

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3481 OF 2024

All India Abbott Employees Union ...Petitioner
Versus
Abbott India Ltd. & Anr. ...Respondents

WITH
WRIT PETITION NO.2970 OF 2019

All India Abbott Employees Union ...Petitioner
Versus
Abbott India Ltd. & Anr. ...Respondents

WITH
CHAMBER ORDER (L) NO.160 OF 2022
IN
WRIT PETITION NO.2970 OF 2019

All India Abbott Employees Union ...Applicant
Versus
Abbott India Ltd. & Anr. ...Respondents

Mr. Sanjay Singhvi, Senior Advocate a/w. Mr. Yash Naik, Mr. Rahil Fazelbhoy, i/b. Karishma Rao, Advocates, for the Petitioner in WP/3481/2024.

None for the Petitioner in WP/2970/2019.

Mr. Vishwajit Sawant, Senior Advocate a/w. Ms. N. V. Patankar & Mr. P. M. Jadhav Advocates, for the Respondents in WP/3481/2024 and WP/2970/2019.

CORAM: MADHAV J. JAMDAR, J.
DATED : 31 JULY 2024

P. C.:

1. Writ Petition No.2970 of 2019 was filed by All India Abbott Employees Union (Petitioner No.1) (hereinafter referred to as “the Union”) and one Jitendra Dhumal (Petitioner No.1). The reliefs sought in Writ Petition No.2970 of 2019 are as follows:

“a) That this Hon’ble Court may be pleased by a Writ of Mandamus or in the nature of Mandamus or any other appropriate writ, order or direction to quash and set aside the impugned Order dated 05/09/2019 of the Industrial Court, Mumbai in Complainant (ULP) No.231 of 2019 annexed herein above at Exhibit H”

b) That this Hon’ble Court may be pleased by a Writ of Mandamus or in the nature of Mandamus or any other appropriate writ, order or direction to restrain the Respondents from transferring the services of Petitioner No.2 pending the final hearing and disposal of the said Complaint (ULP) No.231 of 2019 by the Industrial Court, Mumbai and for one month thereafter;

c) That pending the hearing and final disposal of this Petition, this Hon’ble Court may be pleased to restrain the Respondents from transferring the services of Petitioner No.2;

d) That pending the hearing and final disposal of this Petition, this Hon’ble Court may be pleased to direct the Respondents to allow the Petitioner no.2 to continue to work at Thane (Kalyan-Dombivali territory) as before;”

2. By detailed order dated 8th November 2019, the Writ Petition No.2970 of 2019 has been admitted and interim relief in terms of prayer clauses (c) and (d) has been granted by a learned Single Judge till the disposal of the Writ Petition.

3. It appears that thereafter, the Petitioner No.2-Jitendra Dhumal in Writ Petition No.2970 of 2019 represented the Court that he would be appearing in-person. In view of said submission made by the Petitioner No.2-Jitendra Dhumal, Mr. Singhvi, learned Senior Counsel stated before a learned Single Judge that leave be granted to the Petitioner No.1 i.e. the Union to file separate Writ Petition questioning the very same order which is impugned in the said Writ Petition No.2970 of 2019 and the said Writ Petition No.2970 of 2019 be disposed of against the Petitioner No.1-Union. Accordingly, by order dated 20th June 2022, a learned Single Judge granted the said prayer and directed that such new Writ Petition filed by the Petitioner -Union be tagged along with said Writ Petition No.2970 of 2019.

4. It further appears that in the said Writ Petition No.2970 of 2019, Interim Application No.981 of 2019 was preferred by the

Respondent-Company seeking vacation of Order dated 8th November 2019 passed by the learned Single Judge granting interim relief in terms of prayer clauses (c) and (d) till the disposal of the Writ Petition. By Order dated 26th July 2022, the said Interim Application has been disposed of by only fixing the Writ Petition for final hearing on 2nd September 2022.

5. Mr. Singhvi, learned Senior Counsel states that thereafter said Jitendra Dhumal, Petitioner No.2, who appears in-person in Writ Petition No.2970 of 2019 is not appearing in the matter. Today, the matter is listed on board however, none appears in Writ Petition No.2970 of 2019. Both the learned Counsels state that said Jitendra Dhumal-Petitioner No.2 is not prosecuting the Writ Petition.

6. Accordingly, the Writ Petition No.2970 of 2019 is dismissed for non-prosecution.

7. Mr. Singhvi, learned Senior Counsel states that as far as Writ Petition No.3481 of 2024 is concerned, it has been filed by the Union by raising same contentions and the interim order which is

operating in Writ Petition No.2970 of 2019 be continued to operate in Writ Petition No.3481 of 2024. However, it is to be noted that interim relief in terms of prayer clauses (c) and (d) of Writ Petition No.2970 of 2019, has been granted by the learned Single Judge by Order dated 8th November 2019 is only operating with respect to Petitioner No.2 i.e. Jitendra Dhumal.

8. It is also required to be noted that by the said detailed Order dated 8th November 2019 passed by the learned Single Judge in Writ Petition No.2970 of 2019 the point involved in said Writ Petition No.2970 of 2019 is set out and *prima facie* observations in that regard are made and interim relief is granted. The detailed Order dated 8th November 2019 passed by a learned Single Judge in Writ Petition No.2970 of 2019, is reproduced herein below for ready reference:

*“1 By this petition, rejection of application for interim relief moved under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the M.R.T.U. & P.U.L.P. Act for the sake of brevity) by complainants is challenged. **The registered Trade Union along with the workman designated as Territory Business Developer challenged***

the order dated 22nd August 2019 passed by the respondent/employer transferring him from Thane to Gondia. Unfair labour practices under Items 3, 5, 9 and 10 of Schedule IV of M.R.T.U. & P.U.L.P. Act were alleged by complainants.

2 The learned senior counsel appearing for petitioners/ original complainants argued that First Settlement between the registered Union and the employer took place on 7th March 2012 and Clauses 7 and 8 thereof required the employer to discuss the matter with the Union. He further argued that Second Settlement took place between the registered Union and the employer on 21st February 2013 and Clause 8 thereof required the employer to discuss the matter with the Union. Both these Settlements were not followed by the respondent/employer in transferring the petitioner no.2/complainant no.2 from Thane to Gondia and this transfer is a malafide transfer made under the guise of following Management Policy of bifurcation of Nagpur Head Quarter in Nagpur and Gondia Territories. The learned senior counsel further argued that the Settlement is misinterpreted by the learned Member of the Industrial Court by adding the word “existing” in its clause. Error of law is committed by the Member of the Industrial Court while holding that there is no binding clause in the Settlement that in case of bifurcation of territory or creation of new territory, consultation with the Union is mandatory. With this, it is urged that prima facie case of breach of Settlement is made out by petitioners/original complainants, and therefore, the learned Member of the Industrial Court ought to have allowed the application for interim relief.

3 *As against this, it is argued on behalf of respondent /employer that the First Settlement between the parties is only in respect of promotions which took place at that point of time and it is not binding on subsequent events. It is further argued that Clause (8) of the said Settlement deals with uncovered territory and in the case in hand, Gondia city is already falling under Nagpur territory. Therefore, the Settlement is not applicable to the case in hand. The same is in the respect of reorganization of business which took place at that time and it is not the case of complainants that because of excess work force, the transfer is effected by the Management. It is further argued that Second Settlement is also not covering the subject matter of the complaint. The Second Settlement is in respect of scope of coverage of the existing territories and the said Settlement unerringly points out that it is in respect of existing territories and enhancement of the existing territories. My attention is also drawn to letter sent by one Balu Gandhi to the Management wherein it is mentioned that there is huge business potential in Nagpur and neighbouring district and therefore, creation of independent Head Quarter at Gondia is necessary. With this, it is pointed out to this court that petitioner no.2/plaintiff no.2 was doing good in Legacy Brand products and as such, he is chosen for transfer from Thane to Gondia by the impugned order, which is not perverse. Reasons given are not even challenged by petitioners/complainants before the Industrial Court. It is also urged that the employer is the best Judge to decide the mode and manner in which his work force needs to be deployed and business is required to be conducted.*

4. *I have considered the rival submissions and also perused the impugned order as well as the material placed on record.*

5. *Second Settlement arrived at between the parties dated 21st February 2013 makes it clear that the said is regarding scope of coverage of existing territories and its enhancement. Clause (8) thereof reads thus :*

“8 The above has been agreed without prejudice to the sole prerogative of the Management to organized / reorganize its business. The Union agrees to extend its wholehearted support and cooperation towards the same. However, while doing so in future, the same shall be discussed with the Union and decisions will be arrived at amicably.”

Bare perusal of this clause makes it clear that if the Management decides to organize or reorganize its business, it is incumbent for the Union to extend its wholehearted support and cooperation but while doing so in future, the same is required to be discussed by the Management with the Union in order to arrive at amicable decision.

6 *In the case in hand, letter/report sent by Balu Gandhi to the employer makes it clear that because of huge business potential in territory of Nagpur, it was felt necessary to create separate territory covering the District Gondia. That is how, on bifurcation of existing territory of Nagpur region, territory Gondia was created and to manage that territory, petitioner no.2/original complainant no.2 came to be transferred from Thane to Gondia as Territory Business Developer. **This implies that***

the employer has decided to enhance the coverage of existing territory and thereby reorganize its business in the territory of Nagpur by bifurcating it in two territories i.e. Nagpur and Gondia. Therefore, it was incumbent on the part of the employer to consult this aspect with the registered Union with which the Settlement was arrived at on 21st February 2013. Consultation or discussion implies effective consultation and discussion in order to decide the mode and manner in which the newly created division could be managed by the employer. That includes deployment of staff at the newly created territory. However, undisputedly, there was no discussion with the Union in the matter of reorganization of business by bifurcating the territory of Nagpur into two territories i.e. Nagpur and Gondia. As a consequence of this bifurcation, the petitioner no.2/complainant no.2 was transferred from Thane to Gondia without consultation or discussion with the Union. As such, prima facie, case of commission of unfair labour practice under Item 9 of Schedule 4 of M.R.T.U. & P.U.L.P. Act is made out. In this view of the matter, the learned Member of the Industrial Court has committed error in rejecting the application for interim relief filed under Section 30(2) of the M.R.T.U. & P.U.L.P. Act. Case for consideration is made out and as such, the following order :

ORDER

- i) Admit.*
- ii) Interim relief in terms of Prayer Clause (c) and (d) till disposal of the petition.*

iii) *Hearing is expedited.*

At this stage, the learned counsel for respondents/defendants submits that this order be stayed for a period of four weeks. Such request cannot be acceded once this court comes to the conclusion that there is prima facie case reflecting commission of unfair labour practice under Item 9 to Schedule IV of the M.R.T.U. & P.U.L.P. Act. Hence, request for stay to this order for a period of four weeks is rejected.”

(Emphasis added)

Thus, it is clear that on the basis of Clause No.8 of the Second Settlement arrived at between the parties dated 21st February 2013, *prima facie* a learned Single Judge has observed that perusal of the said Clause makes it clear that if the Management decides to organize or reorganize its business, it is incumbent for the Union to extend its wholehearted support and co-operation but while doing so in future, the same is required to be discussed by the Management with the Union in order to arrive at amicable decision.

9. *Prima facie*, Mr. Singhvi, learned Senior Counsel is right in contending that the said point involved in Writ Petition No.2970 of 2019 is also involved in present Writ Petition No.3481 of 2024.

10. Accordingly, Rule. Interim relief in terms of prayer clause (b).

11. The Respondents to file Affidavit-in-Reply to the Writ Petition by 28th August 2024. Rejoinder, if any, to be filed on or before 11th September 2024.

12. The hearing of the Writ Petition No.3481 of 2024 is expedited.

13. Stand over to **25th September 2024.**

[MADHAV J. JAMDAR, J.]