

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.373 OF 2022
AND
WRIT PETITION NO.375 OF 2022

CHOWGULE INDUSTRIES
PVT. LTD, Campal, Panaji, Goa
through the Manager-HR Sujay
Narayan Rao, aged 48 years,
having office at CIPL, Campal,
Panaji-Goa 403001.

... PETITIONERS

Versus

GOMANTAK MAZDOOR
SANGH, G-5, Machedo
Apartments, Tisk, Ponda, Goa -
403 401.

... RESPONDENTS

Mr Shivan Desai, Advocate *for the Petitioners*.

Mr Shivraj Gaonkar, Advocate *for the Respondents*.

CORAM: M. S. SONAK, J.

Reserved on: 21st April 2023

Pronounced on: 27th April 2023

JUDGMENT:

1. Heard Mr Shivan Desai for the petitioners and Mr Shivraj Gaonkar for the respondents.

2. Rule in both these petitions. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties. Even otherwise, by order dated 22.02.2023, notice was issued explicitly mentioning that the Court may dispose of these petitions at the admission stage itself.

3. As common issues of law and fact arise in these petitions, the learned counsel for the parties agree that a common judgment and order may dispose of both petitions.

4. In both these petitions, the challenge is to the awards dated 06.11.2019 and 23.12.2019 disposing of Reference (IT) Nos.6/2017 and 19/2017. The awards hold that the action of the petitioner (employer) transferring the services of its employees from one branch office to the other was illegal and unjustified. The Tribunal found that Clause 18 of the appointment letters issued to the employees did permit transfers of the employees anywhere in India, in any of the existing or future establishments of the employer or the employer group, including transfer from one shift to another and one department to another. However, there was no provision in this clause to transfer the employees from one branch/workshop to another of the same company and within the State of Goa itself. Aggrieved mainly by this finding, and interpretation of Clause 18 of the appointment letters issued

to the employees involved in this dispute, the employer has instituted both these petitions.

5. Mr Desai, learned counsel for the petitioner/employer based upon the specific instructions from the petitioner/employer communicated through Mr Sujay Rao, General Manager (HR), Chowgule Industries Pvt. Ltd. Goa, made a statement that the petitioner/employer was not interested in enforcing the transfer orders issued to the eight employees who were involved in the two disputes and referenced disposed of by the impugned awards. Therefore, he submitted that such transfer orders would not be enforced qua the eight employees. However, Mr Desai submitted that the impugned awards may be interfered with because, based on the reasoning in the impugned awards, all other employees resisted transfers from one branch/workshop to another, even in the State of Goa. Therefore, Mr Desai submitted that the Tribunal's interpretation was *ex-facie* wrong and amounted to almost a perversity.

6. Mr Desai submitted that the references in which the impugned awards were made were based upon the dispute raised by the respondent/union purporting to espouse the cause of eight employees. Accordingly, seven employees were concerned with Reference No.363/2022, which is the subject matter of Writ

Petition No.373/2022. One employee, i.e. Mr Viplav Vasta, was concerned with reference no.364/2022, which is the subject matter of Writ Petition No.375/2022.

7. Mr Desai submitted after handing over a chart that the status of the seven employees concerned with Reference No.363/2022 or Writ Petition No.373/2022 was as follows:-

SN	Name	Designation	Parent Location	Transferred	Remarks
1	Mr. Nilesh Sawant	Mechanic	Fatorda	Canacona	Suspended, in respect of misconduct committed at Canacona
2	Mr. Dattaraj Morajkar	Tr. Technician	Fatorda	Canacona	Discharged
3	Mr. Anand Naik	Asst. Technician	Fatorda	Karaswada (Tivim Ind Estate	Transferred back to Fatorda as per Industrial Tribunal Award
4	Mr. Kiran Gadekar	Mechanic	Fatorda	Karaswada (Tivim Ind Estate	Transferred back to Fatorda as per Industrial Tribunal Award
5	Mr. Audhut Samant	Mechanic	Fatorda	Canacona	Resigned and Settled with full and final settlement
6	Mr Sanjay Gaude	Mechanic	Fatorda	Karaswada (Tivim Ind Estate	Resigned and Settled with full and final settlement
7	Mr. Naydade Antao	Sr. Technician	Fatorda	Savordem	On his request to Savordem, where he is presently working

8. Similarly, Mr Desai pointed out that Mr Viprav Vasta, an Accounts Executive, was transferred from Fatorda to Baina (Vasco). After the transfer, he was involved in serious misconduct and was issued a charge sheet. Based on the disciplinary inquiry findings, Mr Vasta was dismissed from service. However, the matter was settled, and in terms of the settlement, Mr Viprav Vasta was paid some compensation, which he has accepted in full and final settlement of all his claims.

9. From the above chart concerning the employees in Reference No.363/2022 or Writ Petition No.373/2022, it is evident that Mr Sawant is presently under suspension, Mr Morajkar is already discharged from services; Mr Anand Naik and Mr Kiran Gadekar are re-transferred to Fatorda in compliance with the directions in the impugned award, Mr Audhut Samant and Mr Sanjay Gaude have resigned services after accepting a full and final settlement, and Mr Naydade Antao is transferred on his request to Savordem where he presently works.

10. Nevertheless, the issue of interpretation of Clause 18 of the appointment orders issued to the above employees is live because Mr Desai submits that based upon the Tribunal's interpretation, the employees are resisting transfers from one branch/workshop

to the other even though such branches/workshops are within the State of Goa itself.

11. In the impugned award, Mr Desai submits that the Tribunal has accepted that each of the employees was issued appointment letters. To such appointment letters, general terms and conditions of service were attached. By accepting the appointments (by endorsing their signatures), the employees accepted such terms and conditions of service. He pointed out that Clause 18 specifically contemplates intra and inter-state transfers. This clause also contemplates transfers to existing or future establishments of the employer group.

12. Based upon the wording of Clause 18, Mr Desai submitted that the interpretation of a bar to transfer from one branch/workshop to another within the State is perverse and unsustainable. He submits that merely because the word "*branch*" is not specifically used in Clause 18, the Tribunal could not have held that transfer from one branch to another or one workshop to another within the State was barred or impermissible.

13. Mr Desai submitted that the Tribunal misinterpreted the decisions cited before it. In particular, Mr Desai submitted that the Tribunal failed to properly construe the decision of the

Hon'ble Supreme Court in *Kundan Sugar Mills v/s. Ziyauddin & Ors.*¹ Based upon all this, Mr Desai urged interference with the impugned awards while assuring the Court that the transfer orders leading to the dispute would not be enforced against the eight employees involved in the dispute.

14. Mr Shivraj Gaonkar, learned counsel for the Union/employees, defended the impugned awards based on the reasoning reflected therein. He submits that the *Kundan Sugar Mills (supra)* is an authority for the proposition that no transfers can be effected to establishments not in existence on the dates of the employees' initial appointments. He submitted that the transfers in the present case were to branches or workshops that were not existing when the eight employees were appointed. Therefore, their transfers from Fatorda to Canacona or Karaswada establishments were *ultra vires* Clause 18 of the appointment letters.

15. Mr Gaonkar further submitted that the Tribunal interfered with the impugned transfer orders not only because the employer lacked the power to order such transfers but further because the Tribunal, based upon the evidence before it, found that the transfers were malafide and to victimize these employees for

¹ AIR 1960 SC 650

union activities. Mr Gaonkar submitted that these are findings of fact supported by the evidence on record. Consequently, he submitted that the transfer orders warrant no interference and the impugned awards may be allowed to remain and govern the relations between the employer and employees on the transfer issues. He relied on *Obeates Pvt. Ltd., Mirzapur (by Director) v/s State of Uttar Pradesh & Ors.*², *Nippani Urban Co-operative Bank, Ltd. v/s Their Workmen*³, *Group Pharmaceuticals Ltd. v/s Blossom Godinho & Anr.*⁴, *H.N. Desai & Ors. v/s Bhor Industries Ltd. & Ors.*⁵, *Chennai Port and Dock Workers Congress (INTUC) v/s Union of India & Ors.*⁶, *Usha Workers' Union v/s Usha Martin Industries Ltd. & Anr.*⁷, in addition to *Kundan Sugar Mills (supra)*.

16. The rival contentions now fall for my determination.

17. As noted earlier, substantial evidence on record shows that the eight employees involved in the dispute were appointed by issuing written appointment letters. The appointment letters are like an offer of appointment. To the letters were annexed

² 1986 (1) LLN 564

³ 1992 (2) LLN 147

⁴ 1997 (4) LLN 613

⁵ 2001 (4) LLN 1267

⁶ 2003 (1) LLN 406

⁷ 2003 AIR Jhar R 495

"GENERAL TERMS AND CONDITIONS OF SERVICE".

The appointment letter stated that if the terms and conditions are acceptable to the appointee, the appointee must return the duplicate of the appointment letter along with the annexure duly signed and dated in token of the acceptance. The letter also stated that if the employer does not receive the acceptance within four days, the appointment letter will automatically stand cancelled.

18. The general terms and conditions annexed to the appointment orders deal with several service conditions governing the relationship between the employer and the employees. Clause 18 of the general terms and conditions is concerned with TRANSFER, and the same reads as follows:-

*"18. **TRANSFER** : An employee is liable to be transferred or loaned or deputed at the option of the Company/Firm anywhere in India, in any of the existing or future establishments of the company/Firm in the CHOWGULE GROUP, including transfer from one shift to another and/or from one department to another. The employee, shall, however, have no right to claim transfer.*

On transfer to a different establishment or Company/Firm, the existing total salary of an employee, excluding local and charge allowances, etc., will be protected, and the terms of conditions of service, in all respects as leave, provident fund, gratuity, bonus, holidays, working hours, deductions,

etc., will be applicable from time to time, as in the establishment to which the employee is transferred.

The seniority of an employee, on transfer, will be fixed by taking into account his part service in the category."

19. The Tribunal, in the impugned awards at para 16 of the award dated 23.12.2019, has held that there was no dispute about the appointment letters being issued to the eight employees involved in the dispute and the appointment letters containing an annexure as above. The annexure, in its Clause 18, had the transfer clause referred to above. Accordingly, in paragraph 17 of the impugned award, the Tribunal has accepted that the employees were bound by the general terms and conditions appended to the appointment order including Clause 18 concerning the transfer.

20. The Tribunal, in paragraph 17 of the impugned award, however, observed that Clause 18 of the general terms and conditions of service indicates that "*the transfer is for group of companies of Chowgules i.e. one company to another company and not in the same branch or workshop in the same company. The word 'branch' is not present in the General terms and conditions, which means that transfer from one branch to*

another was not permissible under the terms and conditions of the service."

21. In paragraph 18 of the impugned award, the Tribunal also accepts that the services of the employees could be transferred in any "*existing or future establishment of the company in the Chowgule Group; one shift to another and one department to another.*" However, the Tribunal maintains that since the transfers of the employees involved in the dispute were not to any future establishments or from one shift to another or one department to another, but the same was from one branch to another branch, the same was illegal and unjustified.

22. In paragraph 16 of the impugned award, the Tribunal noted that the eight employees involved in the dispute were appointed before the establishment or the workshop at Karaswada (Mapusa) and Canacona. However, the interference with the transfer orders is not because the transfers were to establishments or branches that did not exist at the time of the employee's initial appointment. However, the interference is on the ground that there was no reference to the word "*branch*" in Clause 18 of the general terms and conditions appended to the appointment letters.

23. Clause 18 of the general terms and conditions provides that an employee is liable to be transferred or loaned, or deputed at the option of the company/firm anywhere in India, in any of the existing or future establishments of the company/firm in the Chowgule Group including transfer from one shift to the other.

24. Considering the width of the transfer powers retained by the employer, the construction that the employer is not empowered to transfer its employees from one branch to another, even though the branches are within the State of Goa, cannot be accepted. Therefore, because Clause 18 does not make a specific reference to transfer from one branch to the other, there is no reason to conclude that the transfers from one branch to the other are barred under Clause 18.

25. Clause 18 refers to "*existing or future establishments*". Clause 18 also refers to the expression "*anywhere in India*". There is also a reference to transfers from "*one shift to another and/or one department to another*". These expressions used in Clause 18 are neither technical nor hyper-technical expressions nor some words of art.

26. The expression "*establishment*" is wide enough to include in its sweep a branch. So also, expressions like "*existing or future*

establishments" or "*anywhere in the country*" suggest that the employer had retained vast powers to transfer its employees. Therefore, to suggest that Clause 18 does not include or was not intended to include the power to transfer an employee from one branch to another within the State of Goa would not be a proper construction of Clause 18.

27. Upon holistic reading and construction of Clause 18, it is evident that the same includes the power to transfer an employee from one branch to another. As noted earlier, Clause 18 also refers to the "*Chowgule Group*," implying that even intra-group transfers are contemplated under Clause 18. Thus, if intra-group transfers, transfers anywhere in India, transfers in existing or future establishments, transfers from one shift to another and/or from one department to another are contemplated by Clause 18, it would not be proper to hold that Clause 18 prohibits or does not empower the employer to transfer its employees from one branch to the other within the State of Goa itself.

28. The construction adopted by the Tribunal is too narrow and inconsistent with the various expressions and phrases used in Clause 18. Clause 18 must be interpreted reasonably and pragmatically. Therefore, because there is no reference to "*branch*" in Clause 18, the Tribunal was not justified in holding

that Clause 18 bars transfers from one branch to another within the same State. A branch is also, in a sense, an establishment. In a given case, the branch can be regarded as a department. Therefore, neither the expressions used in Clause 18 can be construed narrowly or pedantically, nor can the expression "*branch*" be construed too strictly or literally. Even the expression "*including*" in Clause 18 is an expression to denote the width, and the purpose of such expression is not to restrict. Accordingly, on a plain and pragmatic construction of Clause 18, the transfer of employees from one branch to the other within the State of Goa was contemplated and, therefore, is permissible.

29. The eight employees involved in the dispute/reference were all posted at the Fatorda establishment. They were transferred to Canacona, Karaswada, Savordem and Baina establishments. In the context of Clause 18, there can be no substantial difference between a branch and an establishment. A branch can also qualify as an establishment for certain purposes. Ultimately, the context is important since the expressions branch or establishment are not some terms of art or technical terms.

30. When the eight employees were appointed and posted at Fatorda, possibly, the branches or establishments at Karaswada (Mapusa) or Canacona may not have been established. However,

Clause 18 refers explicitly to the existing or future establishments. Therefore, the argument that transfers cannot be made to establishments or branches which were not even in existence on the date of the employees' appointment would not apply. Even the Tribunal did not fault the transfers on the ground that the establishments or branches at Karaswada (Mapusa) or Canacona were not existing when the employees were appointed at the Fatorda establishment or branch.

31. In *Kundan Sugar Mills (supra)*, there was no express agreement on the aspect of transfers of employees. Therefore, the question was whether such a term had to be necessarily implied between the parties. In this context, the Hon'ble Supreme Court noted that when the employer employed the employees, the latter ran only one factory at Amroha. Nothing on record indicates that, at that time it was intended to purchase factories at other places or extend its activities in the same line at different locations. It was also not suggested that even if the employer had such an intention, the employees had any knowledge of the same. Under such circumstances, without anything more, the Hon'ble Supreme Court held that it would not be right to imply any such term between the contracting parties when the idea of starting new factories at different places was not in contemplation. The Court observed that ordinarily, the employees would have agreed

only to serve in the factory then in existence, and the employer would have employed them only in respect of that factory.

32. Therefore, the factual position in *Kundan Sugar Mills (supra)* was completely different from the factual position in the present petitions. There was no clause akin to Clause 18 in the general terms and conditions subject to which the employees were appointed in the present case. Therefore, based upon *Kundan Sugar Mills (supra)*, the impugned awards cannot be sustained.

33. In *Obeates Pvt. Ltd., Mirzapur (supra)*, the standing orders were silent on the transfer issue. Moreover, there was no condition in the employees' appointment letters on the transfer issue. In these circumstances, the Learned Single Judge of the Allahabad High Court found it difficult to subscribe to the abstract proposition that the employer's transfer of workmen from one factory to another was implied right. Again, no clause like Clause 18 empowered the employer to transfer the workmen from one station to another or to transfer the employees in any of the existing or future establishments. Therefore, the impugned awards cannot be upheld based on *Obeates Pvt. Ltd., Mirzapur (supra)*.

34. In *Nippani Urban Cooperative Bank Ltd. (supra)*, the Division Bench of the Karnataka High Court held that the right of the employer to transfer employees is governed by the terms of the contract between the employer and the employee or by the terms necessarily implied therefrom. The Court found that when the workman was employed, the employer had only one office and no branches. Further, the workman was not told that the employer was likely to open up branches and there was a possibility of transfer in such contingency. In these circumstances, the Division Bench held that the employee could not be transferred even if the employer subsequently opened branches. Again, there was no clause similar to Clause 18 permitting transfers in existing or future establishments. Therefore, even the decision of the Division Bench in *Nippani Urban Cooperative Bank Ltd. (supra)* is distinguishable.

35. In *Group Pharmaceuticals Ltd. (supra)*, the learned Single Judge of this Court found that the facts before it were close to the case decided by the Division Bench of Karnataka High Court in *Nippani Urban Cooperative Bank Ltd. (supra)*. This is clear from para 13 of the judgment. But, again, there was no clause similar to Clause 18 and the evidence established that when the employee joined her service, the employer company and its entire organization were functioning only in Mumbai. The employer

company neither had any branch nor office outside Mumbai. It was also not the case of the employer company that at the time the employee was appointed in 1980, there was any contemplation or intention to have its branch or office or any division outside Mumbai, nor was the employee informed at the time she joined her duties that there was a possibility of any division of the organization being shifted outside Mumbai and that the transfer could be made in such contingency. The Court held that had these facts been known to the employee, she might or might not have joined her services with the employer company. Accordingly, the facts in *Group Pharmaceuticals Ltd. (supra)* are not comparable to those in the present cases.

36. In *H. N. Desai & Ors. (supra)*, the learned Single Judge of this Court found that no agreement existed between the union of workmen and the employer accepting or laying down provision for transfer. There was no provision in the settled Standing Orders for transfer. In such circumstances, this Court held that the right of the employer to transfer workman was not implied in the contract of service. Further, the Court also found *prima facie* materials to show that the order of transfer was tainted. Accordingly, interim relief of stay of transfer order was granted. Again, even in this case, there was no provision like Clause 18, which expressly contemplates transfer anywhere in India, in any

of the existing or future establishments of the company, firm or even group of companies.

37. *Chennai Port and Dock Workers Congress (INTUC)* (*supra*) holds that a transfer to a new station is a new condition of service falling within Schedule IV of the Industrial Disputes Act, 1947 (ID Act). Therefore, in terms of Section 9A of the ID Act, notice had to be issued before imposing such new condition of service. Such an issue is not at all involved in the present matters.

38. In *Usha Workers' Union* (*supra*), the Division Bench of Jharkhand High Court has held that there may not be an inherent right to transfer employees to a private organization. The transfer must be based upon the standing orders or terms of a contract between the employer and the employee. Again, in this case, the contract between the employer and the employee explicitly contemplated transfer. Therefore, even the *Usha Workers' Union* (*supra*) decision would not apply.

39. The Tribunal has found some malafides in the case of some of the transfers. However, considering the statements made by Mr Desai, it is unnecessary to revisit the issue of malafides. Mr Desai has based on instructions, already stated that the employer was not interested in enforcing the transfer orders issued to the eight

employees involved in the two disputes and references disposed of by the impugned awards.

40. Accordingly, both these petitions are disposed of by holding that Clause 18 of the General terms and conditions applicable to the employees contemplates and consequently permits transfers of the employees from one branch to the other, even if the new branch may not have been existing at the time of appointment of the employees. Consequently, the Tribunal's interpretation of Clause 18 of the General Terms and Conditions is not approved. Accordingly, the impugned awards are interfered with to this limited extent. Further, the statements made on behalf of the petitioners about the non-enforcement of the transfer orders, which were the subject matter of the dispute between the eight employees and the employer, are accepted and recorded. Accordingly, the employer will have to abide by the statements.

41. The Rule in both these petitions is disposed of in the above terms.

42. Accordingly, there shall be no order for costs.

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