

MHIC120003502022



IN THE COURT OF MEMBER, INDUSTRIAL COURT, PUNE.

Presided Over by Shri. S. G. Dabadgaonkar

Complaint ULP./90/2022

1) Maharashtra Rajya Rashtriya Kamgar Sangh
Rashtriya Mill Mazdoor Sangh Manzil,
G D Ambedkar Marg, Parel Mumbai

2) Revan Namdeo Bhakare

3) Sunil Shyamlal Parse

4) Balasaheb Saudagar Anbhule

5) Subhash Dagadu Gaade

6) Atmaram Ananta Dhumal

.... Complainants

VERSUS

M/s Exide Industries ltd
Plot No D 2 MIDC Industrial Estate.
Chinchwad(East) Pune - 411 019.
Through - Managing Director.

.... Respondent

Advocate for complainants : Shri. Gajanan S. Telangre
Advocate for the respondent : Shri. A. K. Gupte

ORDER BELOW INTERIM RELIEF APPLICATION (EXH. U-2)
(Delivered on 01-11-2022)

This application is filed under Section 30 (2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'the Act') seeking an interim relief against the respondent to stay the transfer orders dated 24/06/2022 of complainants No. 2 to 6.

Brief facts of the case :-

2. Complainant No. 1 is a registered Trade Union and employees of the respondent company are its members. The respondent is engaged in manufacturing of Lead Acid Storage Batteries. Complainants No. 2 to 6 are its employees and members of the Complainant No.1 Union. The respondent, with malafide intention, has transferred Complainant No. 2 to 6 as per order dated 24/06/2022 to Bawal, Haryana Plant. The said plant is established in 2005 and the respondent factory is established in 1971. As such, there is no express contract of employment enabling the respondent to transfer its employees to newly established plant. Without any term of employment, transfer to another establishment is unfair. Transfer orders of these employees have been issued in order to break the Union activities. The employees are not given increased wages or transfer allowance. Service condition of the employees are changed due to the transfer orders. There is no exigency shown in the transfer order. Hence, the action of the respondent falls within the ambit of unfair labour practices under Items 3, 5 and 9 of Schedule IV of the Act. It is, therefore, prayed to quash and set aside transfer orders dated 24/06/2022.

3. Along with the main complaint, an interim relief application (Exh. U-2) is also moved with prayer to stay the transfer orders and further directions are sought to provide work to these employees at *Chinchwad* factory.

4. The respondent resisted the claim by filing Written Statement-cum-reply to the interim relief application (Exh. C-2) and contended that the complainant Union has no *locus standi* to act and appear for employees of the respondent. It is admitted that Complainants No. 2 to 6 are transferred to *Haryana*. However, it is denied that the said transfer orders are actuated with malafide. It is contended that the respondent is engaged in manufacturing of two types of batteries used for four wheelers and two wheelers. It is employing near about 218 employees in Starting Lightening and Ignition (SLI) activity and 110 employees in Motor-Cycle Batteries production. The manufacturing of Motor Cycle's Batteries is absolutely unreliable and uneconomical in its *Chinchwad* establishment. Therefore, the respondent is unable to provide meaningful work to workmen employed in Motor-Cycle Battery division. With an intention to provide gainful employment to these employees, the respondent proposed them to transfer in another establishment where their services can be utilized. It is contended that there is specific clause of transfer in the appointment letter of the employees.

5. It is further contended that two wheeler's battery production is mostly supplied to Bajaj Auto Ltd., Hero Motocorp Ltd. and Honda Motor-cycle and Scooter India Pvt. Ltd., which are major two wheeler

manufacturers. These manufacturers have established their plants in North India. It is the mandate of all these important customers that the respondent should have manufacturing set up near their factories to reduce the gap between ordering and supply. It is also required to minimize transportation and insurance cost along with mitigating the risk associated with delay in delivery. Batteries manufacturing at *Chinchwad* caused huge costs of logistic expenses and therefore the respondent cannot supply batteries at the costs compared with the competitors. Therefore, the respondent had established its plant at *Bawal, Haryana* to meet the above objectives. Costs of manufacturing in *Bawal, Haryana* are lower than *Chinchwad*.

6. It is further case of the respondent that there is lot of change in technology in manufacturing of batteries and new technology which is known as valve regulated lead acid (VRLA) storage batteries, has been introduced. The respondent tried to introduce this new technology at *Chinchwad* establishment in the year 2018 but Union and employees opposed to the same. It is further contended that while issuing transfer orders, the respondent has taken care of accommodation for initial period of 10 days at the transferred place with transit leave of 7 days. There is no change in service conditions also. As such, orders of transfer are legal, bonafide and justifiable. The decision of transfer of employees of Motor-Cycle Battery activity division was taken long back and it has no concern with membership of these employees with Complainant No.1 Union. The respondent has not engaged in any unfair labour practice as alleged in the complaint. It is, therefore, prayed to reject the interim relief application.

7. The following points arise for my determination. I have recorded my findings thereon with the reasons stated below :-

POINTS	FINDINGS
1 Whether complainants have made out a strong prima-facie case of unfair labour practices ?	No.
2 Whether balance of convenience lies in their favour ?	No.
3 Whether complainants are entitled to reliefs as prayed for ?	No.
4 What order ?	The application is rejected.

REASONS

As to points No. 1 to 4 :-

8. It is a settled proposition of law that unless prima facie case of unfair labour practices has been established, no interim relief can be granted. In this case, the complainant Union has specifically alleged unfair labour practices under item 3 of the Schedule IV of the Act with contention that the respondent has transferred its members with malafide intention on the count of union formation. The Ld. Counsel for the complainant has specifically argued that the Union was actually formed in the month of May-2022 and 334 employees of the respondent company became its members since 14/05/2022 to 22/05/2022.

9. It is not in dispute that the present union has filed one complaint before the Industrial Court, Pune, bearing Complaint (ULP) No. 50/2022 and in said matter it has moved an interim relief application seeking relief of production of service and some other reliefs. It is also on record that in said matter, ad-interim order came to be passed on 21/06/2022, restraining the present respondent from terminating members of the complainant Union without following due process of law. In such circumstances, the complainant Union alleges transfer orders dated 24/06/2022 as malafide and on the count of Union formation.

10. Nowhere in the complaint, it is mentioned by the complainant union about functioning of any other union in the company either on the date of the complaint or prior to the union formation. However, the respondent company in its written statement, more particularly in para No. 6(j), has specifically averred that subject matter of transfer was discussed with Maharashtra Labour Union in a meeting conducted with the said Union on 23/06/2021. The respondent has relied upon copy of minutes of meeting filed along with List Exh. C-4 page No. 10 to show that issue of transfer of some of the employees was discussed with the Union – Maharashtra Labour Union much before the formation of the complainant Union in respondent company. The respondent has further relied upon copy of letter dated 23/05/2022 (Exh. C-4/8) to show that specific intimation was given to the said union in respect of transfer of employees.

11. From contention in the Written Statement of the respondent

supported by documents on record, it prima facie appears that prior to formation of the complainant union in respondent company, union namely Maharashtra Labour Union was functioning in the company, issue of transfer was discussed in meeting dated 23/06/2021 with the said union and specific letter was also given by the company on 23/05/2022 to the said union in connection with transfer of employees.

12. The Ld. Counsel *Shri. Telangre* for the complainant Union tried to submit that the said minutes of meeting filed by the respondent company are not signed. It is required to mention here that it is not his objection that the said document is forged. Admittedly, the matter is at initial stage. There are specific allegation of unfair labour practice of malafide transfer on the count of union formation. The respondent, to counter the said allegations, has filed this document, which prima facie support the contention raised in the pleading in respect of discussion with the union about transfer of some employees. It also prima facie goes to show that issue of transfer of employees was discussed prior to 11 months of the formation of the Union. At this prima facie stage, copy of minutes of meeting dated 23/06/2021 and copy of letter addressed to Maharashtra Labour Union dated 23/05/2022, are sufficient to establish the fact that issue of transfer of employees was under consideration, due to various reasons, much before the union formation of Complainant No.1 in the respondent company.

13. The Company has specifically pleaded about loss caused to Motor-Cycle Batteries manufacturing unit of *Chinchwad*. It has

specifically pleaded about production of batteries being supplied to major two wheelers manufacturers like Bajaj Auto Ltd., Hero Motocorp Ltd. and Honda Motor-cycle and Scooter India Ltd. The company has further pleaded about establishment of these companies and their plants in Northern India and also pleaded about manufacturing their set up in order to reduce gap between the ordering and supply and to minimize transportation cost and delay in delivery. These aspect, specifically pleaded by the respondent, are not denied by the complainant Union by filing any counter affidavit. As such, contention raised in the written statement by the respondent in respect of exigency of work at *Bawal* Plant, more particularly, in the light of earlier discussion with Maharashtra Labour Union, prima facie support the case of the respondent that it has transferred its employees out of exigencies.

14. Therefore, though it appears that after the passing of an ad-interim order in Complainant (ULP) No. 50/2022 dated 21/06/2022, the company has issued transfer orders on 24/06/2022, however, if earlier circumstances prima facie brought on record by the respondent are considered, it appears that the decision to transfer employees of Motor-cycle Battery Division was taken after discussion with Maharashtra Labour union, much earlier than that of actual Union formation. As such, in my opinion prima facie, transfer of employees cannot be termed as malafide act on the part of the respondent due to formation of complainant Union.

15. The Ld. Counsel for complainants has relied upon decision in *Exide Industries Limited, Ahmednagar Vs. Rashtrawadi Maharashtra*

General Kamgar Union Mumbai And Others (Writ Petition No. 11930 of 2017 date of decision 13/11/2017) and submitted that *Ahmednagar* Unit of the respondent company had transferred some workers from *Ahmednagar* to *Bawal, Haryana*. The said transfer orders were quashed and set aside by the Industrial Court and subsequently the said order is confirmed by the Hon'ble Bombay High Court.

16. I have gone through decision in *Exide Industries Limited, Ahmednagar* case. *Ahmednagar* Unit of the respondent company had transferred 11 workers from *Ahmednagar* plant to *Bawal, Haryana*. In said matter, the exigency to transfer was not established by the company. Furthermore, it was clearly observed that workers of *Ahmednagar* Plant are appointed after 2010 and workers of *Bawal* Plant are appointed prior to that and therefore, workers of *Bawal* Plant are experienced persons. In such circumstances, the transfer of workers, after the union formation, was held to be malafide.

17. In the present case, prima facie, the respondent has established exigency of work at *Bawal* plant. It is prima facie brought on record that major customers of the respondent company have established their units in Northern India and therefore, supply of batteries to these customers without delay and by avoiding transport costs is an adjustment and need of the business. It has also brought on record that issue of transfer was under consideration much prior to formation of the complainant Union. Furthermore, the factory of *Chinchwad* is established in the year 1969 near about

34 years prior to the plant at *Bawal, Haryana*. As such, Chinchwad Plant is having experienced employees than that of Bawal Plant which was not the situation in *Exide Industries Limited, Ahmednagar's case*. Therefore, due to these distinguishable facts, decision in aforesaid case is not helpful to the complainant to establish malafide intention of the respondent company.

18. One more objection is raised that the company has no right to transfer its employees to *Bawal* Unit. The said unit was not in existence when these employees have joined the *Chinchwad* Unit. For this, the Ld. Counsel for complainants placed his reliance upon decision of the Hon'ble Bombay High Court in *Crest Communication Ltd. Vs. Sheetal Shenoy, [2001 (4) MhLJ 919]* in which decision of the Hon'ble Supreme Court in *M/s. Kundan Sugar Mills Vs. Ziyauddin and Ors., AIR 1960 SC 650 : [1960 SCR (2) 918]* was relied.

19. I have given thoughtful consideration to the decision in *Crest Communication's case* (mentioned supra). The said case was decided on merit by the Industrial Court and it was not an interim order which was under challenged. Employees in the said matter joined the company in the year 1993 without written appointment orders. In 1994, the said company became Public Limited Company and in the year 1995, it has framed Rules and Regulations governing service conditions of its employees. One of the said rules was governing transfer of employees. In the light of these facts, it was held that Rules have been framed posterior to the date of the joining of the employees and therefore, it is held to be alteration of

condition of service by the company prejudice to the rights of the employees.

20. In the present case, the company has issued appointment orders in writing in which there is specific clause of transfer. In such circumstances, when there is specific clause of transfer at the time of joining of the employment, it is a service condition and therefore, transfer of these workers cannot be termed as change in service condition as it was held in Crest Communication's case (mentioned supra).

21. The Hon'ble Bombay High Court in VIP Industries Ltd. Vs. Maharashtra Kamgar Karmchari Sanghtana, Satara and Anr., (2008 III CLR 22) , relied upon by the Ld. Counsel *Shri. Gupte* for the respondent, has clearly distinguished decision of the Hon'ble Apex Court in Kundan Sugar Mill's case (mentioned supra). Para No. 8 of the said judgment is relevant and therefore, is reproduced as under. It reads as :-

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 proposition. 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 21 st July 1994 in Associated Breweries and Distilleries V/s. Shri Purshottam Govindji Patel (Writ Petition 1570/1994)

22. It is further held by the Hon'ble Bombay High Court in VIP Industries Ltd.'s case (mentioned supra) that 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 is exercising the right to transfer the employee cannot be faulted except for malafides or where there is a statutory violation.

23. The Hon'ble Bombay High Court in Engineering Workers Association, Thane Vs. Radium Creation Ltd. and Ors., (2016 II CLR 875), held that it is within the managerial discretion of an employer, to organise and arrange his business in the manner he considers best and if the same is done bona fide, it is not competent of a tribunal to question its propriety.

24. In the present case, the respondent company has prima facie brought on record that Motor-Cycle Battery manufacturing activity unit of *Chinchwad* palnt is running in loss and there was a discussion with Maharashtra Labour Union in respect of said loss as well as transfers of some employees to *Bawal, Haryana* Unit. It is also prima facie established that major customers of the company have started their business in the Northern India and therefore, in order to supply

material within time, by avoiding delay and other losses, the Management of respondent has decided to increase production at Bawal Plant and therefore, has transferred its some employees to said plant.

25. As laid down by the Hon'ble Bombay High Court Engineering Workers Association, Thane's case (mentioned supra), the Management has a discretion to arrange its business in the manner it considers best. The respondent is intending to organise its business and as stated earlier, the said decision was taken much earlier to the formation of the complainant Union. As such, prima facie, the complainant Union has failed to establish that the said transfer orders are the out shoot of the Union formation and therefore, prima facie failed to show unfair labour practices under Item 3 of Schedule IV of the Act. The complainant has failed to establish that the respondent has breached any service condition by issuing said transfer orders and thus failed to establish unfair labour practices under Item 9 of Schedule IV of the Act. Furthermore, if transfer orders, which are filed on record by complainants at pages No. 72 to 76 of list Exh. U-5, are perused, it becomes clear that the company has provided accommodation for the initial period of 10 days. There is mention of entitlement of transit leave for 7 days, reimbursement of second class fare for the employee and his family members. It is specifically mentioned in said transfer orders that terms and conditions of service of the employee will remain unchanged.

26. As such, according to me, complainants have failed to establish strong prima facie case of unfair labour practices under

Items 3 and 9 of the Schedule IV of the Act. Balance of convenience lies in favour of respondent company because it is transferring employees in order to arrange its business. Therefore, any interference in said orders may cause an irreparable loss to the company while arranging its business. On the other hand, if the transfer orders are implemented, service condition of these employees will remain unchanged. Furthermore, as per the appointment letters of these employees, transfer is one of the service conditions and therefore, they are bound to obey the said transfer order. In such circumstances, the complainant Union is not entitled to interim relief in respect of transfer orders as prayed for. Accordingly, I answer points No. 1 to 3 in negative and in answer to point No. 4, pass the following order :-

ORDER

- 1) The interim relief application (Exh. U-2) is hereby rejected.
- 2) No order as to costs.

Date :- 01-11-2022.

amj/-

(Shri. S. G. Dabadgaonkar)
MEMBER,
INDUSTRIAL COURT, PUNE.