

Bombay High Court Abbott India Ltd & Ors vs All India Abbott Employees Union & ... on 12 October, 2011 Bench: S.C. Dharmadhikari 1 wp1717-11.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1717 OF 2011

Abbott India Ltd & Ors .. Petitioners

versus

All India Abbott Employees Union & Anr .. Respondents

Mr.K.M.Naik a/w Mr.S.P.Salkar for the petitioners.
Mr.R.D.Bhat for respondent No.1.

Ms.Jane Cox for the applicant in Chamber Summons No.253 of 2011.
ig CORAM : S.C.DHARMADHIKARI, J.

12th October 2011. ORAL JUDGMENT: 1} Rule. Respondent No.1 waives service. Service on respondent No.2 is not necessary. Even the intervenors waive service and agree that the writ petition be taken up for hearing forthwith. With the consent of the learned advocates, this writ petition is heard finally and disposed off by this judgment and order. 2} The petitioners have challenged, by this writ petition under Article 226 of the Constitution of India, the order dated 8th August 2011 passed by Member, Industrial Court, Mumbai in complaint (ULP NO.114 of wp1717-11.doc 2011). By this order, the learned Member rejected the application dated 19th July 2011 (Exhibit C-13) raising

a preliminary objection to its territorial jurisdiction to entertain and try the complaint. The 1st respondent-Union is the original complainant. 3} 4} The complaint alleges unfair labour practices under Item 5 of Schedule II and Item 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short MRTU and PULP Act). 5} The 1st respondent-original complainant states that it is a trade union functioning in the establishment of the petitioner No.1, which is the original respondent No.1. It is stated that the unfair labour practices have commenced from 5th April 2011. The thrust of the allegations is that the 1st respondent-Union is a registered trade union functioning in the establishment of the of the 1st petitioner since 1966. It is a recognised union under the Code of Discipline under the Industrial Disputes Act, 1947. It has signed several settlements, concerning wage scale and service conditions of sales promotion employees. The 1st petitioner- wp1717-11.doc company is engaged in manufacturing and marketing of pharmaceutical products all over India and is a leading company. The Union consists of Sales Promotion Employees employed by the company with different designations such as Medical Representatives, Territory Business Developer, Territory Executive and other such designations. All of them carry out the same functions i.e to promote the products of the company. 6} The definitions of the term “Sales Promotion Employee” under the Sales Promotion Employees (Conditions and Services) Act, 1976 and under the Industrial Disputes Act, 1947, have been referred to and reproduced and it is then alleged that the grievances of the Sales Promotion Employees had been taken up by the Union. There are about 1000 such employees working all over the country. They are members of the 1st respondent-Union. On their behalf, the Union has been signing the settlement laying down wage scales and service conditions from time to time. It is stated that a Charter of Demand was submitted on 4th August 2010, a copy whereof is annexed as Annexure A to the complaint and thereupon negotiations commenced with the Union sometime on 21st /22nd January 2011. The last discussion was held wp1717-11.doc sometime in April 2011. They remained inconclusive inasmuch as it is alleged that there is a rigid stand adopted by the 1st petitioner. 7} About 250 Sales Promotion Employees designated as Territory Executives in respect of whom the company has not discussed with the Union although they are carrying out identical functions as Medical Representatives, also had certain grievances and they raised a separate Charter of Demand through 1st respondent-Union and the Union raised its separate Charter in relation thereto on 1st July 2002, a copy of which is at Annexure B. There was no response to the said Charter of Demands and, therefore, intervention of Conciliation Officer was sought and the conciliation proceedings are yet to be initiated. 8} It is alleged that while the office bearers of the Union were busy in preparing for negotiations on the Charter of Demand, the Company suddenly took several steps without the prior knowledge of the Union. The steps that are taken are set out in para 3.8 of the complaint and the same reads thus: “3.8 While the office bearers of the Union were busy in wp1717-11.doc preparing for negotiations on the Charter of Demand, the Company has, all of a sudden, taken various steps on the sly and on emergent basis

without the prior knowledge of the Union. The Company had earlier booked to and fro air tickets in favour of most of the SPEs working all over India and were required to attend a purported launch of Established Products Division for which a workshop was organised by the Company. In bonafide belief of the case made out by the Company about 800 SPEs attended the purported Workshop at Bangalore and at Hyderabad on 6th and 7th April 2011. At the said "Workshop", however, the Company offered fresh appointment letters identifying them as orders of promotion. The so called promotion order states that the concerned SPE, irrespective of his existing designation, including that of Territory Executive, are designated as "Therapy Business Manager". The orders of promotion contain 3 annexures. Annexure-I provides for change in remuneration providing for a rise of around Rs.80,000/- to Rs.1,30,000/- per annum. Annexure-II contains "Job Purpose". In other words the company has used high sounding management jargon though the job content remains the same which is promoting the products of the company. Annexure-III contains purported "other terms and conditions" thereby imposing certain stringent conditions which are not prevalent prior to the issue of wp1717-11.doc such letter. As per the new service conditions the notice period for resignation has been increased from one month to three months. The said Annexure also provides for medical examination as the company may require from time to time. It also provides that the company can deduct from the concerned SPE's remuneration any money due to the company including outstanding loans or advances given by also provides for transfer including transfer to any other Group Company which is contrary to the law. It also provides for periodic training and certification of code of business conduct as required. The Union submits that all these new stringent conditions of services provide a handle to the Company to terminate the services of the concerned SPEs under one pretext or the other. It also provides for one time deduction of all outstanding dues which is meant to be used for the purpose of force and coercion to the concerned SPEs to succumb to the dictates of the Management." 9} It is then alleged that the 1st petitioner-Company attempted to issue fresh appointment letters to the aforesaid employees only to ensure that they do not continue with the Union. According to the complainant all Sales Promotion Employees who attended the purported workshop were required to accept the order without giving wp1717-11.doc them time to consider or consult the Union or take required advise, legal or otherwise. There was thus a force or pressure which was asserted and the said employees could not even take up the matter with the Union. After alleging that the Charter of Demand was submitted there is a reference made to circular dated 23rd March 2011 of the Union and alleging that the attempt of the Company was to counter the Union and prevent it from asserting its demand under the Charter that the action was initiated. There is a reference to the circular of the Union dated 5th April 2011 and in para 3.12, this is what is alleged: "3.12 Under the circumstances, most of the members of the Union did not accept the offer made by the company excepting very few SPEs who were either on promotion or just joined the company. Most of the members have been in touch with the representatives of the Union and have voiced their apprehension about acceptance of the offer made

by the company. The offers were handed over to the SPEs on 6th April 2011 and were forced to accept the same either immediately or on the next day i.e on 7th April 2011. Most of the members of the Union, therefore, did not attend the purported workshop on the 7th April 2011. Most of the members remained in groups so that individual SPE may not be targeted either by the wp1717-11.doc officials of the company or the bouncers employed by the company. There were, however, stop target such as those who were just confirmed or on probation and who were located in one Hotel by name West Inn in Hyderabad. The District Managers/Regional Managers who are immediate superiors of SPEs, went to the Hotel rooms of such members in the unearthly hours in the early morning between 2.00 a.m to 4.00 a.m. In some cases the SPEs were called to the room where the District/Regional Managers were staying. Similar effort was made in the Hotel Taj in Bangalore.” 10} It is in these circumstances, that the complaint proceeds to allege that the 1st respondent is the only Union functioning in the company and has recognition. The company and Union have engaged in discussion for resolving the Charter of Demand. There was a necessity, therefore, of open and bonafide discussions, but the company has failed to abide by the same and imposed certain conditions and this constitutes an unfair labour practice under Item 5 of Schedule II of the MRTU and PULP Act. 11} In paras 3.16 and 3.17 so also in para 3.18, this is what is alleged: wp1717-11.doc “3.16 As stated hereinabove, the wage scales and service conditions of all SPEs were determined on the basis of settlements between the Union and the Company since about last four decades. The members of the Union were, therefore, entitled to continuation of such terms and conditions of service including those which may be accepted by the Union after negotiation and after considering the effect of such changes on its members. The company has, however, proceeded under undue haste in order to impose its own unilateral terms and conditions of service upon the members of the Union by adopting strong arm method and by not permitting the concerned members to even consider the offer taking into account all relevant factors including discussing them collectively under the banner of the Union. Such unilateral change in service conditions which are sought to be implemented by adopting strong arm means, the company has engaged in unfair labour practices under Item 9 of Schedule IV of the MRTU and PULP Act. 3.17 The company has also engaged in use of force and coercion by forcing the members of the Union to attend the purported”Workshop" at Bangalore and at Hyderabad and used police and hired bouncers to spread threats and mental pressure upon the members of the Union with the sole aim of forcing to unfair labour wp1717-11.doc practice under Item 10 of Schedule IV of the Act. 3.18 The Union submits that all matters concerning SPEs are decided by the Head Office in Mumbai. The discussions over Charter of Demand are going on in Mumbai since last several months. The decisions to give such “offer” was taken in Mumbai. Both the registered office and administrative office of the company as well as the Registered Office of the Union is in Mumbai. The appropriate Government for the company is the State of Maharashtra. Hence, this Hon’ble Court has jurisdiction to entertain and try this complaint.” 12} It is upon these allegations that the Union prayed that the Industrial Court should hold and

declare that the petitioners have engaged in unfair labour practice in terms of Item 5 of Schedule II and Items 9 and 10 of Schedule IV of the MRTU and PULP Act and further directions and reliefs have been claimed. This complaint was filed on 13th April 2011. It is common ground that the 1st respondent-Union made an application for interim reliefs and on 13th April 2011, after hearing both sides, an ad-interim order was passed directing the petitioners not to force the Sale Promotion Employees to accept the offers of promotion. In reply to the application for interim relief, the petitioners wp1717-11.doc filed a reply of Mr.Sachin Amdekar, Head- Business Human Resources of the Abbott India Ltd. In this affidavit what has been alleged is, that the 1st respondent-Union has no locus standi to file the complaint in relation to any erstwhile field employees who are operating beyond the territorial jurisdiction of the Industrial Court. It is germane to state that the promotion letters were issued to the concerned field employees on 6th April 2011 and thereafter, the concerned Regional Managers/Business Managers of respective regions were reporting authority. These promotion letters were issued to the field employees and some of them may be posted in the western region including Mumbai. However, the purported complaint relating to the field employees and Therapy Business Managers who are placed outside Mumbai region, cannot be entertained by the Industrial Court. It would be beyond its territorial jurisdiction. Therefore, in so far as these employees are concerned, the Industrial Court lacks territorial jurisdiction. However, it must at once be stated that Mr.Naik, learned senior counsel appearing on behalf of the petitioner concedes that as far as the employees who are posted at Mumbai are concerned, their grievances could be raised before the Industrial Court at Mumbai and the said Court has territorial jurisdiction to entertain and take cognizance thereof. However, since some wp1717-11.doc employees are not posted in Mumbai, but were always posted outside Mumbai and on promotion have been given posting outside the State of Maharashtra, in relation to such employees the Industrial Court lacks territorial jurisdiction and that is how the matter must be seen, as far as these employees are concerned. It is, therefore, clear that the complainant-Union cannot take up the cause of such employees. In these circumstances, the contention raised by the petitioners was that there is no cause of action for filing the complaint before the Court in Mumbai, as admittedly the promotions took place in Bangalore and Hyderabad, which is beyond the territorial jurisdiction of the Industrial Court. 13} All other allegations in the complaint have been denied by the petitioners, but it must be stated that I am not concerned with the allegations in the complaint as far as the merits of the matter are concerned and, therefore, it is not necessary to advert to the reply of the petitioners in further details insofar as the merits are concerned. Suffice it to state that as far as the pleas of both sides on the merits of the complaint and on the merits of the interim application are concerned, they are specifically kept open for being raised at an appropriate stage. wp1717-11.doc 14} The petition concerns principally the relief that was sought by the petitioners of dismissal of the complaint on the ground that the Industrial Court, Mumbai, lacked the territorial jurisdiction to entertain and try the complaint. 15} On such objections, the Industrial Court appears to have taken note of the

rival contentions and in the light of the request made, it has rendered the conclusion as set out in the impugned order. 16} Based on the rival contentions, the issue of territorial jurisdiction of the Industrial Court was framed. The Industrial Court proceeded on the basis that as far as the title of the complaint goes, both parties are based in Mumbai. As far as the reliefs are concerned, they have been referred to including the pleading in para 3.18 in relation to the territorial jurisdiction of the Industrial Court. 17} It appears that the Court proceeded on the basis of the allegations in the complaint and the stand taken in the affidavits. The Court proceeded on the basis that the allegations in the complaint alone will wp1717-11.doc have a bearing and the Court must presume that they are true for the purpose of the issue of territorial jurisdiction. The Court proceeded on the basis that the issue of territorial jurisdiction is a legal issue. According to the Industrial Court, the Union has raised a plea that the Charter of Demands was submitted. The last settlement was arrived on 27th July 2007. That was at Mumbai. The service conditions of the employees are determined at Mumbai. The company has filed a reference and sought certain reliefs from Industrial Court at Mumbai. The company cannot now object to the territorial jurisdiction of the Industrial Court as that would be blowing hot and cold at the same time. As the dispute is in relation to the service conditions and between the company and the Union, both of whom have their offices at Mumbai so also all policy decisions are taken at Mumbai, therefore, the Industrial Court concluded that it has territorial jurisdiction. Further, if the matter is tried at Mumbai, that would cause no prejudice to the company inasmuch as the previous settlement, a copy of which was placed on record below Exhibit 19, was also arrived at Mumbai. For all these reasons and considering the complaint allegations, the Industrial Court concluded that it has territorial jurisdiction to entertain and try the complaint. That is how the conclusions in paras 14 to 16 of the wp1717-11.doc impugned order would read: “14 If the nature of duties which the Medical Representative has to perform is considered then he has to maintain the rapport with the Doctors or Medical Practitioners or chemist. It requires continuous interaction. There shall not be communication gap due to language problem. So change in services conditions is a common collective issue which has been raised by the Union with the Company and as its office is at Mumbai so they got right to do so. It is in exist once since 40 years. Last settlement was derived on 27.07.2007. The service conditions of the employees are determined at Mumbai. The company by filing the Reference (IT) has sought the reliefs from this Court only. When the company has objected the jurisdiction in request of the same issue then they cannot go hot and cold at the same time. As the dispute occurs between the Union and the company in respect of service conditions and both have their offices at Mumbai and policy decisions are required to be taken at Mumbai. So this Court has got jurisdiction to try and decide the complaint. If the matter is tried at Mumbai then no prejudice would be caused to the company. It was claimed that as the parties to the litigation who resides at Mumbai and the Union who has agitated the matter has office at Mumbai, the policy decision in wp1717-11.doc respect of the service conditions are to be taken at Mumbai, and therefore, previous settlement a copy of which

is placed on record below Exhibit U-19 was also derived at Mumbai, and consequently this Court will have jurisdiction to try and decide the complaint. If the nature of complaint which is filed is considered then it is filed in terms of Item 5 of Schedule II and Items 9 and 10 of Schedule IV of the MRTU and PULP Act. 15 While considering the question of jurisdiction as appears in pleading I find that all the prayers are required to be considered together. If the pleading of the parties and the prayers made in the application are considered together then it shows that the triable issues are raised into the pleadings in respect of change in service conditions. One of the prayer pleaded into the main petition is in respect of the transfer. It looks that the general issue has been raised by the Union in respect of unilateral change of service conditions and in respect of force said to have been applied to the category of sales promotions employees to accept the promotions. The complainants has claimed the reliefs by alleging breach of Item No.5 of Schedule II and Item Nos.9 and 10 of Schedule IV of the MRTU and PULP Act. When certain allegations are made into the pleadings claiming the breach of service conditions then those require to be wp1717-11.doc enquired by giving an opportunity to the parties putting such grievances. The complainant Union amongst other documents have relied in the Memorandum of Settlement placed on record below Exhibit U-19. The said settlement looks to have derived between Abbott India Limited and All India Abbott Employees Union at Mumbai on 27th July 2007. It is claimed by the complainant that there is a unilateral change of service conditions. 16 The Office of the company is located at Mumbai. As per nomenclature the office of the Union is also located at Mumbai. The main grievances has been put forth by the Union in general in respect of violation of service conditions including applicability to the workers working at Mumbai is considered then without giving an opportunity to prove their claim it cannot be parted away on the point of jurisdiction. In the present case in respect of claim put forth by the Union in respect of change in service conditions, it needs to be resolved after hearing the parties at length and considering the evidence placed on record supporting the claim. At this juncture concluded decision in that regard cannot be recorded. The grievances has been put forth by the Union in respect of unfair labour practices as stated above and the decision in that regard can be taken only by considering the evidence placed on record.” wp1717-11.doc 18} It is this order which is challenged before this Court in the instant writ petition. 19} Mr.Naik, learned senior counsel appearing on behalf of the petitioners would submit that the impugned order suffers from serious error of law apparent on the face of record. The impugned order overlooks the essential and fundamental allegations in the complaint. The allegations in the complaint relate to a promotion and the policy of promotion of the subject employees. 20} The employees were invited for a conference which they attended voluntarily and at that conference after certain decisions were made known to them, appointment/promotion orders were handed over. These promotion orders were handed over at a conference which took place outside Maharashtra. The promotions and/or posting or promotion of the said employees is outside Maharashtra. The cause of action for making grievance in relation to the action taken in April 2011 having arisen outside the territorial jurisdiction of

the Industrial Court, then, the complaint of alleged unfair labour practices and that too under State Act, wp1717-11.doc could not have been filed in Industrial Court at Mumbai. It is immaterial whether the Union is based at Mumbai. It is immaterial whether the petitioners are based at Mumbai. The allegations project the alleged unfair labour practices which occurred beyond the territorial limits of the Industrial Court, then, the cognizance of the same could not have been taken by a Court functioning under the MRTU and PULP Act. His submission is that the Act has no extra-territorial operation. It cannot extend beyond the territorial limits of the State of Maharashtra. It is not as if the Union and the members, who are allegedly aggrieved by the acts of the company and the said conference are remediless. Each one of the unfair labour practices that have been alleged in the complaint can be made subject matter of proceedings under the Industrial Disputes Act, 1947. That act itself enlists several unfair labour practices and the Schedule to the same would enable the aggrieved employees to approach the competent Courts under that act. 21} Therefore, the complaint of alleged unfair labour practices under the MRTU and PULP Act, could not have been instituted by the Union at Mumbai. For all these reasons, it is clear that the Industrial Court, Mumbai lacked the territorial jurisdiction. Mr.Naik submits that the wp1717-11.doc conclusions which have been reached by the Industrial Court are completely erroneous inasmuch as if paras 15 to 17 of the impugned order are perused, it would be clear that what the Industrial Court has proceeded upon, is only the situs of the parties. The location and situs of the parties has influenced the decision on the preliminary issue. That conclusion completely overlooks the allegations in the complaint and the basis of the unfair labour practices alleged therein. This is not a matter in relation to only the service conditions. This is a specific act which allegedly took place at a conference at Bangalore and which is stated to be unfair labour practice, that the complaint has been filed. In such circumstances, the Industrial Court had no territorial jurisdiction to entertain and try the complaint. It also did not have territorial jurisdiction to entertain and try it because admittedly, the complaint involves employees and the cause of employees who were never posted at Mumbai, either before their promotion or even thereafter. If such employees are brought under the purview of the present complaint, merely because they are members of the respondent No.1-Union which claims to be operating on all India basis, then, the complaint was not maintainable at Mumbai at their instance. It is plain and clear that such employees could not have alleged any unfair labour practices by taking wp1717-11.doc recourse to State law. For all these reasons, he submits that the impugned order be set aside. 22} Mr.Naik places reliance upon the following decisions in support of his above contentions: (1)2008 III CLR 894 (Bom. H.C) - Glaxo Smith Kline Pharmaceuticals Ltd Vs. Abhay Raj Jain & Anr; (2) Judgment of learned single Judge of this Court in Writ Petition No.20070 of 2009 decided on 3rd November 2009 - Manish Ashok Badkas Vs. Novartis India Ltd & Anr; (3)2009(2) Mh.L.J 331 - Torrent Pharmaceuticals Ltd., Ahmadabad Vs. Member, Industrial Court, Chandrapur & Anr; (4)2009(1) L.L.N 139 - Eastern Coalfields Ltd & Ors Vs. Kalyan Banerjee; (5)2005 I CLR 598 - Shyam Sunder Seth Vs. S.M.Limaye, President Industrial

Court & Anr wp1717-11.doc 23} Mr.Naik's second submission is that the complaint also alleges unfair labour practices in matter of transfer. It has been very clearly set out in the decision of this Court reported in 2008 III CLR 894 - Glaxo Smith Kline Pharmaceuticals Ltd Vs. Abhay Raj Jain and Another, that a complainant who is working as an employee of the company and posted outside Mumbai so also transferred from that posting to anywhere else, except the State of Maharashtra would have no right to file a complaint alleging unfair labour practices in a Court functioning in the State of Maharashtra and exercising jurisdiction under the MRTU and PULP Act. In case of such of the employees who were posted out of Maharashtra and not transferred or promoted and posted in Maharashtra, the Union, could not have approached the Industrial Court and in their case there was no dispute that the Industrial Court lacked the territorial jurisdiction. The judgment of the Division Bench has been brushed aside by the Industrial Court in this case. In such circumstances, in the matter of transfer atleast the Court could not have taken the view that it has territorial jurisdiction. Further, the complaint and the allegations therein have been segregated so as to arrive at the conclusion that the Industrial Court has territorial jurisdiction and that was also impermissible in law. Therefore, looked at from any angle, according to wp1717-11.doc Mr.Naik, the complaint could not have been filed in the Industrial Court at Mumbai. 24} Countering these submissions, Mr.Bhat appearing for respondent No.1-Union/complainant and Ms.Cox appearing for intervenor supported the conclusion of the Industrial Court. They submitted that the Industrial Court has proceeded on the basis that the complaint read as a whole indicates that what is being projected are the unfair labour practices in relation to service conditions of the employees of the petitioner No.1- Company. The Union based at Mumbai being an all India Union and its membership extending to all over India, held negotiations and discussions on the Charter of Demands and in relation to the service conditions of the employees and they were held at Mumbai. Both, the petitioner as also the respondents are based at Mumbai. The Charter of Demands was submitted at Mumbai. Pursuant thereto, Union was invited for discussions at Mumbai. The allegations are not of just unfair labour practices in relation to preventing the recognised union from bargaining in relation to service conditions, but also of committing breach of settlement which has been arrived at between the petitioners and the respondent No.1-Union with regard to the terms and condition wp1717-11.doc of service of the employees. This fundamental distinction between matters which are covered by the Division Bench judgment and the instant complaint has to be borne in mind. What the Division Bench has held is that the Court lacked territorial jurisdiction purely and simply in matters of transfer and when the allegation of unfair labour practice is only with regard to the mala fide act of transfer. When such isolated allegation is made, that the situs of the parties assumes significance. When the scope of allegations and particularly in relation to the service conditions of the employees is taken into account, then, none of the rulings and decisions brought to this Court's notice, would have application, is the submission of the learned counsel. Mr.Bhat was at pains to point out that both, petitioners and respondents are proceeding on

the premise that if the allegations in the complaint of unfair labour practices are taken into account and presumed to be true, then, each one of them are committed within the territorial jurisdiction of the Industrial Court at Mumbai. This is not a fit case of any extra-territorial operation of the statute. This is a pure and simple case of unfair labour practices which are covered by the State law and which can be taken cognizance by pre-established Court functioning under the State law. In these circumstances and when territorial jurisdiction is not a matter wp1717-11.doc which goes to the root of the case and the Industrial Court's view is a possible view of the matter, then, all the more no interference is necessary in writ jurisdiction and the petition be dismissed. 25} Mr.Bhat has relied upon following decisions in support of the above contentions: (1) 1956 I.L.L.J 557- Lalbhai Tricumlal Mills Ltd and Vin (D.M.) and others; (2) 1979(39) F.L.R 229 - Kuldeep S. Makani and S.V.Kotnis, Presiding Officer, 2nd Labour Court Bombay and another; (3) AIR 1959 Supreme Court 676 - M/s.Lipton Ltd and another Vs. Their Employees; (4) 1962 F.L.R 444 (S.C.)- Indian Cable Co Ltd and Its Workmen; (5) AIR 2004 Supreme Court 2321 - M/s.Kusum Ignots and Alloys Ltd vs. Union of India and another; (6) 2007 AIR SCW 2990 - Bikash Bhushan Ghosh and others Vs. M/s.Novaratis India Ltd and others 26} As far as the subject of transfer is concerned, it is brought to my wp1717-11.doc notice by Ms.Cox that the Division Bench judgment in the case of Glaxo Smith Kline Pharmaceuticals Ltd (supra) was challenged by filing a Special Leave Petition before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court has clarified that although the matter is settled between the parties, issue of law is kept open. Therefore, it is not as if in all cases and for all matters, that the principle laid down in the Division Bench judgment could be applied. Ultimately, everything depends upon the facts and circumstances of each case and it can never be said to be concluded. For all these reasons, it is submitted that the petition be dismissed. 27} With the assistance of the learned counsel appearing for the parties, I have perused the petition and all annexures thereto including the complaint and the impugned order. I have perused the relevant statutory provisions. I have also perused the decisions that have been brought to my notice. 28} As strong reliance is placed on the decision of the Division Bench in the case of Glaxo Smith Kline Pharmaceuticals Ltd (supra), the facts therein need to be noticed. There, the Division Bench was considering wp1717-11.doc the correctness of the view taken by the learned single Judge of this Court in Writ Petition No.760 of 2002. By the order delivered therein on 9th July 2002, the learned Judge upheld the conclusion of the Industrial Court and dismissed the writ petition of Glaxo Smith Kline Pharmaceuticals Ltd. The Industrial Court, Mumbai, by an order dated 24th January 2002 passed in Complaint (ULP) No.921 of 2001 had allowed the application filed by Abhay Raj Jain-respondent No.1 in that petition. The complaint of the employees was against the order of transfer and the Industrial Court during the course of its order, over ruled the objection with regard to lack of territorial jurisdiction raised by the petitioner. The Industrial Court as also the single Judge held that under the MRTU and PULP Act, 1971, the Industrial Court at Mumbai had jurisdiction to entertain and try the complaint on the ground that

the order of transfer dated 16th October 2001 impugned in the said complaint was signed and issued by the company-Glaxo Smith Pharmaceuticals Ltd., at Mumbai though it was served upon respondent No.1 at Delhi and it was to take effect outside the State of Maharashtra. After referring to the allegations in the complaint and the objection of territorial jurisdiction, what has been observed by the Hon'ble Division Bench is, that the letter dated 16th October 2001 was served on wp1717-11.doc respondent No.1 on 24th October 2001 during the sales meeting at Delhi. He refused to accept the same and a copy thereof was sent by registered post on 25th October 2001. This transfer order of the said Abhay Raj Jain was issued as a matter of administrative or business exigency, according to the company. He was given sufficient time to report for work at new head quarters, namely, Imphal (Manipur). The respondent No.1 at the relevant time was working as Medical Representative at Udaipur in the State of Rajasthan. 29} It is, therefore, clear that the Division Bench was considering the grievance of Glaxo Smith Kline Pharmaceuticals Ltd., that when Abhay Raj Jain was posted initially at Udaipur in the State of Rajasthan and at a sales meeting at Delhi he was given the transfer order posting and transferring him from Udaipur to Imphal (Manipur), that the Industrial Court at Mumbai lacked the territorial jurisdiction and that a complaint of unfair labour practices in the matter of transfer at the instance of Abhay Raj Jain, could not have been entertained and decided by the Industrial Court at Mumbai. 30} All findings and conclusions of the Division Bench must, therefore, wp1717-11.doc be seen in this factual background. It was, therefore, clear that the Division Bench was considering a limited controversy. The Division Bench, therefore, referred to rival contentions and framed the point for determination thus: "7. The point which arise for determination in the case in hand is that: Q. Whether the Industrial Court and the Labour Court under the MRTU and PULP Act have jurisdiction to entertain a complaint solely on the ground that an order allegedly having effect of unfair labour practice is issued from a place situated within the territory of the State of Maharashtra even though the effects and/or consequences of such an order are to take place outside the territory of the State of Maharashtra and the person against whom such an order is issued for all purpose is employed in an area situated outside the State of Maharashtra?" 31} It thereafter observed as under, in para 8: "8. While dealing with the said issue, the learned single Judge in the impugned order has stated that wp1717-11.doc though the situs of employment is at Udaipur, the origin of the unfair labour practice sought to be employed by the appellant-company was at Mumbai and, therefore, the Industrial Court at Mumbai has jurisdiction to entertain the complaint. At the same time it is apparent that the finding by the learned single Judge, which is, in fact, reiteration of the finding of the Industrial Court on the point in issue, is very clear to the effect that the situs of employment is at Udaipur. Indeed, it is not in dispute that the respondent No.1 had been employed at Udaipur and his area of employment lies beyond the territory of the State of Maharashtra. Being so, there is no dispute on the aspect of situs of employment to be at Udaipur." 32} It referred to each of the decisions brought to its notice by both sides and finally in paras 28 and 29 held thus: "28. It is thus clear that it is

the situs of the employment which would be 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 wp1717-11.doc the places beyond the territory of the State of Maharashtra. 29. 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 to 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. 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 wp1717-11.doc 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." 33} It is, therefore, apparent that the situs of employment would be relevant factor to decide the accrual of cause of action for any legal proceedings is a finding that the Division Bench reached in the backdrop of the allegations in the complaint of respondent No.1 Abhay Raj Jain and that is how paras 28 and 29 so also the ultimate and final conclusion in para 30 must be read. In my view, the reliance placed by the petitioners on this decision is clearly misplaced. 34} In the instant case, the decision of the Division Bench cannot be of any assistance to the petitioners because what the petitioners are alleging is, that the Industrial Court at Mumbai lacked territorial jurisdiction to entertain and try a complaint of unfair labour wp1717-11.doc practice, which complaint does not only project and raise the issue of transfer. The complaint has been referred to by me in details. The allegations in the complaint have been reproduced by me, with a view to appreciate the rival contentions. If the complaint is perused as a whole, it projects that the service conditions of the petitioners' employees are determined and decided by it at Mumbai. All policy decisions in relation thereto, are taken at Mumbai. Whenever such policy decisions are taken at Mumbai and they are known to all the member employees of the petitioners through the medium of the respondent No.1-Union, which is a recognised Union and the

Undertaking of the petitioners and its registered office is at Mumbai, that the complaint has been filed at Mumbai. Each of the issues in relation to the service conditions have been raised by the respondent No.1-Union at Mumbai. There is a reference to the Charter of Demands and the prior settlement, each one of which is a event taking place at Mumbai. It is alleging breach of the terms of the settlement and the essential foundation of collective bargaining, that the unfair labour practice on the part of the petitioners have been extensively set out. The allegations in the complaint refer to Items 9 and 10 of the MRTU and PULP Act. These Items 9 and 10 in Schedule IV read thus: wp1717-11.doc “9. Failure to implement award, settlement or agreement. 10. To indulge in act of force or violence.” 35} A bare perusal of the same would indicate that they refer to failure to implement award, settlement or agreement and to indulge in any act of force or violence. If what the Union alleges, is failure to implement an award, settlement or agreement in relation to the service conditions which have been determined and decided after negotiations and discussions with the sole collective bargaining agent, viz., recognised Union at Mumbai and merely because the complaint alleges force or violence stated to have occurred at a conference at Bangalore, and which act is allegedly committed so as to cause a breach of the settlement agreement with the Union, then, I do not see how a complaint of unfair labour practice under the abovementioned items of MRTU and PULP Act, cannot be filed by the recognised Union in Mumbai. The service conditions and policies are framed at Mumbai. The recognised Union is based at Mumbai. Both are amenable to a law made by the State legislature as is clear from the schedules thereto. wp1717-11.doc The Members of the recognised Union may be working out of Maharashtra. The Union proclaims to be a single all India Union. However, that alone is not decisive in the present case because what is also alleged in para 3.1 of the complaint is that the Union is a registered trade union functioning in the establishment of the company since 1966. It is also a recognised Union under the State Act. It is submitting Charter of Demand regarding the service conditions of the employees at the Head Office of the petitioner No.1 at Mumbai. The settlements and decisions on these charters are taken at Mumbai. The appropriate Government for the company is the State of Maharashtra. In my view, this is not a case where any extra territorial operation of the statute is an issue involved. This is not a case where the Industrial Court at Mumbai is taking cognizance of a cause of action which has occurred beyond its territorial limits and thereby extending its territorial operation. It is clearly a case where unfair labour practice is stated to have been committed within the territorial limits of the Industrial Court, inasmuch as Charter of Demands are concerned, negotiations in pursuance thereof are under way and mid-stream, the acts of force and/or violence have been committed which caused, according to the Union, complete failure to abide by the settlement or agreement in relation to the service wp1717-11.doc conditions. Therefore, it is not as if some isolated incident of a conference at Bangalore is the basis of the allegations in the complaint. The complaint perused in its entirety projects a grievance of unfair labour practice having being committed within the territorial limits of the said Court. 36} Equally, there is an allegation of unfair labour practice which

has been committed by refusing to bargain collectively, in good faith with the Recognised Union which, once again is the concept also under the State law, namely, MRTU and PULP Act, 1971. If the refusal to bargain collectively, in good faith is an alleged unfair labour practice on the part of the employer and which act has allegedly taken place at Mumbai, where both the employer and the Union are located, then, I do not see how the Court at Mumbai lacked territorial jurisdiction. This is an Item 5, covered by Schedule II. The Schedule II enlists unfair labour practices on the part of employers, Schedule III sets out the unfair labour practices on the part of the Trade Unions and Schedule IV set out General Unfair Labour Practices on the part of the employers. 37} Section 28 of the MRTU and PULP Act states that where any person has engaged in or is engaging in any unfair labour practice, then, any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may be, under section 7 of the Act. 38} If reference is made to section 5, that would at once make it clear that it refers to the duties of the Industrial Court. The Industrial Court which is referred to as Authority under the Act vide Chapter II, is the Industrial Court constituted and set up by the State Government. The Labour Court is also one of the authority and its duties are also set out. Equally, Investigating Officer's and their duties are set out. The Act very clearly in its long title states that it is to provide for recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights, and obligations; to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid, that the Act has been enacted. In the preamble, there is a reference to the report of the Committee constituted on unfair labour practices. Then, in the definitions and prior thereto, in section 2 it states that the Act extends to the whole of the State of Maharashtra and in the definitions while defining the term "concern", "Industry", "Undertaking" and thereafter clarifying the definitions itself in section 3(18), that the Act becomes operational. It has very clearly set out chapter-wise, the aspects that have been covered, namely, Recognition of Unions and Obligations and Rights of Recognised Unions, Other Unions and Certain Employees so also Illegal Strikes and Lock-Outs and subsequently providing for a machinery to deal with unfair labour practices. The scheme or the underlying idea and object being that a comprehensive statute to deal with not only the obligations and duties of the employers and of the Unions is made so as to take care of collective bargaining and industrial peace. Such a statute and its mandate cannot be defeated by taking a hyper technical view and on the issue of territorial jurisdiction of the Courts and Authorities set up and constituted thereunder. 39} In my view, the Division Bench judgment and the single Judge's judgment fol-

lowing the same, must be read in the backdrop and restricted to the facts and circumstances that were brought to the notice of the Division Bench. Beyond that and particularly the matters covered thereby, nothing should be read into the same as that would mean that the Act which is operational in the State and deals with all aspects noted by me hereinabove, cannot be enforced by raising pleas of such nature. The Hon'ble Supreme Court has time and again clarified that the aspect of jurisdiction covers a Court's pecuniary limits, territorial limits and the power to deal with the subject matter. The matters and subjects dealing with the cause of action as set out in the application/plaint/complaint being beyond the purview of the Court's jurisdiction, power and authority are viewed with utmost seriousness. The matters in relation to pecuniary limits and territorial limits are capable of being waived. They are not matters where the initial lack of authority or jurisdiction is projected. They are matters where proceedings are covered by the enactment and the subject matter is within the purview of the Court's jurisdiction, but its limits being confined, that it will not have authority to deal with them. Such matters must be wp1717-11.doc seen in the backdrop of the failure of justice or causing serious prejudice. In this behalf, reference can usefully be made to a decision of the Hon'ble Supreme Court in the case of Church of South India Trust Association Vs. Telugu Church Council reported in AIR 1996 Supreme Court 987. In para 27, this is what the Hon'ble Supreme Court holds: "... Juridically speaking, the concept of jurisdiction of a Court comprehends (i) pecuniary jurisdiction, (ii) territorial jurisdiction, and (iii) jurisdiction of the subject-matter. [See: Hirday Nath Roy v. Ramachandra Barma Sarma ILR 48 Cal 138 at P.146: (AIR 1921 Cal 34 at pp.35-36) (FB); Official Trustee, West Bengal v. Sachindra Nath Chatterjee, (supra) (1969(3) SCR 92) at p.100; (AIR 1969 SC 823). When section 11 of the present Code talks of the competence of the Court, does it mean the competence in all the three aspects of the jurisdiction of the Court including the territorial jurisdiction of the Court? In order to answer this question, it is necessary to take note of some other provisions of the present Code which gives an indication that the present Code makes a distinction between the territorial jurisdiction and other aspects of the jurisdiction of the Court. In section 21 of the present Code, it has been provided that "no objection as to the place of suing shall be allowed by any appellate wp1717-11.doc or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice." Having regard to the said provision, it has been held that though the defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties, the policy of the Legislature has been to treat objections to territorial jurisdiction as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits. [See: Kiran Singh v. Chaman Paswan (supra) (1955 (1) SCR 117) at pp.121-22]: AIR 1954 SC 340). In that case, this Court has also taken note of section 11 of the Suits Valuation Act, 1887, to hold that even objection as to the pecuniary

jurisdiction is technical in nature and not open to consideration by an appellate Court, unless there has been a prejudice on the merits. To the same effect is the decision in *Hiralal Patni v. Kali Nath* (1962(2) SCR 747: AIR 1962 SC 199) (supra) wherein it has been held that “the objection to its territorial jurisdiction is one which does not go to the competence of the Court and can, therefore, be waived.” [at p.751 (of SCR) : (at p.201 of wp1717-11.doc AIR). . . .” 40} As pointed out by the Division Bench in the matters of transfer where no part of the cause of action has arisen within the State of Maharashtra, that the complaint could not have been instituted therein. It is there, that the element of harassment and prejudice to the parties gets prominence. 41} In the instant case all that is being stated on the aspect of prejudice is that the petitioner No.1 is all India company. It has units through out the country. The officers and employees are posted by it through out the country. If some of them are concerned with the subject matter of the complaint and are required to depose in the matter as witnesses, they would leave their work and come all the way to Mumbai, thereby disrupting the functioning of the petitioner-Company. In my view, Courts are not powerless when such grievances are raised. There are adequate provisions in all procedural and substantive laws safeguarding the interests of the parties like the petitioners and prevent any disruption in their working and functioning. The procedural provisions in relation to examination of the witnesses can always be brought to the Court’s notice. The witnesses need not come all the way to Mumbai in all matters and at all times. The witnesses can have their deposition recorded wherever they are posted and the records then be transmitted to the Courts at Mumbai. It is not as if any such request made by the petitioners will be rejected by the Industrial Court. Therefore, the apprehension that there is grave prejudice because employees and officers would leave their work and depose for the Union in the complaint filed at Mumbai beyond anything more, cannot be a factor in holding that the Industrial Court lacked the territorial jurisdiction. 42} Thus, finding that the subject matter of the complaint was squarely within the competence of the Industrial Court and also finding that the cause of action has arisen within its territorial limits, that the conclusion of the Industrial Court that it had jurisdiction, cannot be said to be erroneous or vitiated by an error apparent on the face of record. Ultimately, it is a finding of fact and on which petitioners’ hold another view. We are in writ jurisdiction. There is no perversity committed by the Industrial Court while rendering such finding. For all these reasons, I do not find merit in this writ petition and it is rejected. Rule is discharged but without any order as to costs. wp1717-11.doc 43} It is clarified that as and when the application for interim relief made by the 1st respondent is taken up and the request is to stay the orders of transfer of individual employees and if such of the employees in relation to whom the interim reliefs are sought, are posted out of Maharashtra even initially and have been transferred to offices/regions outside the State of Maharashtra, then, insofar as their cases are concerned, it would be open for the petitioners to raise a plea of lack of territorial jurisdiction of the Industrial Court and if such a plea is raised, then, in relation to such employees, after hearing the parties, the Industrial Court can make appropri-

ate order in accordance with law. Those pleas and in relation to transfer are not dealt with nor concluded by either the impugned order or the judgment rendered in the present writ petition. 44} At this stage, Mr.Naik appearing on behalf of the petitioners prays for stay of this order for a period of six weeks. In my view, the writ petition challenging an order and that too interlocutory in nature on the point of territorial jurisdiction of the Court below having being dismissed, an order of dismissal of the petition cannot be stayed. All that could be wp1717-11.doc stayed is further proceedings in the complaint before the Industrial Court. However, the request to stay further proceedings in the said complaint before the Industrial Court is vehemently opposed by Ms.Cox and Mr.Bhat. They state that interim relief application is pending and even the complaint is pending and the employees in question are without any relief from April 2011. In such circumstances, the Industrial Court should be allowed to proceed with the complaint or atleast the application for interim relief. 45} After hearing both sides on this issue, in my view, interest of justice would be served if it is directed that for a period of four weeks from today, the Industrial Court should not proceed with the said complaint or any application therein. (S.C.DHARMADHIKARI, J)