

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 18.05.2017

CWP No.6410 of 2012 (O&M)

Bhola Nath Maurya & others

...Petitioners

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: M/s Pankaj Jain & Sumeet Jain, Advocates, for the petitioners.

Mr. Ajaib Singh, Addl. AG, Punjab, for respondents No.1 to 3.

Mr. Alok Mittal, Advocate, for respondents No.4 & 5.

RAJIV NARAIN RAINA, J. (ORAL)

1. Large number of workmen totalling 73 are before this Court praying for quashing the order dated March 15, 2012 (Annex P-5), whereby the Assistant Labour Commissioner, SAS Nagar, exercising powers of the 'appropriate Government' has declined the reference by passing the following order addressed to the Advocate representing all the 73 workmen who had raised a dispute with M/s Ranbaxy Laboratory Ltd.:

“Subject: Notice of Demand u/s 2-K of the Industrial Disputes Act, 1947, as amended by the Industrial Disputes (Amendment) Act, 11996 read with Section 2(ra) of the Industrial Disputes Act.

Reference:

A demand notice submitted by you on behalf of Bhola Nath Morya S/o Sh. Mahavir Singh & 72 others workmen regarding Ranbaxy Laboratory Ltd.

Your Demand Notice cannot be proceeded in this office because of the following reasons:

1. Under Section 2(K) of the Industrial Disputes Act, 1947 and under Rule 4 of Punjab Industrial Disputes Rules, 1958 the demand notice can only be submitted by the registered union of workmen or through their five nominated representatives. The Rule is reproduced hereunder:

“4. Attestation of Application – The application and the statement accompanying it shall be signed:

(a) In the case of an employer by the employer himself, or when the employer is an incorporated company or other body corporate by the Agent Manager or other principal office of the Corporation.

(b) In the case of workmen either by the Presiding and Secretary of registered trade union of the workmen, or by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose.

(c) In the case of an individual workman by the workman himself or by any officer of the trade union of which he is a member or by another workman in the same establishment duly authorized by him in this behalf.”

2. And even otherwise the workmen at present are not working in present industry and they are working at Dewas (MP) as such they are not within territorial jurisdiction of this office therefore this demand notice is being filed on the ground of want of jurisdiction.”

2. The demand notice was on a wide range of collective disputes which had arisen between the management and the workmen, narrated in the

demand notice dated March 6, 2012 (Annex P-4). The major dispute appears to have arisen due to mass transfer of the workmen to Dewas in Madhya Pradesh asserted by way of unfair labour practice as alleged by all the 73 workmen and the reasons which establish the allegations were taken up in the demand notice, which are extracted as follows:

- “(a) That after the transfer of these workmen the employer Ranbaxy has employed/adjusted 71 persons at Tonsa Plant District Ropar.
- (b) That at the new place of posting the basic salary of the employees which they had been getting at Mohali has been considerably reduced in violation of all provisions.
- (c) That by inflecting a dent on future prospects even their annual increment to which they were entitled after the completion of one year of successful service has been reduced from ₹200 to ₹40/-.
- (d) The benefit of leave has been curtailed alarmingly and rather the calculations for entitlement are in no way more than the presumptory as practically we are to get 18 leaves after working for 300 days which is practically not possible taking into consideration Sundays, Gazetted holidays, causal leave etc.
- (e) At Mohali there was a provision of 4 days short leave whereas at their new place of posting there is none.
- (f) The workmen have been transferred to Dewas to work in pharma Plant, whereas after uprooting them number of new workmen have been adjusted/employed at Mohali and Tonsa.
- (g) That the children of these workmen are at the threshold of making their career and the transfers of the workmen has come as impediment in the way of their efforts.
- (h) Even their status has been effected as from supervisor/technician they have been reduced to rank of workmen.”

3. The demand notice was served through counsel, who was the authorized representative.

4. It is well settled by a large number of judgments that the 'appropriate Government' does not act as a Court. It has no jurisdiction to decide the *lis* and is virtually a rubber stamp and a forwarding agent of the disputes to the Labour Court or the Industrial Tribunal, as the case may be, for determination by trial. The appropriate government performs an administrative act while making reference. The Assistant Labour Commissioner has apparently misdirected himself in resorting to the provisions of the Punjab Industrial Disputes Rules, 1958 while laboring to think that the demand notice can only be submitted by a registered union of workmen or through their five nominated representatives as rules provide. The Rule cited in the impugned order deals with 'attestation of application'. It does not deal with how disputes are to be raised under Section 2(k) of the Industrial Disputes Act, 1947. The doctrine of espousal in industrial law is based on a substantial number of workmen raising a dispute with the management for settlement of their grievances expressed orally or in a charter or demands. This is the system of collective bargaining, which the Assistant Labour Commissioner has unfortunately forgotten by his patently illegal and perverse order, if I may describe it as one of the kind.

5. The Assistant Labour Commissioner does not seem to know that the Industrial Disputes Act does not require a registered trade union in existence before industrial dispute is raised. A substantial body of workmen can raise an industrial dispute. Therefore, attestation of application, when it speaks of in Rule 4 deals with only registered trade unions and how those would be represented in raising disputes with the management. Hence, the first reason for refusal to refer the disputes has to be rejected as erroneous.

6. The second reason ascribed to scuttle the reference is that the workmen are not working in the present industry and are working in Dewas (M.P.) and, therefore, they are not within the territorial jurisdiction of the office of the Assistant Labour Commissioner. Therefore, the demand notice deserves to be filed on the ground of want of jurisdiction. When the allegation of unfair labour practice was levelled as a foundation of the industrial dispute involving 73 workmen, then the cause of action had substantially arisen in Mohali, where the dispute fomented and turned into an actionable dispute. If the reasoning of the Assistant Labour Commissioner in para.2 is accepted, it would mean that an employer can always whimsically transfer workers en mass to another of its establishments outside the territory and to a different State and frizzle out the demands of the workman and expect them to approach the appropriate Government in Madhya Pradesh for the resolution of the dispute to be adjudicated there. The approach of the Assistant Labour Commissioner is wholly illegal and has to be deprecated. He does not seem to know even the principles of labour law. The order has effectively derailed the adjudication for five years.

7. The Assistant Labour Commissioner instead of passing the order should have sent the parties to the Conciliation Officer for attempting an amicable settlement, but this was not done. The Assistant Labour Commissioner seems to be in a tearing hurry to close the case without even hearing the parties. In a case of such far reaching consequences involving the lives of 73 workmen, the Assistant Labour Commissioner should have acted in accordance with law by instead has made a complete mess of the case and the miscarriage has to be retrieved to restore justice, which is the foundation of industrial principles in the Act to act swiftly to restore peace and tranquility in industry by attempting to settle amicably burning issues..

The Labour Commissioner has instead of quelling the dispute and finding a solution fired it with discontent among a large body of the workforce, where over 70 workmen have been deprived of access to Court.

8. Accordingly, the petition is allowed. The impugned order declining the demand notice dated March 15, 2012 and refusing to make the reference is quashed. The appropriate Government is directed to reconsider its decision in the light of this order and make a reference to the area Labour Court/Industrial Tribunal within eight weeks from the receipt of certified copy of this order.

9. Costs of ₹5 lakhs is imposed on the State of Punjab to be paid to the workmen for the deliberate failure and insensitivity of its functionaries in the Labour Department to do justice according to law and to keep adjudication in abeyance. The amount be paid on the first date of appearance before the Labour Court/Industrial Tribunal after the IDR is registered and notice of appearance is received from the labour court.

18.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*