

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13233 OF 2022**

1. Maharashtra Rajya Rashtriya
Kamgar Sangh (INTUC),
Rashtriya Mill Majdoor Sangh,
Majdoor Manzil, G.D. Ambedkar Marg,
Parel, Mumbai-12, through its
Organizing Secretary, Ishwar S/o
Sumant Wagh, Age-47 Years,
Occupation- Social Work.
2. Ravindra S/o Machindranath Dode,
Age- 55 Years, Occ. Service,
R/o. Scheme No.11/9/13, Tathastu
Nagar, Nigdi, Pune-411 044.
3. Sanjay S/o Gajanan Kandarkar,
Age- 58 Years, Occ. Service,
R/o-Anjana Niwas, Sandvik Colony,
Bhosari, Pune.

4. Bhausahab S/o Narayan Kadam,

Age-54 Years, Occ. Service,

R/o- Hari Om Niwas, S.No.36,

House No.1829, Behind Utkarsh

Classes, Dattawadi, Akurdi,

Pune-411 035.

5. Santosh S/o Pandit Bhosale,

Age- 43 Years, Occ. Service,

R/o- Bhosale Wasti, D.Y. Patil

College Road, Charholi (BK),

Tq. Haveli, Dist. Pune.

6. Shailesh S/o- Khandu Kute,

Age-40 Years, Occ. Service,

R/o- Purvanjay Niwas, Near

Inamdar Chicken Center,

Akurdi, Tq. Haveli, Dist. Pune.

.... PETITIONERS

(Org. Complainants)

VERSUS

1. M/s. Exide Industris Ltd.,

Plot No. D-2, M.I.D.C. Industrial

Estate, Chinchwad (E), Pune,

Through its Managing Director.

....RESPONDENT

(Org. Respondent)

AND

WRIT PETITION NO.13792 OF 2022

1. Maharashtra Rajya Rashtriya

Kamgar Sangh (INTUC),

Rashtriya Mill Majdoor Sangh,

Majdoor Manzil, G.D. Ambedkar Marg,

Parel, Mumbai-12, through its

Organizing Secretary, Ishwar S/o

Sumant Wagh, Age-47 Years,

Occupation- Social Work.

2. Revan S/o- Namdeo Bhakare,

Age- 52 Years, Occ. Service,

R/o. Mauli Housing Society, Vitthalwadi,

Dehugaon, Tq. Haveli, Dist. Pune.

3. Sunil Shyamlal Parse,

Age- 43 Years, Occ. Service,

R/o-S. No. 33, Opp. Rajalaxmi Niwas,

Maharashtra Nagari, Nakhate (Shastri)

Nagar, Rahatani, Pune-411 017

4. Balasaheb S/o Saudagar Anbhule,
Age-51 Years, Occ. Service,
R/o- Dnyaneshwar Housing Society,
Near Padwal Hospital, More Wasti,
Chikhali, Pune.

5. Subhash Dagadu Gawade,
Age- 49 Years, Occ. Service,
R/o- Flat No. 303, Building B,
Tulsi Ratna, Banker Wasti, Moshi,
Tq. Haveli, Dist. Pune.

6. Atmaram S/o Ananta Dhumal,
Age-47 Years, Occ. Service,
R/o- Shramdeep Niwas, Sr. No. 135,
Near Santoshi Mata Mandir, Mohan
Nagar, Chinchwad, Pune- 411 019

.... PETITIONERS

(Org. Complainants)

VERSUS

1. M/s. Exide Industris Ltd.,
Plot No. D-2, M.I.D.C. Industrial
Estate, Chinchwad (E), Pune,
Through its Managing Director.

....RESPONDENT

(Org. Respondent)

Mr. Shailendra Kulkarni with Mr. Nitin R. Bhavar Patil, Ms.
Nilima Sarvagod, for Petitioners.

Mr. D. J. Bhanage, for Respondent

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 21st MARCH, 2023

PRONOUNCED ON:- 28th APRIL, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2) These Petitions take exception to an identical order passed by the learned Member Industrial Court, Pune on applications for interim relief under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, Act, 1971 ("the Act, 1971"), whereby the prayer of the petitioners to stay the transfer orders dated 27th June, 2022 and 24th June, 2022 in respect of the petitioner-complainant Nos. 2 to 6, in the respective Petitions, came to be rejected.

3) Since the Petitions arise out of an identical factual backdrop, both the Petitions are decided together. Writ Petition

No.13233 of 2022 is considered as lead Petition and reference hereinafter is to the facts in the said Petition.

4) Shorn of unnecessary details, the background facts leading to this Petition can be stated as under:-

(a) The respondent is engaged in manufacturing of Lead Acid Storage Batteries from its factory situated at D-2, M.I.D.C. Industrial Estate, Chinchwad (E), Pune. Petitioner Nos. 2 to 6 are the workmen and have been working at the said factory since more than 20 years. Petitioner No. 1 is a registered Trade Union. The employees of respondent, including petitioner Nos. 2 to 6, are members of petitioner No. 1.

(b) By order dated 27th June, 2022 petitioner Nos. 2 to 6 have been transferred to Exide Industries Ltd., Bawal, Rewari, Haryana. The petitioners filed a complaint alleging unfair labour practices under Item 3, 5 and 9 of Schedule IV of the Act, 1971. The petitioners claim that transfer order was *mala fide* as it was issued as a counterblast to an order dated 21st June, 2022, passed by the Industrial Court at Pune in another complaint ULP No.50 of 2022, filed by petitioner No.1, whereby respondent has been restrained from terminating the members of petitioner No.1- Union without following due process of law. Petitioners

further contended that the factory at Pune was established in the year 1971, whereas the plant at Bawal, to which the petitioner Nos. 2 to 6, have been transferred was established in the year 2005. There was no express term of contract empowering the respondent to transfer its employees to a newly established plant. The said transfer order, according to the petitioners, were in teeth of the provisions contained in Section 9A of the Industrial Disputes Act, 1947 and constituted change in service condition. Petitioners asserted, the transfer orders were issued in order to break the Union activities. Even otherwise, according to the petitioners, there was no exigency which warranted the transfer of the petitioner Nos. 2 to 6 to Bawal, a far off place.

5) The petitioners sought interim stay to the transfer order by filing an application (Exhibit-U2). Respondent resisted the application by filing its written statement *cum* reply.

6) Respondent categorically denied that the transfer order was *mala fide*. According to the respondent, the respondent had not been able to provide meaningful work to the workmen employed in its Motorcycle Battery Division and, thus, the petitioner Nos. 2 to 6 were transferred to another establishment.

The said transfer is in accordance with the contract of service, and it did not amount to change in service condition.

7) Controverting the contentions that the transfer order has been issued to give a counterblast to the interim order passed by the Industrial Court on 21st June, 2022 in complaint (ULP) No. 50 of 2022, the respondent contended that a decision to transfer few employees of the respondent working at its Pune plant had been taken long back and the said decision was in no way influenced by the interim order passed by the Court. Thus, there was no unfair labour practice.

8) The learned Member Industrial Court, after appraisal of the pleadings and material on record, was persuaded to reject the application for interim relief opining, *inter alia*, that the management has a discretion to arrange its business in a manner it considers best, the petitioners failed to establish that the transfer orders were *mala fide* and transfer amounted to change in service condition. Thus, in the view of the learned Member Industrial Court, petitioners failed to make out a strong *prima facie* case of unfair labour practice, the balance of convenience tilted in favour of the respondent and any

interference in the transfer order would cause irreparable loss to the respondent in arranging its business.

9) Being aggrieved the petitioners have invoked writ jurisdiction of this Court.

10) I have heard Mr. Shailendra Kulkarni, the learned Counsel for the petitioners, and Mr. Bhanage, the learned Counsel for the respondent at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

11) Mr. Kulkarni, took a slew of exceptions to the impugned order. Firstly, the learned Member Industrial Court, according to Mr. Kulkarni, lost sight of the fact that issue of transfer orders under a few days of the interim order in complaint (ULP) No. 50 of 2022 could not be explained on any other hypothesis than that of a *mala fide* exercise of power to break the collective bargaining power. Second, according to Mr. Kulkarni, the learned Member Industrial Court misdirected himself in drawing an inference that the transfer order was in conformity with the condition of service as when the petitioner Nos. 2 to 6 were appointed, the Bawal plant was not in existence. In the circumstances, the Industrial Court committed an error in

drawing an inference that transferability was a condition of employment. Thirdly, the learned Member proceeded on the basis of bald pleadings to hold that there was exigency of situation, which warranted transfer of the petitioner Nos. 2 to 6. No material was placed in justification of the transfer order. Fourth, according to Mr. Kulkarni, the learned Member Industrial Court unjustifiably distinguished an order passed in Writ Petition No. 11930 of 2017 in the matter of respondent-company itself, wherein the stay to the transfer of 11 workmen from respondent's Ahmednagar plant to Bawal was upheld. The reasons which weighed with this Court in upholding the stay order, according to Mr. Kulkarni, apply with equal force to the instant case.

12) Per contra, Mr. Bhanage, the learned Counsel for the respondent, would urge that none of the grounds sought to be urged on behalf of the petitioners is worthy of consideration. Laying emphasis on the appointment order, which contains an express condition that the services of the employees were liable to be transferred to any office or establishment of the respondent or its associate-company, Mr. Bhanage would urge that the very premise of the complaint of unfair labour practice is flawed. Where there is an express condition of transferability,

according to Mr. Bhanage, the discretion of the management to transfer its employee for better organization of business can not be whittled down.

13) Mr. Bhanage would further urge that the ground of *mala fide* is also wholly unsustainable. Taking the Court through the minutes of the meeting, between the Maharashtra Labour Union, which represented the employees at the respondent's factory, and the management, dated 23rd June, 2021, and the communication dated 23rd May, 2022, addressed to the General Secretary of Maharashtra Labour Union, Mr. Bhanage would urge that employees of the respondent and the Union were aware of necessity of transfer of employees to make the manufacturing activity at the respondent's factory viable. Mr. Bhanage submitted that order in WP No. 11930 of 2017, dated 13th October, 2017, in the matter of transfer of 11 workmen from Ahmednagar to Bawal was rendered in a completely different fact situation, where the Court noted that the Bawal factory was established before the Ahmednagar plant and there had been no transfer of a single employee from Bawal to Ahmednagar to train the new workers. The situation at hand is converse, submitted Mr. Bhanage.

14) Lastly, Mr. Bhanage submitted that neither a case of change in condition of service nor *mala fide* in issue of transfer order has been made out and, thus, learned Member committed no error in refusing to stay the transfer order.

15) I have given anxious consideration to the rival submissions. In the wake of the aforesaid submissions, I deem it in the fitness of things to consider the challenge in two stages. First, whether transferability is a condition of service. Second, in the event it is found that the transferability is, *prima facie*, a condition of service, then whether the order of transfer is vulnerable for statutory violation or *malafide*.

16) It was urged on behalf of the respondent that the transferability was an express condition of service. Appointment order dated 1st November, 2003 of petitioner No. 5 was pressed into service by way of illustration. Clause 7.0 of the terms and conditions, subject to which the appointment was made, reads as under:-

“7.0. This appointment is made on the express condition that your services are liable to be transferred to any office or establishment of this company or its associated companies”

17) Mr. Kulkarni would urge that the aforesaid condition can not be construed as an all pervasive condition to include the

establishments which come up after the appointment of the employee. It must be understood as a contract of transferability to only those establishments, which were then in existence. Since Bawal plant was established after the appointment of the petitioner Nos. 2 to 6, the respondent can not draw mileage from the aforesaid stipulation, urged Mr. Kulkarni.

18) To lend support to this submission, Mr. Kulkarni placed a strong reliance on the judgment of the Supreme Court in the case of **M/s. Kundan Sugar Mills Vs. Ziyauddin and Others**¹. In the said case, the partners of the appellant-Mill purchased the building machinery and other equipment of another sugar mill and started a new factory at Bulandshahr. Respondent Nos. 1 to 4 therein, who were working at Kundan Sugar Mills at Amroha, were transferred from Amroha to the new mill at Bulandshahr.

19) In the backdrop of the aforesaid factsituation, the Supreme Court noted that there was no express term of the contract of service between the appellant and the respondent Nos. 1 to 4 that the latter should serve in any future concerns which the appellant might acquire or start. The two mills were situated at different places with accounts separately maintained and governed by different service conditions, though they

1 AIR 1960 SC 650

happened to be under the common management and, therefore, they were treated as two different entities.

20) The Supreme Court while holding that there was no condition of service of employment of the concerned workmen either express or implied that the employer had the right to transfer them to a new concern started by employer subsequent to the date of the employment observed, *inter alia*, as under:-

“.....Apart from any statutory provision, the rights of an employer and an employee are governed by the terms of contracts between them or by the terms necessarily implied therefrom. It is conceded that there is no express agreement between the appellant and the respondents where under the appellant has the right to transfer the respondents to any of its concerns in any place and the respondents the duty to join the concerns to which they may be transferred.....”

21) Mr. Bhanage joined issue by canvassing a submission that pronouncement in the case of **M/s. Kundan Sugar Mills** (supra) is required to be appreciated in the light of the peculiar facts of the said case. The judgment in the case of **M/s. Kundan Sugar Mills** (supra) has been explained by this Court in the case of **VIP Industries Limited Vs. Maharashtra Kamgar Karmachari Sanghatana and Others²**.

22) In the case of **VIP Industries Limited** (supra) the employer had acquired a plant at Sinnar. Thereupon the employees who

were working at its plat at Satara were transferred to Sinnar. In the context of the challenge to the said transfer, based on the enunciation of law in the case of **M/s. Kundan Sugar Mills** (supra), this Court explained the import of the decision in the case of **M/s. Kundan Sugar Mills** (supra) in the following words:-

“....8. The judgment of the Supreme Court in Kundan Sugar Mills would show that this was a case where the contract of employment had no express condition empowering the employer to transfer the workman to any other place. The argument before the Supreme Court was that the right to transfer was implicit in the contract of service but that, the Supreme Court held was not a universally correct preposition. Though the two factories were owned by the same employer, they were distinct entities situated at different places and even the service conditions that were prevailing therein were different. This distinction on facts in the Judgment of the Supreme Court in Kundan Sugar Mills have been adverted to in an unreported judgment of Hon'ble Mr. Justice S.H. Kapadia (as the learned Judge then was) dated 21st July 1994 in Associated Breweries and Distilleries V/s. Shri Purshottam Govindji Patel (Writ Petition 1570/1994).

9. In the present case, both the establishment at Sinnar as well as the establishment at Satara belong to one and the same employer. The service conditions of the workmen are not to be adversely by the order of transfer. On the contrary, the Petitioner has agreed to provide additional payments to the workmen, as already noted in the earlier part of the judgment. It is an admitted position that transferability is a condition of service in the letters of appointment of 55 workmen. The fact that in the case of some of them, the clause may be more widely worded would make no difference. Once transferability is a condition of service, and the conditions of service are not being adversely affected by

the order of transfer, the action of the employer in exercising the right to transfer the employee cannot be faulted except for mala fides or where there is a statutory violation. In a judgment of a learned Single Judge of the Delhi High Court (Hon'ble Mr. Justice A.K. Sikri) in General Marketing and Manufacturing Co. Ltd. V/s. Presiding Officer (2000 III LLJ 1171), it has been held as follows: -

According to the aforesaid stipulation in the appointment letter and conditions of appointment, it is clear that the services of the Petitioner workman were liable to be transferred to anywhere in India or any department. It is further stipulated in these conditions that the management is at liberty to utilize service from time to time in any department or any section/branch of the company in India. Once these are the service conditions, relating to transfer it cannot be said that workman could not be transferred to particular branch which was opened after the appointment of the workman. If the contention of the workman is accepted it would mean that workman can be transferred to any of the branches/departments anywhere in India which were in existence as on the date of her appointment only but not to those branches or departments which were opened by the management after her appointment. Such a position cannot be accepted in law and it would make the very condition of service regarding transferability to any department/section/branch anywhere in India as redundant.

10. I am in respectful agreement with the view formulated in the judgment. This view is consistent with the law laid down by the Supreme Court in a line of authority, and reference may be made to the judgment in Pearlite Liners Pvt. Ltd. V/s. Manorama Sirsi 2004 II CLR 965".

(emphasis supplied)

23) Another learned Single Judge of this Court in the case of **Engineering Workers Association, Thane Vs. Radium Creation Ltd., Mumbai and Others**³ considered the aspect of transfer of the employees to a unit which was not in existence when the employees were appointed. Repelling the challenge, the learned Single Judge, after following the judgment in the case of **VIP Industries Limited** (supra), observed as under:-

“....55. This Court in the case of VIP Industries Limited, Satara (supra), after adverting to the judgment of the Supreme Court in the case of M/s.Kundan Sugar Mills (supra), held that in the case of M/s.Kundan Sugar Mills (supra), the contract of employment had no express condition empowering the employer to transfer the workman to any other place. The employer had urged before the Supreme Court that the right to transfer was implicit in the contract of service but the Supreme Court held that it was not a universally correct proposition. Supreme Court had considered that though two factories were owned by the same employer, they were distinct entities situated at different places and even the service conditions that were prevailing therein were different. This Court distinguished the said judgment of the Supreme Court and held that in the case before this Court in the case of VIP Industries Limited, Satara (supra), both the establishments i.e. establishment at Sinnar as well as the establishment at Satara belong to one and the same employer and the service conditions of the workmen were not to be adversely affected by ppn 27 wp-2941.16 (j).doc the order of transfer. It was also an admitted position that transferability was a condition of service in the letters of appointment.

.....

3 2016 (3) Mh.L.J. 547

57. This Court also adverted to the judgment of the Delhi High Court in the case of General Marketing and Manufacturing Co. Ltd. Vs. Presiding Officer, reported in 2000 (III) L.L.J. 1171(Del.) in which it was held that if the service condition provides that workman were liable to be transferred to anywhere in India or any department and the management was at liberty to utilize services from time to time in any department or any section/branch of the company in India, it could not be said that the workman could not be transferred to a particular branch which was opened after the appointment of the workman. This Court agreed with the views formulated by the Delhi High Court in the said ppn 28 wp-2941.16 (j).doc judgment and has accepted the arguments of the employer that transfer of the workmen from the plant at Satara to the plant at Sinnar which came to be vested in the petitioner as a consequence of a scheme of amalgamation subsequently was within the rights of the employer under the terms and conditions of the contract agreed between the parties and could not be considered as mala fide.

.....

59. In my view, since there is no term to the contrary in the contract of service and in view of specific provision in the contract providing for transferability of the services of these workmen as recorded in the letter of appointment and in the Memorandum of Settlement, a transfer order issued by the respondents was a normal incidence of service unless the workmen would prove mala fides on the part of the employer. The allegation of mala fides cannot be vague and without particulars and have to be specifically pleaded and proved with clear and cogent material..... "

(emphasis supplied)

24) The position in law which thus emerges is that in the absence of the term to the contrary in the contract of service, a transfer order is a normal incidence of service. In the absence of

a term prohibiting the transfer of an employee, ordinarily the transfer orders can not be called in question. Where transferability is a condition of service, it would be impermissible for a Court or Tribunal to interdict an order of transfer which flows from the express term of the contract. Even in the absence of an express term of contract, the Court may embark upon an inquiry as to whether the transferability is an implied term of employment. In the face of an express condition of transferability, the broad proposition that the employee can only be transferred to a unit or branch which was in existence on the date of appointment, can not be countenanced, unless there is a clear stipulation against transfer to new establishment. Such an interpretation would amount to taking a very constricted view of the business dynamics. It has the propensity to render the condition of transferability to any unit, branch or even associated company, as in the case at hand, redundant.

25) Reliance placed by Mr. Kulkarni on the judgment of this Court in the case of **Crest Communication Ltd., Vs. Sheetal Shenoy**⁴ does not seem to advance the cause of the petitioners. The facts in the case of **Crest Communication Ltd.**, (supra) were

4 2001 (4) Mh.L.J. 919

quite distinct. The respondent therein was appointed without any written appointment order. Subsequently, the petitioner therein framed rules and regulations to govern the terms, conditions and privileges of employment of its employees. It is in that context, this Court observed that the right of employer to frame rules can not be doubted but if the rules are framed posterior to the date of joining of service by the employee, then it was mandatory to obtain express consent of the employee concerned or the consent of the workers union. Evidently, the aforesaid enunciation does not govern the facts of the case at hand.

26) The judgment of this Court in the case of **Group Pharmaceuticals Ltd., Vs Blossom Godinho And Another**⁵ also proceeds on a similar line. In that case also, when the employee joined the service there was no stipulation in the contract that she was not liable to transferred from one place to another in the employer company. The Court, in the facts of the said case, observed that the decision of the employer to shift the marketing division from Mumbai to Bangalore was *bonafide* but by such decision of shifting the marketing division from Mumbai to Bangalore employee could not have compelled to join the duties

5 (1998) 1 LLJ 1182

outside Mumbai, which was not contemplated under her contract of service.

27) Both these pronouncements, relied upon by Mr. Kulkarni, turn on the pivotal aspect of absence of term of transferability in the contract of employment, which is not the case at hand.

28) I am, therefore, not persuaded to accede to the submission of Mr. Kulkarni that since Bawal plant was established after the appointment of the petitioner Nos. 2 to 6, they could not have been transferred to the said plant by invoking the transferability clause in the appointment order. This propels me to challenge to the transfer order on the ground of *mala fide*.

29) Under Item 3 of Schedule-IV of the Act, 1971, the act of transfer of an employee would amount to an unfair labour practice if the transfer is actuated by *mala fide*. The concept of *Mala fide* has two facets; one, malice in law and the other, malice in fact. The term *mala fide* has a definite juridical connotation. It envisages want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose.

30) In the case of **State of Bihar and Another Vs. P.P. Sharma, IAS and Another**⁶, the Supreme Court, observed that the determination of a plea of *mala fide* involves two questions,

⁶ 1992 Supp (1) SCC 222

namely (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

31) Following the aforesaid Judgment in the case of **State of Bihar** (Supra), the Supreme Court in a recent pronouncement in the case of **Rajneesh Khajuria Vs. Wockhardt Ltd and Others**⁷ observed that in terms of the provisions of the Act, 1971, the transfer by itself can not be said to be an act of unfair labour practice unless it is actuated by *mala fide*. Therefore, to sustain a plea of *mala fide*, there has to be an element of personal bias or an oblique motive.

32) It is also well recognized that the allegations of *mala fide* are easy to make than prove. In the case of **Union Of India and Others Vs. Ashok Kumar and Others**⁸, the Supreme Court enunciated in clear terms that it cannot be overlooked that burden of establishing *mala fide* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.

7 (2020) 3 SCC 86

8 (2005) 8 SCC 760

33) The challenge to the transfer order on the ground of *mala fide* is required to be appreciated on the aforesaid touchstone. Mr. Kulkarni would urge that action of transfer in the instant case is clearly actuated by malice as it was made to achieve an ulterior purpose of breaking the Union activity. Two, circumstances were pressed into service. One, the petitioner No. 1- Union was formed in the month of May, 2022 and majority of employees of the company became the members of the petitioner No. 1 – Union to the consternation of respondent. Two, in complaint (ULP) No. 50 of 2022, on 21st June, 2022, the respondent was restrained from terminating the members of the petitioner No. 1- Union without following due process of law.

34) Mr. Kulkarni would urge that the fact that respondent was bent upon breaking the Union activity becomes evident from the documents sought to be relied upon by the respondent itself, especially, the letter dated 23rd May, 2022. In the said letter dated 23rd May, 2022, addressed to General Secretary of Maharashtra Labour Union, the respondent adverted to the fact that recently there had been some movement regarding change of Union, raising new demands, possibility of industrial unrest and law and order situation at Chindchwad location. This,

according to Mr. Kulkarni, betrays a clear intent to break the collective bargaining power by transferring petitioner Nos. 2 to 6.

35) Mr. Bhanage would submit the aforesaid contents of the letter can not be read in isolation. The said letter adverts to many of factors of which the management was then concerned.

36) It is trite a document has to be read as whole and a sentence or two thereof, can not be read torn out of context. The letter dated 23rd May, 2022, addressed to the General Secretary of Maharashtra Labour Union, in a sense, contains a litany of grievances as regards the alleged failure on the part of the Union to achieve the productivity target, how the business activity was becoming increasingly unviable and the possible scenarios which may emerge. In the said letter, indeed there is a reference to movement regarding change of Union. However, if read in totality, the said letter does not justify an inference that being alarmed by the possible change of Union, the respondent resorted to the device of transfer of petitioner Nos. 2 to 6, to break the Union activity.

37) The learned Member Industrial Court was justified in taking note of the Minutes of Meeting dated 23rd June, 2021 between the management and the representatives of the Union.

One of the decisions taken therein was the possible transfer of 120 MC workers from Chinchwad plant to Ahmednagar and Bawal as MC section at Chinchwad would get closed. This circumstance is of material significance. It *prima facie* runs counter to the contention that the transfer was a retaliatory measure. Said minutes of meeting lend, *prima facie*, credence to contention on behalf of the respondent that matter of transfer was under contemplation since the month of June, 2021.

38) Mr. Kulkarni submitted that punitive nature of the transfer becomes evident from the fact that Ten employees have been transferred to Bawal and none to Ahmednagar. I am afraid this circumstance can be arrayed against the respondent. This brings in the element of exigency of the business and the right of the management to organize its affairs. Transfer of petitioner Nos. 2 to 6 can not be termed *mala fide* for the reason that no employee has been transferred to the Ahmednagar plant, which is relatively near.

39) The next submission on behalf of the petitioners that the contention of the respondent that there was exigency of the situation to warrant transfer of the employees to Bawal has not been supported by any credible material and the learned

Member Industrial Court decided the issue on the basis of bald pleadings, does not merit acceptance. At the interim stage, the Industrial Court was required to take a *prima facie* view of the matter. The learned Member after appraising the pleadings of the parties and the documents adverted to above, arrived at a *prima facie* finding. Such a finding is not susceptible to challenge on the ground that the respondent did not place on record material to establish its case to the hilt.

40) At the first blush, the transfer of petitioner Nos. 2 to 6 under a few days of the interim order passed in complaint (ULP) No. 50 of 2022, may render the allegation of *mala fide* on the said count attractive. However, the said contention, if evaluated in the light of entire setting of the matter does not pass judicial scrutiny. If viewed through the prism of the circumstances which have been brought on record on behalf of the respondent, touching upon the challenges faced at the Chinchwad plant, since at least a year prior to the transfer orders, and the necessity of transfer of the employees to other plants as a measure of organization of business, the short interval between the order in complaint (ULP) No. 50 of 2022 and the impugned transfer order can not be the sole barometer to test the *mala fide*.

41) The learned Member Industrial Court was *prima facie* satisfied that respondent could demonstrate that most of the customers of the company had started their manufacturing activity in North India and, therefore, in order to supply the material in time and thereby arrest the delay and the consequent losses the respondent had decided to increase production at Bawal plant and that necessitated the transfer of some of its employees to the said plant. In my view, in exercise of writ jurisdiction, this Court would not be justified in delving into the correctness of factual finding and that too at an interlocutory stage.

42) The submission on behalf of the petitioners that the transfer order constitutes a change in the conditions of service does not seem to be *prima facie* borne out by the record. The transfer order dated 27th June, 2022, explicitly records that the employee is transferred without prejudice to the existing emoluments and job responsibility, and the other terms and conditions of employment shall remain the same. It would be contextually relevant to note that the transfer order also makes reference to the facilities extended to the employee, post transfer, albeit for a limited period.

43) For the foregoing reasons, I am not persuaded to accede to the submission on behalf of the petitioners that the transfer orders were actuated by *mala fide*.

44) Reliance on the decision of this Court in Writ Petition No. 11930 of 2017, dated 13th October, 2017, wherein the transfer of 11 employees from Ahmednagar to Bawal was interdicted by this Court, in my view, does not advance the cause of the submissions on behalf of the petitioners. I find substance in the submission of Mr. Bhanage that the fact situation in the said case was quite distinct. The stated reason that experienced employees were required to be posted at the Bawal was found to be factually incorrect as Bawal plant was established at a much earlier point of time and, in the past, none of the employees had been transferred from Bawal to Ahemadnagar. In any event, the question as to whether a transfer suffers from the vice of malice is essentially rooted in the facts of a given case. Such decision on facts in one case may not be applied and imported to the facts of another case, unreservedly.

45) The upshot of aforesaid consideration that the Petitions deserve to be dismissed.

Hence, the following order.

:-ORDER:-

- (i) The Petitions stand dismissed.
- (ii) Rule stands discharged.
- (iii) All the Interim Applications also stand disposed.
- (iv) There shall be no order as to costs.

[N. J. JAMADAR, J.]

At this stage, Ms. Nilima Sarvagod, the learned counsel for the petitioners seeks continuation of interim protection granted by this Court by an order dated 15th November, 2022.

Mr. Vishal Muglikar, the learned advocate holding for Mr. Bhange, learned counsel for respondent opposes the prayer for continuation of the protection. By the said order this Court had restrained the respondent from taking coercive steps against the employees only on the ground that they have not reported to work at the transferred place of posting.

The said protection shall continue to operate for a period of four weeks from today.

[N. J. JAMADAR, J.]