



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5891/2024

1. Sanvijay Rolling & Engineering Ltd.,
having its industrial establishment at
Plot No. B-202, MIDC, Butibori,
Dist. Nagpur-441108. (Unit-B-1)
Through its Head - Human Resources.
2. Factory Manager,
M/s. Sanvijay Rolling & Engineering Ltd.,
having its industrial establishment at Plot
No. B-202, MIDC, Butibori,
Dist. Nagpur-441108. (Unit-B-1)
(ORIGINAL RESPONDENTS. NO.1 &2)

... **PETITIONERS**

...VERSUS...

Maroti s/o Tikaram Lole
Aged 43 yrs. Occ. Nil,
r/o Revatkar Layout, Plot No. 19,
Friends Colony, Ward No. 1, New Vasahat,
Butibori, Tah. & Dist. Nagpur-441108.
(ORIGINAL COMPLAINANT)

...**RESPONDENT**

WRIT PETITION NO.4848/2024

Sanvijay Rolling and Engineering Ltd.
Having its industrial establishment at
Plot No. B-202, MIDC Area, Butibori,
Dist. Nagpur-441108
Through its Head - Human Resources.
(ORIGINAL RESPONDENTS)

... **PETITIONER**

...VERSUS...

Naresh s/o Sukhdeo Shamkuvar; Occ.- Service
Aged 42 years, r/o c/o Usha P.Dengre
124, Kedar Colony, Ward No.3,
Post: Tembhari, Bhargao,
Tah. Hingna,
Dist. Nagpur.
(ORIGINAL COMPLAINANT)

...RESPONDENT

Shri H.V. Thakur, Advocate for petitioners
Shri R.N. Deshpande, Advocate for respondent

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 13/02/2025

DATE OF PRONOUNCING THE JUDGMENT: 13/03/2025

JUDGMENT

. Heard learned Counsel for petitioners and learned
Counsel for respondents, finally at the stage of admission.

2. As in both the petitions similar issue is involved, they
are taken up for decision together and Writ Petition No.5891/2024
is taken as lead case and facts in that case are considered.

3. In Writ Petition No.5891/2024 the respondent is
working as an Electrician and transferred by order dated
10.06.2024 from Unit-B-1 to Unit H-3, has filed Complaint (ULP)

NO.95/2024 wherein interim order came to be passed which is under challenged. In Writ Petition No.4848/2024, the respondent is working as an Assistant Fireman and transferred by order dated 10.06.2024 from Unit-B-1 at MIDC, Butibori to Unit H-3 at MIDC, Hingna, has filed Complaint (ULP) No.93/2024, wherein interim order is under challenge. Both the orders are under challenge and similar grounds were raised before the Industrial Court.

4. Being aggrieved by the order passed by the Industrial Court, Nagpur, thereby allowing the application for interim relief, Exh. U-2, in Complaint (ULP) No. 95 of 2024 filed under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for brevity “MRTU and PULP Act”) read with Items 3 and 9 of Schedule IV thereby stayed a transfer order dated 10.6.2024 whereby the respondent transferred from companies unit B-1 at Butibori to MIDC unit H-3 Hingna is under challenge here.

5. Petitioner company, Sanvijay Rolling and Engineering Limited, has one of its industrial establishments situated at Plot

No.B-202, MIDC Area, Butibori, Dist. Nagpur - 441108 (commonly called as Unit B-1) wherein industrial activity of fabrication work is undertaken. The said Unit B-1 is governed by the provisions of the Maharashtra Industrial Relations Act, ('MIR Act', for short). The petitioner company has another unit located at Plot Nos.41 and 43, MIDC Industrial Area, Hingna, Dist. Nagpur (commonly called as Unit-H-3) where similar industrial activity of fabrication work is undertaken. The petitioner company has two other industrial units i.e. Unit H-2 and Unit H-4, which are also situated at MIDC Hingna Industrial Estate where industrial activity of fabrication work is undertaken.

6. The petitioner company had appointed the present respondent, Maroti Lole, (original complainant), vide appointment order dated 1.2.2010 and pursuant thereto he was posted to work in the company's Unit B-1 at MIDC, Butibori, Dist. Nagpur. As per the respondent's terms of appointment, transferability is a condition of service and the management of the petitioner company has a right to transfer the respondent in any section, department and in any unit in any part of the country as may be considered necessary

considering the exigencies and requirement of work.

7. It is submitted that the respondent was initially working as an Electrician in the Unit B-1. In the year 2018, the respondent was elected as one of the representatives of the employees under the provisions of the MIR Act. During the course of his employment, the respondent was issued a charge sheet dated 7.7.2020. Before issuing him charge sheet, by order dated 16.9.2019, the respondent was suspended pending disciplinary action pursuant to certain complaints of misconduct received against him. In order to investigate the charges, a departmental enquiry was initiated and the same is underway.

8. On 1.7.2020, the respondent filed Complaint (ULP) No. 43 of 2020 before the Industrial Court, Nagpur under section 28 of the MRTU & PULP Act read with item 9 of schedule IV and item 4(f) of schedule II thereto challenging the suspension order and seeking revocation of the suspension. Subsequently, on 12.9.2023, the respondent filed another complaint bearing Complaint (ULP) No. 253 of 2023 under section 28 of the MRTU & PULP Act read with item 9 of Schedule IV challenging the charge sheet dated

7.7.2020 as well as the departmental enquiry being conducted against the respondent. The respondent further prayed for revocation of suspension and permitting him to join duty. An application for interim relief dated 12.9.2023 was also filed seeking stay of the charge sheet as well as stay of the departmental enquiry. By order dated 5.3.2024, the Industrial Court rejected the application for interim relief in Complaint (ULP) No. 253 of 2023. The Industrial Court refused to stay the departmental enquiry by observing that conducting the departmental enquiry is the prerogative of the employer. The Industrial Court even refused to stay the departmental enquiry on the alleged grievance of delay.

9. On 9.5.2024, the HR-Executive of the petitioner company's Unit-H-3 at MIDC, Hingna sent a letter to the company's Human Resource Department at Head Office, informing that there was an urgent need of manpower due to vacancies in the company's Unit-H3 and requested for transfer of manpower. As per this letter, one post of Electrician and one post of Fireman was shown as vacant in Unit H-3 along with other vacancies.

10. The petitioner company by order dated 10.6.2024 issued by Mr. Subhlash Tiwari, Head-HR of the company, revoked the suspension pending enquiry of the respondent with immediate effect and further transferred the services of the respondent from company's Unit B-1 to company's Unit-H3 at MIDC, Hingna where there was a need of an Electrician and Fireman. On 10.6.2024 itself the respondent was relieved from duty from Unit B-1 at MIDC, Butibori.

11. It is submitted that the services of the respondent were bonafidely transferred having regard to the need of an Electrician and Fireman in Unit-H-3. The salary of the respondent, pursuant to his transfer was not adversely affected and the management was willing to pay Conveyance allowance @ Rs.3 per km on the actual travel as per the management's policy for which the respondent would be required to maintain a travel log. While transferring the respondent, he was also paid full wages for the period of his suspension and the differential amount was credited to his Bank Account.

12. Petitioner filed Complaint (ULP) No. 95 of 2024 dated 24.06.2024 under section 28 of the MRTU & PULP Act read with items 3 and 9 of Schedule - IV before the Industrial Court, Nagpur, challenging the transfer order. By the impugned order dated 28.09.2024 passed below Exh. U-2, the Industrial Court allowed the interim relief application and stayed the transfer order during pendency of the complaint. The aforesaid order is the subject matter of challenge in the present writ petition.

13. Learned counsel for the petitioner contended that the Industrial Court derives jurisdiction to grant interim relief under section 30(2) only upon arriving at a specific prima facie finding of unfair labour practice under the IV Schedule of MRTU & PULP Act. In the present case, the Court has failed to arrive at a specific finding about prima facie commission of unfair labour practice under items 3 & 9 of Schedule IV and in absence of any such finding, the Industrial Court could not have assumed jurisdiction and stayed the transfer order issued by the petitioner management transferring the respondent's services from the company's Unit B-1 at Butibori, MIDC, Dist. Nagpur to the company's Unit-H-3 at

Hingna, MIDC, Dist. Nagpur, which is approximately at a distance of 40 kms from the Unit B-1. It is further contended that in the present case, transferability is a condition of service of the respondent employee and there was a bonafide need to deploy the respondent's services as an Electrician at the transferred place due to ongoing audit pertaining to ISO 9001 certification. The Industrial Court has further erroneously held that the transfer order dated 10.06.2024 was prima-facie actuated by malafide, even though the Officer issuing the transfer order, i.e. the Head-Human Resources of the company has not been personally made a party to the complaint nor any allegation of malafides and/or unfair labour practice levelled against him.

14. Learned Counsel for petitioner relied on following citations :

- 1) *The Premier Automobiles Ltd. Vs. The Engineering Mazdoor Sabha and others, 1981 SCC OnLine Bom 504.***
- 2) *Rajneesh Khajuria Vs. Wockhardt Limited and another, (2020) 3 SCC 86***
- 3) *Indian Express (P) Ltd. & ors. Vs. Ganesh Gopinath Rane, 2024(5) Bom.C.R. 105***

4) Bses Limited Vs. Bombay Electric Workers Union and others, 2004(3) CLR 469

15. Learned Counsel for the Respondent/complainant supported the order passed by the lower court and contended that the complainant is elected representative as per the M.I.R. Act. He was suspended pending some enquiry. The company had not paid him subsistence allowance and therefore, he filed complaint before the Industrial Court. He has submitted that the enquiry has not been completed for more than three years. Petitioner with malafide intention, have revoked his suspension after approximately 4 years and transferred him. Learned lower court rightly taken into consideration the provision of Section 101 (2A) of the M.I.R. Act and submitted that, being a protected employee, the complainant cannot be transferred and rightly passed an appropriate order which needs to be confirm.

16. Learned Counsel for respondent relied on following citations :

1) M/s Doypack Systems Pvt. Ltd. Vs. National Textile Corporation, New Delhi and another

17. I have heard both the parties at length, perused impugned orders, documents placed on record and considered the citations relied on by both the parties. Petitioner has placed on record appointment order of the respondent (page 55). It has specific clause that “the Management of the undertaking shall have the right to transfer you in any section, department, any unit in any part of India as it may consider it necessary, considering exigencies and requirement”. True it is that respondent was chargesheeted and also suspended. He has challenged suspension and departmental enquiry initiated against him under MRTU and PULP Act. However, in both the matters, there was no stay granted.

18. The learned Counsel for petitioner drawn my attention to the communication dated 11.03.2024. The said communication is in reference to Audit Plant and Notification from Intertek India Pvt. Ltd.(Certification Body) regarding SREL (Union- H3 and H4 Plant) Plant Process, QMSR Re-certification Audit, Schedule on dated 22.04.2024 to 15.07.2024. With this regard all plants concerned person Directed to note for QMS Certification and System

Implementation, Preliminary Internal Plant Process Audit will be conducted from 08.04.2024 to 15.07.2024 and all concerned were requested to provide the required requisition of data, manpower, resources, plant and machinery details and equipments, documents and record updated.

19. In response to SREL Unit- H3 Hingna, informed to the HR Head office intimating that there are 15 vacancies in SREL Unit H3 Hingna, where manpower is urgently required. This letter is dated 09.05.2024. Thereafter, transfer order came to be issued on 10.06.2024 by revoking suspension and directing respondents to join SREL Unit- H3 and he was relieved on the same day. The respondent herein filed complaint on 24.06.2024 vide Complaint ULP No.95/2024. The respondent has also filed application for grant of interim relief under Section 30(2) of Maharashtra Act No.1 of 1972. If prayer in the application is seen, it was alleged that the respondent Industry is engaged in unfair labour practice as covered under Item- 3 and 9, Schedule-IV of the Maharashtra Act No.1 of 1972 by issuing illegal transfer order dated 10.06.2024. In application for interim relief, the complainant prayed for stay the

effect and operation of transfer order dated 10.6.2024.

20. Main contention of the respondent was that order of transfer is issued with malafide intention. There was departmental enquiry initiated against him as well as he was suspended during the enquiry. It is his contention that the said transfer order is malafide, illegal because the complainant was an elected worker's representative under the MIR Act and the said presentation was only for the workers of Butibori Unit who voted for them. Thus, the complainant being a protected employee under Section 101(2A) deemed to be admitted by the respondent cannot be so transferred from the said unit.

21. There has to be *prima facie* finding of unfair labour practice having been engaged in by the party against whom the complaint is made. The interim order contemplated under Section 30(2) cannot be justified, in absence of such finding. Learned Counsel for petitioner relied on the judgment ***Bses Limited (supra)***. It is further contention of the petitioner that when transfer is the condition of the service, the employee cannot stall the transfer. He cannot take the shelter of protected workmen as laid down in MIR

Act. The respondents have not changed service condition of the complainant, Balance of convenience lies with the company, as there was exigency of work at transferred placed. Thus transfer cannot be said to be malafide, unless malafide intention is established, transfer cannot be stayed.

22. It appears that the learned Industrial Court has given more importance to the fact that applicant was under suspension since 16.09.2019. The enquiry is not concluded and in opinion of Industrial Court, it is a strong circumstance in favour of the complainant to establish unfair labour practices against the respondents. While drawing such inference, the learned Industrial Court failed to appreciate that there was no stay either to suspension or to departmental enquiry. The Court also proceed to observe that non-payment of subsistence allowance as per rules within stipulated period, can *prima facie* be termed as unfair labour practice on the part of employer. However the said issues are already pending in another ULP filed by respondent.

23. The learned Industrial Court further held that

suspension of respondent was suddenly revoked and he was transferred on 10.06.2024. Therefore, the Court found force in the contention of the complainant that he is working as representative of the workers and to prevent him from participating in Union activities, he is being transferred.

24. Section 30 empowers the Court to direct all such persons, who are engaged in, or is being engaging in, unfair labour practice to cease and desist from such unfair labour practice. In **Clause 30 (2)**, the Court, may pass such interim order directing to the person to withdraw temporarily the practice complained of, which is an issue in such proceedings, pending final decision.

25. Learned Counsel for petitioner relied on ***The Premier Automobiles Ltd. (supra)***, wherein this Court held in paragraph No.15 as under:

“15. I have reproduced earlier the material operative parts of the order of the Industrial Court in which the Industrial Court has recorded a finding that the payment on which reliance was placed by the employees was an ex-gratia payment and was not in accordance with the terms of the agreement of

1966. Now, if we carefully read the provisions of S. 30 of the Act, which regulates the power of the Industrial Court, it will appear that before the power to make any operative order is exercised directing a person to cease and desist from an unfair labour practice, the Court has to find as a fact that the person named in the complaint has engaged in or is engaging in any unfair labour practice. The provisions of S. 30 will, therefore, show that unless the Court comes to the conclusion that the employer is indulging in an unfair labour practice, it will not have jurisdiction to direct the employer to cease or desist from the unfair labour practice complained of. Sub-sec.(2) of S. 30 enables the Court to make an Interim order including a direction to the person concerned to withdraw temporarily the practice complained of. It cannot be disputed that the Industrial Court has not come to a finding that there is in fact any unfair labour practice of which the employer is guilty.”

26. It appears that transfer order was issued by Head of the HR Department. He is not made a party to the proceedings. Unfair labour practice can be alleged against any person unless such person is party and unless such finding in there that he is engaged in unfair labour practice, there cannot be any interim order under Section 30 (2). There is no allegation against the Head of the HR nor he is a party. Thus to allege malafides, the person who has animus has to be made a party.

27. Learned Counsel for petitioner place reliance in *Rajneesh Khajuria (supra)*, wherein similar facts were involved in the matter before the Hon'ble Apex Court. The Hon'ble Apex Court relied on the judgment in *Ratnagiri Gas Power (P) Ltd. vs RDS Projects Ltd. (2013) 1 SCC 524*, wherein in paragraph No.27, it is held as under:

“27. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned.”

The Hon'ble Apex Court held in paragraph No.21 and 22 as under:

“21. The allegation in the complaint is that the transfer was actuated for the reason that the employee had raised voice against removal of Shri Khare from the venue of a Conference. The officers present in the said Conference were the Regional Manager or Sales Manager, whereas order of transfer was passed by Mr Suresh Srinivasan, General Manager-HR. It is an admitted fact that there is power of transfer with the employer. The allegations

are against the persons present in the Conference but there is no allegation against the person who has passed the order of transfer. None of the named persons including the person present in the Conference have been impleaded as parties to rebut such allegations. Since the order of transfer is in terms of the letter of appointment, therefore, the mere fact that the employee was transferred will per se not make it mala fide. The allegations of mala fides are easier to levy than to prove.

22. *Therefore, the allegation that the transfer of the appellant was an act of unfair labour practice without impleading the person who is said to have acted in a mala fide manner is not sustainable.”*

28. Learned Counsel for petitioner also relied on the judgment in ***Indian express (P) Ltd. and others (supra)***, wherein this Court held in paragraph No.25 as under:

“25.

In my view prima facie there are no specific allegations of existence of personal bias in the mind of any particular official of the first Petitioner, on account of which the impugned transfer/promotion order is issued. No specific allegations are levelled against Petitioner Nos. 2 and 3, who are impleaded in person. The Industrial Court ought to have considered the pleadings in the Complaint for the purpose of forming prima facie opinion. In fact, the finding recorded by the Industrial Court would indicate that there is no specific finding of existence

of mala fides in the matter of issuance of transfer/promotion order. In my view therefore, in absence of pleadings relating to malafides, the Industrial Court ought not to have interfered in the impugned transfer order by staying the same during pendency of the Complaint.”

29. So far as protection is concerned, Section 101(2A) of MIR Act is relevant. Section 101 specifies that employer not to dismiss, reduce or punish an employee who is an officer or labour of Register Unit or Union, who has applied for being registered under this Act. Sub Section (2A) prohibit employer to dismiss, discharge or reduce any protected employee save with the express permission in writing of the Labour Court. The explanation further clarifies that for the purposes of this sub-section a “protected employee” in relation to any industry means any employee who being an office-bearer of a union connected with the industry is recognised as such in accordance with the rules made under this Act. In my considered opinion, thus protection is granted from dismissal, discharge or reduction. There is no any ambiguity in this provision.

30. Learned Counsel for respondent in support of his proposition that plain meaning must be given effect in absence of

any ambiguity. Learned Counsel for respondent relied on the *M/s Doypack Systems Pvt. Ltd. (supra)*, wherein the Hon'ble Apex Court held that:

“The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore, the meaning of the statute, is primarily to be sought in the words used in the statute itself. The words in the statute must, prima facie, be given their ordinary meanings.”

In my considered opinion it support the contention of the petitioner that in Section 101 (2A) there is no word transfer is used, as such respondent cannot be said to be transferred against Section 101 (2A) applicable to a protected employee.

31. In my considered opinion, in absence of the person who has issued transfer order, malafides cannot be inferred. Moreover, reply filed by the petitioner herein to the application for interim relief has disclosed the fact that what was the exigency in which the said transfer order was issued. If there would have been any malafides, he would have transferred during the period of 4 years when his enquiry was pending and he was under suspension. Even plea of protected employee is without substance. In view

thereof, there is no strong *prima facie* case made out to grant such interim relief by the Industrial Court. In view thereof, I proceed to pass the following order:

ORDER

- i) Both Writ Petitions are allowed.
- ii) In Writ Petition No.5891/2024, the order dated 29.08.2024 passed by the Member, Industrial Court, Nagpur, in Complaint (ULP) No.95 of 2024 and in Writ Petition No.4848/2024, the order dated 18.07.2024 passed by the Member, Industrial Court No.4, Nagpur in Complaint (ULP) No.93 of 2024 are hereby quashed and set aside.
- iii) The petitioner is permitted to effect the transfer order of respondents in both Writ Petitions with immediate effect.
- iv) The Industrial Court is hereby directed to decide the complaints within a period of one year from the date of passing of this order.

Both Writ Petitions are disposed of accordingly. No order as to the costs.

(Smt. M.S. Jawalkar, J.)

At this juncture, learned Counsel for respondent seeks protection for four weeks. Accordingly, effect and operation of this judgment is stayed for another four weeks.

After four weeks, if there is no order obtained by the respondent, the stay granted by this Court shall stand automatically vacated.

(Smt. M.S. Jawalkar, J.)

R.S. Sahare