

IN THE INDUSTRIAL COURT, MUMBAI

COM.(ULP) NO. 1261 OF 2024
CNR NO: MHICO1-001817-2024

Bhartiya Kamgar Sena

...Complainant

Versus

M/s. CIPLA Ltd. & 3 Ors.

...Respondents

CORAM : M. R. KUMBHAR, MEMBER

Appearances : Shri V.K. Gehlot, Advocate for Complainant.
Shri R.N. Shah, Advocate for Respondents.

O R D E R (BELOW EX. U-2)
(Passed on: 29.01.2025)

1. Read the interim relief application filed by the complainant under Section 30 (2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (*For short, 'The M R T U & P U L P Act'*) praying to grant interim reliefs as per the prayer clause 3 which reads as under:

3. **The applicant therefore, prays:-**

a) That pending the hearing and final disposal of the main complaint, direct the respondents not to terminate the services of the member/workmen whose names are appearing in the list Annexure- A herein without following due process of law.

- b) That pending the hearing and final disposal of the main complaint, to restrain the respondents from altering or changing any service conditions of the concern workmen whose names are appearing in list at Annexure- A to the complaint without permission of this Hon'ble Court.
- c) That pending the hearing and final disposal of the main complaint, the respondents may be directed to not transfer the services of the members/workmen malafidely from the existing place of work to any other remote place under the guise of the management policy.
- d) Ad-interim or interim reliefs in terms of prayer clause (a) to (c);
- e) For any other reliefs, orders or directions as it deems fit and proper under the circumstance of the present complaint.
- f) Cost of the present complaint.

The interim relief application is supported with affidavit and list of documents at Exh. U-5 and U-10 respectively.

2. Perused reply of the respondents filed below **Exh.C-3** denying each and every allegations, contentions, averments made in the interim relief application along with the allegations of unfair labour practices made against them.

3. The respondents raised strong objection in respect of maintainability of the complaint. In that regard it is contended that, the present complaint pertains to employees of respondent

company's factory at Goa. The "situs of employment" of the concerned employees is at Goa. Therefore, this court has no territorial jurisdiction to try and entertain the present complaint. Furthermore, the situs of the Head office of the respondent company is immaterial for vesting jurisdiction on the authority under the M R T U & P U L P Act, while dealing with the grievances regarding the alleged unfair labour practices, once it is disclosed that the concerned employees are not working in the territorial jurisdiction of this court. Therefore, the situs of employment which would be the relevant factor to decide the place of cause of action for initiating any legal proceedings.

4. It is further contended that, once it is not in dispute that, the concerned employees are employed at Goa and are working at Goa factory of respondent company situated at Goa it is obvious that the situs of employment of the concerned employees would be at Goa, beyond the territory of State of Maharashtra. Lastly contended that, the State Government by notification in the official Gazette shall constitute one or more Industrial/Labour Courts having jurisdiction in such local areas as may be specified in such notifications. Thus, the said Act prescribes for the territorial jurisdiction of the Court, constituted in respect of such local areas as specified in the notification. On these grounds also the interim relief application requires to be rejected. It is settled law that, when issue of territorial jurisdiction is raised, the same has to be decided as preliminary issue and in absence of finding on said issue, the complaint or interim relief application cannot be entertained and no reliefs

can be granted and prayed to reject the interim relief application filed by the complainant.

5. From the rival pleadings of the parties, following points arise for my determination and my findings to them are as under:

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the preliminary issue needs to be framed?	... In the affirmative.
2)	Whether the Complainant has made out strong prima-facie case in its favor?	... In the negative.
3)	Whether the balance of convenience lies in favor of the Complainant?	... In the negative.
4)	Whether irreparable loss will be caused to the applicant if interim relief is not granted?	... In the negative.
5)	What order?	... As per final order.

REASONS

6. Heard Ld. Advocate Shri V. K. Gehlot for the complainant Union and Ld. Advocate Shri R. N. Shah for the respondents at length. Both of them have submitted their case as per the grounds taken at **Exh. U-2** and reply at **Exh.C-3** respectively with the help of number of copies of documents.

7. While deciding the interim relief application I have to see what evidence is placed before this court. The complainant to substantiate the allegations made in the interim relief application have placed copies of documents with list

Exh.U-5 comprising of copy of list of workmen employed with the respondent No. 1 at Annexure- A, copy of letter dated 27.09.2022 at Annexure- B, copy of charter of demand dated 07.01.2023 at Annexure- C, copy of letter dated 03.12.2024 at Annexure- D and copy of appointment letter and salary slips at Annexure- E.

8. During the course of arguments the learned advocate for the complainant union vehemently submitted that, as per the contention and allegations made in Exh. U-1. He further submitted that, the respondents are engaged in unfair labour practices under Item 1 (a) & (b) of Schedule II and Items 3, 5, 9 & 10 of Schedule IV of the M R T U & P U L P Act on and from 03.12.2024 and continuously thereafter till date. He further strongly submitted that, the complainant Union is registered trade union having its office at Dadar (West), Mumbai. The concerned employees employed with the respondent No.1 company has become members of the complainant union. He invited my attention towards the list of concerned employees whose names are mentioned in Annexure-A to the complaint and submitted that, the employees whose names are mentioned in Annexure- A are members of the complainant union. Then submitted that, the respondent No.1 company is a limited company engaged in the business of manufacturing and marketing of medicines. The respondent No. 2 is the Managing Director and respondent No. 3 is the factory located at the address mentioned in the clause title of the complaint. The respondent No. 4 is the factory Manager working at the site of

the respondent No. 3.

He further strongly invited my attention towards the copies of documents filed on record that, 229 workmen became members of the complainant union in the year 2022 for the purpose of getting their grievances redressed as they have been working continuously since a year. He further submitted that, by letter dated 27.09.2022 the complainant union had informed about its formation to the respondents. Due to the formation of union the respondents started to harass and victimize the concerned members of the complainant union by issuing them transfer letters malafidely and some of active members and committee members have been transferred from the Goa factory to the remote places at Baddi at the state of Himachal Pradesh as well as Sikkim in the month of July to November 2024.

9. He further submitted that, the family setup of concerned employees are at Goa. Therefore, it has become very difficult for them to report at remote place at Baddi and Sikkim. He also submitted that, since the concerned employees could not report for their duties at the transferred place. Therefore, the management of the company had issued them show cause notices followed by charge-sheets and started to conduct the domestic inquiry against the concerned employees. He put his great emphasis that the concerned employees are neither suspended from their services nor allowed to report for their duties at Goa factory. Therefore, all the charge-sheeted employees are facing great hardship and starvation due to non-payment of their wages by the respondents.

10. He further invited my attention towards the copies of documents placed on record at **Exh.U-5** and **U-10** and submitted that, due to active participation in the union activities by the members and committee members, the management has threatened them to terminate their services. The active committee members of the complainant union either transfer or terminated without following the due process of law. Therefore, there is a very apprehension about termination of service of the active members as well as members of the complainant Union. Hence, the respondents have committed unfair labour practices under Item 1 (a) of Schedule II of the Act.

11. He further strongly submitted that, after the formation of union, the charter of demand was submitted to the respondents on 07.01.2023 for the improvement of service conditions of the concerned employees working at Goa factory, which also not considered by the respondents. This act of respondents amounts to unfair labour practices under Item 1 (b) of the Schedule II of the M R T U & P U L P Act.

12. He invited my attention towards (Exh. U-1) particularly para No. 3 of the complaint and submitted that, the committee members were transfer malafidely from Goa factory to remote places at Baddi at Himachal Pradesh without assigning any reason to the 17 concerned employees. By issuing transfer order from Goa factory to Baddi as well as Sikkim. The respondents have committed unfair labour practices under Item 3 of Schedule IV of the Act. He then submitted that, the

respondents are having more than 450 employees working at Goa factory, however, out of them total 226 workers are the members of the complainant union and the respondents have only transferred the services of “19” workers who are the members of the complainant union. This is nothing but the discrimination and partiality amongst one set of the workmen regardless of their merits. Therefore, the respondents are engaged in unfair labour practice under Item No. 5 of Schedule IV of the Act. Though the concerned employees are working since last more than 15 years in the capacity of permanent employee, however, the respondents have not extended the benefits of annual increments since 2022 to the concerned employees nor wages revision given to the employees. The respondents have not extended to the benefits of Dearness Allowances. This act of the respondents amounts to unfair labour practices under Item No. 9 of Schedule IV of the Act. Therefore, due to formation of union 19 concerned employees are malafide transferred from Goa factory which is prima facie unfair labour practices on the part of the respondents. The balance of convenience lies in favor of the complainant union and if the interim relief is not granted then irreparable loss will be caused to the concerned employee vise-versa if the interim relief is granted no prejudice will be caused to the respondent company and prayed that, to allow the interim relief application with all prayers made therein.

He relied upon the observations of the Hon’ble Bombay High Courts and Hon’ble Supreme Court as under-

- (i) Abbott India Ltd. & Ors. vs. All India Abbott Employees Union & Anr. reported in 2011 III CLR 858.
- (ii) Nandram vs. Garware Polyster Ltd. reported in 2016-II-LLJ-75 (SC).
- (iii) Bombay Tyres International Limited vs. All India Bombay Tyres International Employees Federation & Anr. reported in 2000 II CLR 874 (Bom. H.C.).
- (iv) T. Jayapandit vs. State Express Transport Corporation Ltd., Chennai & Ors. reported in 2009 LAB I.C. 3041 (Madras H.C.).
- (v) Somesh Tiwari vs. Union of India & Ors. reported in 2009 LAB.I.C. 1005 (SC.).
- (vi) Shriprakash Maruti Waghmare vs. State of Maharashtra & Ors. reported in 2010 (1) LLN 752 (Bom. HC.).
- (vii) Union of India, rep. by the Govt. of Puducherry & Anr. vs. R. Ilathirayan, working as Bacteriologist, Dept. of Food & Drugs Testing, Puducherry & Ors. and submitted that, the observation relied by the complainant are useful to their case and prayed to allow the interim relief application.

13. On the contrary, the learned advocate for the respondents vehemently submitted in detailed as per the reply to the interim application filed on record. He strongly raised objection regarding the territorial jurisdiction of this court, locus-standi of the complainant union and situs of employment of the concerned employees and submitted that, the interim relief application along with main complaint is not maintainable and prayed to dismiss the same. He invited my attention

towards the complaint filed by the complainant and submitted that, according to the complaint the cause of action pertains to the year 2020 to 2024 and as such no case much less a strong prima-facie case has been made out by the complainant union for granting any relief. He invited my attention towards the appointment letters filed on record by the complainant along with list **Exh.U-5** and submitted that, the transfer is condition of service of all concerned employees working in the respondents' establishment. As per the terms and conditions of and as per the exigencies some employees were transferred. That cannot be termed as unfair labour practices as alleged by the complainant.

14. He further submitted that, respondents have not engaged in any unfair labour practices under Item 1 (a) & (b) of Schedule II of the Act and Items 3, 5, 9 & 10 of Schedule IV of the M R T U & P U L P Act from 03.12.2024 or any other date as alleged by the complainant. He further submitted that, the complainant miserably failed to show in what manner and how the Sections invoked in the complaint are attracted to the case of the complainant. The complaint is bad for mis-joinder of parties in as much as there is no cause of action against the respondents. Therefore, complainant has miserably failed to made out strong prima-facie case for grant of any relief as prayed for and balance of convenience is in favor of the respondents and grave harm, irreparable loss and damages would be caused to the respondents if interim relief is allowed. Vice-versa if interim relief is rejected, no prejudice would be caused to the complainant and prayed to reject the interim relief

application filed by the complainant.

He further submitted that, in the state of Goa respondents has 10 manufacturing units and employ around 3300 employees. All products manufactured in the State of Goa are largely exported and thus, bringing precious forex to the nation besides providing life saving and other critical medicines to patients. He further strongly submitted that, the Government of Goa by issuing notification published in official Gazette dated 20.06.2023 declared that, the sector of manufacturing, packaging, distribution and transportation of pharmaceutical products and components thereof to be an essential service for the purpose of the Goa Essential Services Maintenance Act, 1988. Then invited my attention towards the documents filed by the complainant and submitted that, according to the complainant they have submitted charter of demand to respondents at Goa, the employees working at Goa factory situated at Goa and therefore, the substantial cause of action arose at Goa. Therefore, the present interim relief application is required to be rejected.

15. He then invited my attention towards the terms and conditions of the appointment order wherein the clause of transfer is mentioned and submitted that, the concerned employees were after reading the terms and conditions have accepted the offer of appointment and joined the service at Goa and accepted the benefits of services and now challenge the transfer with malafide intention. Therefore, complainant is not entitled for any relief. Then he submitted that, according to the

complainant, the complainant union is registered at Mumbai. The Labour Commissioner at Goa has already held that, the complainant has no locus-standi. Therefore, the question for management entertaining the complainant union and/or considering the admissions does not arise. He invited my attention towards Regulation 100 of the Industrial Court Regulation 1975 and submitted that, the complaint as well as interim relief application is totally vague, lacks of materiel, particulars. Therefore, complainant is not entitled to get any relief and prayed that before deciding the interim relief application, the preliminary objection raised by the respondents regarding the territorial jurisdiction of this court requires to frame as preliminary issues and decide it first. If this court comes to the conclusion that, this court has territorial jurisdiction then and then only the application for interim relief is liable to be considered. Therefore, prayed to frame preliminary issues at this stage and to reject the interim relief application filed by the complainant.

16. He relied upon the observations of Hon'ble Bombay High Court in the matter between as under -

- (i) Glaxo Smith Kline Pharmaceuticals Ltd. vs. Abhay Raj & Ors. reported in MANU/MH/1289/2008.
- (ii) Anil Murlidharan vs. Larsen & Tubro Ltd. reported in MANU/MH/1085/2019.
- (iii) Abott Healthcare Pvt. Ltd. & Ors. vs. Maharudra Chikane & Ors. reported in MANU/MH/2024/2023.

- (iv) V. G. Jagdishan vs. Indofos Industries Ltd. reported in 2022 6 SCC page 167.
- (v) Judgment dated 08.01.2024 in Complaint (ULP) no. 221 of 2023 Industrial Court Mumbai.

He invited my attention towards the observations made in Glaxo Smith Kline Pharmaceuticals Ltd. vs. Abhay Raj & Ors. at paragraph No. 11 which reads as under:

“11. The situs of the head office of the appellant-company is immaterial for vesting jurisdiction on the authority under the M.R.T.U & P.U.L.P. Act while dealing with the grievances regarding the alleged unfair labour practice, once it is disclosed that the same has consequence or effect beyond the territories of the State of Maharashtra. Besides, the transfer being incidence of service, the Industrial Court could not have restrained the appellant from transferring its employee from one place to the other.”

17. Then he relied upon the observations made in paragraph No. 43 to 46 which reads as under:

“43. It is thus clear that it is the situs of the employment which would be the relevant factor to decide the place of cause of action for initiating any legal proceedings. Once it is not in dispute that the respondent, at the relevant time, was employed at Udaipur and he was sought to be transferred from Udaipur to Imphal (Manipur), it is obvious that the situs of employment of the respondent was sought to be changed from Udaipur to Imphal, both the places beyond the territory of the State of Maharashtra.

44. In the case of unfair labour practice, which is sought to be employed by the employer on account transfer of the employee from one place to another, the actual adoption of the unfair labour practice would be at the place from where the employee is either sought to be transferred or at the place where the employee is sought to be transferred. It

cannot, by any stretch of imagination, be said to have resulted at the place from where mere order of transfer of the employee is issued. It is not the issuance of the order but it is the consequence of the order issued that would result in unfair labour practice to the employee. Being so, in case of alleged harassment consequent to the transfer resulting into unfair labour practice to the employee can result either at the place where the employee had been working prior to the issuance of the order of transfer or at the place where is actually transferred under such order. Being so, the cause of action on account of alleged unfair labour practice would arise only at one of these two places and not at any third place.

45. Undoubtedly, in a case where an employee is merely sent to ascertain the possibility of having an establishment of the employer, till and until such establishment commences at any such place, it could not be said that the unfair labour practice would result at any place other than from where the employment of the employee is controlled. Considering the same, therefore, in Mohan Mhatre's case it was held that the place where the dispute substantially arises or where both the parties reside, that is the test to be applied to decide the issue of jurisdiction of the Court to entertain the proceedings relating to such dispute.

46. In the case in hand, un-disputedly, the unfair labour practice is alleged to have been employed on account of transfer of the respondent from Udaipur to Imphal and, therefore, it cannot be said that any part of the cause of action in relation to the alleged unfair labour practice had arisen within the territory of the State of Maharashtra. The appellant, therefore, is justified in contending that this aspect of the matter was totally ignored by the Industrial Court as well as by the learned single Judge and hence the impugned orders in that regard cannot be sustained and are liable to be set aside while allowing the appeal.”

18. He invited my attention towards aforesaid paragraphs and submitted that, the observations relied on behalf of the respondents are helpful to the case and prayed to reject the interim relief application and to frame the preliminary issues of territorial jurisdiction of this court.

19. Having heard the oral detailed submissions of both the Ld. Advocates for the parties, I have gone through the reasons, allegations and averments of unfair labour practices made by the complainant as well as strong objections raised by the respondents in their reply. I have minutely gone through the copies of documents placed on record and the observations relied by both the parties.

20. Prima-facie it appears that the various allegations made in the complaint against the respondents in respect of unfair labour practices, not paying the annual increments and variable dearness allowance. The allegations of complainant are denied by the respondent by filing the affidavit. That means the allegations are made and supported by affidavit and same are denied by filing reply and affidavit. In short, word versus word, allegations versus allegations, affidavit versus affidavit and documents versus documents.

21. Admittedly the interim relief, application is filed under Section 30 (2) of the M R T U & P U L P Act for claiming the relief, therefore, it is useful to reproduce Section 30 of the M

R T U & P U L P Act which deals with the powers of Industrial/Labour Courts. As per sub Section (2), in any proceeding before it under this Act, the Court i. e. Industrial Court/Labour Court, as the case may be, may pass such interim relief order, including any temporary relief or restraining order, as it deems just and proper and such interim orders may include directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding, pending the final decision.

22. To grant interim relief, is the discretionary power and such discretion has to be exercised on well established principles of law. It is settled principle of law that there are some parameters to grant the interim relief. To grant or refusal to grant the interim relief in the Application filed u/s. 30 (2) of the M R T U & P U L P Act, is covered by three well established principles viz.

(i) Whether complainant has made out a strong prima-facie case?; (ii) Whether the balance of convenience lies in its favor?; and (iii) Whether the Complainant would suffer irreparable loss in absence of any interim relief?.

The burden to prove these three points primarily lies on the Complainant. Interim Relief is not granted to the complainant if he is guilty of delay or engaged in suppression of material facts. The Complainant seeking interim relief must approach the Court with clean hands and the Court has to see whether the claim is bona-fide and whether it is fair and substantial question is to be tried. At the same time, it is also to be borne in mind that prejudice is likely to be caused if interim

relief is not granted in favor of the complainant. In the light of all these well settled principles of law, let us consider the case in hand and the facts mentioned therein.

23. At this juncture it is the prayer of the complainant that, as per the prayer clause 3 as reproduced above grant interim reliefs in favor of the complainant. On the contrary, it is prayer of the respondents to frame preliminary issues regarding territorial jurisdiction of this court. It should not be ignored that, the main thrust of the complaint is upon Item No. 3 of Schedule IV of the Act, regarding the transfer of employees from Goa factory to Baddi, Himachal Pradesh and Sikkim. The present complaint is filed on 11.12.2024 and transfer is effected prior to filing the present complaint. Therefore, now the apprehension in the mind of concerned employee is that, due to non-joining at transferred place by way of initiating disciplinary inquiry against the concerned employees, their services may be terminated or dismissed. Therefore, the complainant approached this court under Items 3, 5, 9 & 10 of Schedule IV of the Act along with Item 1 (a) & (b) of Schedule II of the Act.

24. It is needless to mention here that, the complainant has placed on record names of the concerned employees along with Annexure- A (total 226 employees), copy of union formation letter dated 27.09.2022 whereas the complaint is filed on 11.12.024. The complainant in their complaint has not clarified that how the Item No. 1 (a) & (b) of Schedule II is attracting after gap of near about 2 years. The copy of charter

of demand dated 07.01.2023 submitted on behalf of the complainant is placed on record. From bear perusing said charter of demand it appears that, the charter of demand addressed to the Factory Manager, M/s. Cipla Ltd., Goa for demands of the concerned employees working at Goa factory. The copy of charter of demand appears to be served upon the Dy. Labour Commissioner, Government of Goa, Margoa Goa and the office of the Labour Commissioner & Conciliation officer, Goa. It does not reflects its copies were forwarded to the Asst. Labour Commissioner or Additional Labour Commissioner, Mumbai. Therefore, it can be safely inferred that, the substantial cause of action by issuing charter of demand is arose in Goa. The copy of same is forwarded to the Conciliation officer at Goa. The charter of demand loudly speaks the cause of action arose at Goa. The copy of letter dated 03.12.2024 issued on behalf of the complainant is also placed on record mentioning therein that, the respondents have committed unfair labour practices which is addressed to the Managing Director of respondent company at Mumbai and C. C. to M/s. Cipla Ltd., Goa. Copy of appointment orders are placed on record by the complainant. Appointment letter dated 05.04.2017 of one Mr. Nitesh K. Mirashi, clause No. 19 is regarding the transfer which reads as under:

“Your services are transferable to any of the existing establishments/location of the Company as well as to any new establishments/locations that may be set up by the Company in future at the discretion of the Company without any extra remuneration. You are

also liable to be transferred from one department to another department at the discretion of the Company.”

25. From bear perusing the terms and conditions of the appointment orders, the service contract is a specific contract between the employer and the employee. All the obligations and liabilities arise from such service contract and none travel beyond the conditions stipulated in the appointment letters. It appears that, the concerned employees in the present complaint never put to the terms and conditions that their services were not liable to be transferred. Therefore, as per the terms and conditions of appointment orders, transferability is the service condition and said service conditions accepted by the concerned employees at the relevant time and joined the employment accepted the benefits of employment and said transfer orders are issued as per the business exigencies of respondents.

26. It is worthwhile to mention here that the Hon'ble Apex Court in **Rajendra Roy Vs. Union of India and Anr.**, reported in 1993 I L L. N. 237, it is observed that *“Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department.”* It is clear, therefore, from the law declared by the Hon'ble Apex Court that only in such cases of transfer, representation can be made. A complaint

otherwise on the ground of unfair labour practice is maintainable, whether the order is passed malafide or in violation of the rules of service or guidelines of transfer without any proper justification.

27. In the light of observations of Hon'ble Supreme Court and from bare perusing the appointment order in which a specific clause is mentioned in respect of transfer. Therefore, transferability is the service condition of employment, after accepting the same, employees had joined on duties. It is not a case of complainant that prior to present one, they were not transferred at any place. On the contrary, copies of documents are placed on record for showing transfer orders were issued prior to present one and the concerned employees had joined at transferred places. In view of this, it is an allegation of complainant that due to forwarding the e-mail for demanding dearness allowance and increments, transfers orders are issued during the pendency of discussion on charter of demands. But complainant miserably failed to show that any malafides on the part of respondents. In absence of any malafides or colourable exercise of powers of employers or being arbitrary or any unfair labour practice, court would not interfere the orders issued by the respondents at this prima-facie stage. If on merit after leading the evidence by both the parties, if complainant succeeds to show that these transfer orders are issued by way of malafide, then complainant will get appropriate relief at appropriate stage.

28. The complainant has filed number of observations of the Hon'ble High Courts as well as various Hon'ble Supreme Court to show that this court has territorial jurisdiction to try and entertain the complaint. At this interim stage, it is not possible to discuss and distinguish each and every case law related to the case in hand. From bear perusing the observations relied by the complainant in **Abbot India Ltd. vs. All India Abbott Employees Union & Ors.** (supra) wherein the facts are totally different from the present case. The pleadings supported with the documents are clearly show that, the substantial cause of action *prima facie* appears to be arise at Goa because in view of the documents placed on record, the factory of the respondents is situated at Goa, the employees are residing at Goa and they were appointed in Goa, they are working at Goa. The concerned employees accepted the terms and conditions of the appointment letter at Goa. The complainant union submitted charter of demand to revise the terms and conditions of employees at Goa. That means, the situs of employment is totally at Goa. All these facts are not brought on record by the complainant.

It is well settled law that, the persons who comes to the court with unclean hands is not entitled to be heard on merits of his grievance and is not entitled to any relief. It is also well settled that, the objective underlying this principle is that court is not only entitled but also duty bound to protect itself from unscrupulous litigants who do not have any respect for the truth and to try to pollute system of justice by resorting to falsehood

or by making misstatement or by suppressing material facts which have been adjudicated of the issue arising in the case.

29. The observations in **Ramjas Foundation & Anr. Vs. Union of India & Anr.** [(2010) 14 SCC 38]. **Kiran Singh Vs. Chaman Paswan** (AIR 1954 SC 340). The above judgment is of 1954. The facts of the said case and the facts of the present case in hand are totally different inasmuch as the judgment of Kiran Singh Vs. Chaman Paswan dealt with civil suit whereas the case of Workmen of Shri. Rangavilas Motors (P) Ltd. & Ors. Vs. Shri. Rangavilas Motors (P) Ltd. & Ors., is pertaining to labour/service matters. In case of Shri. Rangavilas Motors (P) Ltd., the Hon'ble Supreme Court has held that situs of employment is the test for deciding territorial jurisdiction. Further in Indian Cable Co. Ltd. Vs. Its Workmen (1962 (4) FLR) is in respect of termination of services of workmen and subject matter dispute is in respect of jurisdiction.

30. In the latest judgment between **Abbott India Ltd. Vs. All India Abbott Employees Union & Ors.**, (supra) in the said judgment the Hon'ble Bombay High Court had held extensively dealt with the case of **Glaxo Smith Kline Pharmaceuticals Ltd. Vs. Abhay Raj Jain & Ors.**, (supra) in para nos. 26 and 32. Further in para no. 33, the Hon'ble High Court has clearly observed that *“situs of employment would be relevant factor to decide accrual of cause of action for any legal proceedings is a finding that division bench reached in the backdrop of allegations in the complaint of respondent no. 1 Abhay Raj Jain*

and that is how para nos. 28 and 29 so also the ultimate and final conclusion in para no. 30.” In the said case i. e. Abbott’s case, the facts were different. In Abbott’s case the recognized union and undertaking of petitioner’s registered office was at Mumbai and negotiation regarding the charter of demands used to take place in Mumbai. The essential foundation of collective bargaining was at Mumbai. In the case in hand, no recognized union is at Mumbai for respondent factory. Company’s registered office is at Vadodara, the workers are working and residing outside Mumbai. Admittedly they are transferred from one place to another which is outside Mumbai and as such Abbott’s case would not be helpful to the present case in hand at this stage.

31. It should not be ignored that the Glaxo Smith Kline Pharmaceuticals Ltd’s case is of Hon’ble Division Bench. In the latest judgment of Hon’ble Supreme Court between **V. G. Jagdishan Vs. Indofos Industries Ltd.**, reported in [(2022) 6 SCC 167). In the said case the Hon’ble Supreme Court discussed the case of Bikas Bhushan Ghosh Vs. Novartis India Ltd. and Nandram Vs. Garware Polyester Ltd. as relied by the complainant, it is held that, “when the issue touches the question of territorial jurisdiction, as far as possible, the same shall have to be decided first as preliminary issue” and held that, “therefore in the present case, the Labour Court did not commit any error in deciding the issue with respect to the territorial jurisdiction as a preliminary issue in the first instance.”

32. It is worthwhile to mention here that in the latest judgment of Hon'ble Delhi High Court between **J. Balaji Vs. The Hindu New Delhi and Anr.**, reported in 2023 III CLR. 487 wherein it is held that *“a challenge is from appellant to the order dated 22.03.2022 passed by the Single Judge dismissing the writ petition and upholding award dated 27.08.2019 passed by the Labour Court dismissing the claim of appellant on the ground that Delhi Courts have no territorial jurisdiction to entertain the claim. The court held that (1) Appellant was posted at Chennai when his services terminated, (2) Appellant did not challenge transfer orders but joined at Chennai, transfer is incidence of service and no employee can claim to have vested right to continue at particular place, (3) His place of posting being Chennai, cause of action arose within the jurisdiction of Chennai Courts on joining at Chennai, situs of employment of appellant shifted at Chennai, (4) Though the Act does not make any reference to aspect of territorial jurisdiction, situs of place of employment is determinative factor in conferring the territorial jurisdiction upon the Labour Court for deciding the dispute, (5) Place of previous posting of appellant at Delhi would not confer territorial jurisdiction upon the Delhi Courts, (6) Merely because respondents have full-fledged office in Delhi, would not confer territorial jurisdiction on the Delhi Courts, (7) Appellant has the liberty to approach the competent Court of jurisdiction at Chennai, which shall consider the case of appellant on merits after granting benefit of Section 14 of The Limitation Act, 1963, (8) No infirmity found in the impugned order.”*

33. From the above discussion, it is crystal clear that, the respondent factory and its employees are from the Goa and the substantial cause of action arose in Goa. On the contrary, admittedly the complainant union is registered under the Trade Unions Act for the jurisdiction of Maharashtra and its office is located at Dadar, Mumbai. The complainant has not placed on record copy of the union's constitution to show that, the complainant union is entitled to accept the membership of the employees who are working at Goa. In absence of material documents placed on record I find that, the objection raised by the respondents regarding the locus-standee of the complainant union along with territorial jurisdiction of this court on the issue of situs of employment are required to be framed as preliminary issue and decided first.

34. Therefore I come to the conclusion that, when the jurisdiction of the court as well as status of the complainant are in dispute, then no interim relief can be granted in favor of the complainant. In view of facts and circumstance of the case, I do not find any substance in the submission made on behalf of the complainant for granting any relief in their favor. Hence, Point No.1 regarding framing of preliminary issue is required to be answered in the affirmative and I hereby answer it in the affirmative.

The points No. 2 to 4 regarding prima-facie case, balance of convenience and irreparable loss, the complainant has miserably failed to show that, in spite of the transferability is the

service condition, the transfer orders are issued with malafide intention and failed to show the balance of convenience lies in favor of the complainant and if interim relief is rejected, no prejudice will be caused to the complainant. Therefore, remaining points are required to be answered in the negative and I hereby answer them in the negative. With due respect, the Hon'ble High Court's observations, which are relied upon on behalf of the complainant are based on facts that are not similar to the facts of the present case in hand. Therefore, those observations are not helpful to the complainant this stage.

35) With this, I proceed to pass the following order.

ORDER

- 1) Application for interim reliefs (Ex. U-2) stands rejected.
- 2) The preliminary issues are framed as under:-
 - I) Whether this court has territorial jurisdiction to try and entertain the complaint filed by the complainant?
 - ii) Whether the complainant proves that it has locus-standee to file the complaint?
- 3) Both parties are at liberty to lead evidence.
- 4) Case to proceed further accordingly.
- 5) The matter is expedited.

(M. R. KUMBHAR)

Member,
Industrial Court, Mumbai

Date: 29.01.2025
Ssp/-