahmednagar are relatively new operators engaged in 2010 and onwards, in comparison to the trained operators at the Bawal Plant, who are more than 15 years experienced operators compared to the six or seven years of experience of these transferred workmen. So also, not a single worker who is the member of the recognized Union, said to be a puppet union of the Management, have been transferred to the Bawal Plant.

11 The Honourable Apex Court in the cases of *Syed Yakoob v/s K.S.Radhakrishnan*, **AIR 1964 SC 477** and *Surya Dev Rai v/s Ram Chander Rai*, **AIR 2003 SC 3044**, has concluded that the supervisory jurisdiction of this Court is akin to the revisional jurisdiction and merely because a second view is possible, the impugned order should not be interfered with. Unless the impugned order causes grave injustice, this Court ought not to interfere with the same.

12 Since the Petitioner /Management has, prima facie, failed to establish that there is any need of operators at the Bawal Plant, no case of work exigencies has been made out. When the case of work exigencies is disproved, the allegations made by the workmen would assume significance. As no work exigencies prima facie exists, continuing the transferred employees at Ahmednagar would cause no harm or loss or

prejudice to the Petitioner Establishment. Per contra, in the absence of work exigencies, sustaining the transfer orders in the above backdrop, would cause grave prejudice and manifest inconvenience to the said workers, who being Class IV employees, will have to shift a thousand kilometers into the State of Haryana, which has a different language and admit their children in the schools or colleges in the State of Haryana. Considering these factors, I do not find that the Industrial Court has committed any error in granting interim relief to the transferred workmen.

13 As such, this Writ Petition being devoid of merits, stands dismissed.

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(RAVINDRA V. GHUGE, J.)