



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4585 OF 2021

Pradeepkumar s/o. Tribhuvanlal Trivedi,
Aged about 58 yrs., Occ. : Nil,
R/o. Plot No.154/A, "Rigved",
Dixit Nagar, Nari Road, Nagpur-440 026.

.... **PETITIONER.**

// VERSUS //

M/s. Curewell Drugs and Pharmaceuticals
Pvt. Ltd., Plot No.241/29, Huda Industrial
Area, Nangal Kheri, Panipat, Haryana -
132 108, Through its Director
Shri Manoj Lalchand Garg.

.... **RESPONDENT.**

The Petitioner in person.
Shri Atul J.Pathak, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.

DATE OF RESERVING THE JUDGMENT : 10/08/2023

DATE OF PRONOUNCING THE JUDGMENT : 10/10/2023.

JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by
consent of the parties.

3. The petitioner was working as Zonal Sales Manager when he was terminated vide order dated 15/03/2008, which was the subject matter of challenge in BIR Application No.2 of 2008 before the Second Labour Court, Nagpur. The said application was allowed *ex-parte* directing the respondent to reinstate the petitioner and further to pay compensation of Rs.5,00,000/- in lump sum, vide order dated 13/01/2010.

4. The respondent filed an appeal bearing Appeal (BIR) No.01 of 2019 before the Industrial Court which came to be allowed vide impugned order dated 27/09/2019, thereby setting aside the order of the Labour Court, directing to reinstate the petitioner. The same is the subject matter of challenge in this writ petition.

5. The Industrial Court, while setting aside the order of the Labour Court has held that as the respondent has no industrial or business activity at Nagpur, the Labour Court at Nagpur has no jurisdiction to entertain the BIR application filed by the respondent.

6. It is further held that the applicant is not an employee under the Maharashtra Industrial Relations Act, 1946 (hereinafter referred to as “the MIR Act”).

7. Thus, the whole controversy revolves around the following two questions :

- I) Whether the Labour Court has jurisdiction to entertain the BIR application filed by the petitioner No.2 ?
- II) Whether the petitioner is an employee under the provisions of the Maharashtra Industrial Relations Act, 1946?

8. I have heard the petitioner in person and Shri Pathak, learned counsel for the respondent.

9. The petitioner submits that though the respondent Industry is situated in Panipat (U.P.), the cause of action arose at Nagpur and therefore, the place of occurrence of unfair labour practice is important to find out the territorial jurisdiction and not the place where the decision was taken. It is therefore, submitted that as the order of termination was served upon the petitioner at Nagpur and as the petitioner was working at Nagpur on the relevant date as a Zonal Manager, the cause of action arose at Nagpur and therefore, the Labour Court has jurisdiction to entertain the BIR Application under the provisions of the MIR Act. For this purpose, he has placed reliance on the judgment of this Court, in case of *Torrent Pharma. Ltd. ..vs.. Industrial Court*, reported in **2009 (2) Mh.L.J. 331**.

10. It is further submitted that the learned Labour Court has rightly held that the petitioner is an employee considering the nature of duty being performed by the petitioner. He further submits that the learned Labour Court has further rightly held that the designation of the petitioner is of deceiving nature. Hence, the petitioner submits that the order of the learned Industrial Court is erroneous and prays for setting aside the same by upholding the order of the Labour Court.

11. On the other hand, the learned counsel for the respondent submits that the MIR Act is a local Act and is applicable only to the industries which are situated within the Maharashtra. It is pointed out that admittedly the respondent's manufacturing unit is situated at Panipat (U.P.) and there is no manufacturing unit, establishment, factory, branch or any type of office situated at Nagpur or in the State of Maharashtra. He, therefore, submits that since the case was filed under the Maharashtra Industrial Relations Act, which is a local Act, it will not apply to the respondent and as such the Labour Court at Nagpur has no jurisdiction to entertain the application filed by the petitioner.

12. It is further submitted that the Hon'ble Supreme Court of India in the case of *H.R. Adyanthaya ..vs.. Sandoz (India) Ltd.*, reported in **AIR 1994 SC 2608** has held that Medical Representative does not

perform duties of skilled or technical nature and therefore, Medical Representative is not a workman. It is submitted that the petitioner was working as Zonal Manager and considering the nature of his duties, the above referred judgment squarely applies to the case of the petitioner. It is therefore, submitted that the learned Industrial Court has rightly held in favour of the respondent. He, therefore, prays for dismissal of the present writ petition.

13. In light of the rival contentions, I have perused the record and the impugned judgment and orders.

14. Admittedly, the application filed before the Labour Court was under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946 and the applicability of the MIR Act is restricted to the State of Maharashtra.

15. In the present matter, the petitioner is not disputing the fact that the manufacturing unit of the respondent is situated at Panipat (U.P.). He is also not disputing the fact that there is no other manufacturing unit, establishment, factory, branch or any type of office situated at Nagpur or in the State of Maharashtra. Furthermore, there is nothing to show that the respondent is notified as an 'Industry' under Section 11 of the MIR Act.

16. The learned Industrial Court, while allowing the appeal, has held thus:

“As per definition of industry, it includes “business”, trade, manufacture, any other calling of employer, service, employment, handicraft, industrial occupation, avocation, agriculture and agriculture operation, any branch or group of industries. Under the definition of employer and employee, there is no express provision that Sales promotion employees, engaged for sales promotion of pharmaceuticals or other products are treated as employee. By referring to this definition of industry and considering the admitted facts and circumstances of the case, namely because the applicant is residing at Nagpur and merely because the Nagpur place comes within the area for which he was appointed for promoting sales, it can not be said that non-applicant is an industry comes under the definition of industry under M.I.R. Act to apply whole provisions of M.I.R. Act to it. It is because the non-applicant has no production unit in Nagpur or in Maharashtra. Non-applicant has no registered office or its branch Office at Nagpur. It has also not other type of activities at Nagpur or in Maharashtra and, therefore, I am of the view that merely because the applicant was doing sales promotion activities at Nagpur, it can not be said that non-applicant is an industry and the M.I.R. Act will apply. Admittedly the application is not under I.D. Act. The I.D. Act is made applicable to whole India including Nagpur. But similar is not a position of M.I.R. Act. It is local Act. It is made applicable to specific local areas as well as to specific industries. But as the non-applicant has no industrial or business activities at Nagpur, I am of the view that Labour Court has no jurisdiction to entertain the application. By going through the impugned judgment and order, it is clear that learned Labour Court has not considered the jurisdictional aspect at all. Labour Court has observed only in one sentence as follows:

“Under the circumstances, he is entitled for

filing application and seeking the benefits under the provisions of BIR Act as well as I.D. Act.”

It has not considered how BIR Act will apply. Therefore, this finding is without reason. It is not speaking order. I accordingly answered Point No.1 in negative.”

17. In the circumstances, in view of the provisions of the MIR Act, I do not find any perversity in the findings recorded by the learned Industrial Court holding that the provisions of the MIR Act are not applicable to the present case.

18. The judgment cited by the petitioner in the case of *Torrent Pharma. Ltd.* (supra) is distinguishable on facts for the reason that it was the case of the complainant in that matter that the company was registered under the Companies Act having Head Office at Ahmadabad in Gujrat State and has got its centres at New Delhi, Mumbai, Bangalore, Chennai, Hyderabad and Kolkata in order to co-ordinate the general marketing activity, for sending and receiving the general information/ documents, sending and receiving the material etc. The respective Managers in-charge of those centres report to the Head Office at Ahmadabad and all decisions in relation to the business of the Company, including those pertaining to the administration and management of the employees, rest with registered office are taken there only.

19. In the present matter, it is not the case of the petitioner that any centre was created in Maharashtra to co-ordinate the general marketing activity. In the circumstances, the said judgment is of no help to the petitioner.

20. As far as the observations recorded by the Industrial Court as regards the point whether the petitioner is a workman, it is evident from the impugned judgment and order that the learned Industrial Court has considered the nature of duties and also the judgment of the Hon'ble Supreme Court of India holding that the Medical Representative is not Workman. Hence, I do not find any error committed by the Industrial Court in holding that the petitioner is not an employee.

Having observed so, I do not find any merit in the present writ petition, accordingly, it is **dismissed**.

Rule stands discharged. No order as to costs.

(ANIL S. KILOR, J)