

(2014) 10 BOM CK 0034

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 6588 of 2013

VIP Industries
Shramik Sangh

APPELLANT

Vs

VIP Industries Limited

RESPONDENT

Date of Decision: Oct. 31, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 10, 10(1), 12(5), 2(e), 33
- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 28, 59

Citation: (2015) 5 BomCR 217

Hon'ble Judges: A.S. Chandurkar, J

Bench: Single Bench

Advocate: B.M. Khan, Advocate for the Appellant; H.V. Thakur, Advocate and A.R. Taywade, AGP, Advocate for the Respondent

Judgement

A.S. Chandurkar, J.

This Writ Petition filed under Articles 226 and 227 of the Constitution of India challenges the order dated 27-09-2013 passed below Exhibit-10 thereby holding that the statement of claim filed by the petitioner Union in relation to the transfer of 140 employees was beyond the scope of the industrial dispute that had been referred for adjudication. By order dated 23-12-2013, notice for final disposal was issued and accordingly the learned Counsel for the parties have been heard at length.

2. The petitioner is a Union of employees registered under the Trade Unions Act, 1926 and is also recognized under the provisions of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 [for short, "the Act of 1971"]. The respondent no. 1 is a Public Limited Company wherein the employees represented by the petitioner Union are employed. On 28-02-2007 there was a

settlement between the Union and the Management which settlement was to remain in force till 31-12-2010. However, prior to expiry of aforesaid period, a fresh charter of demands was submitted after giving notice of termination of settlement. On 03-03-2011 a charter of demands was submitted to the Conciliation Officer. In view thereof, certain preliminary meetings were held between the members of the Union and the Management. As no settlement in the conciliation proceedings was possible, a failure report was submitted by the Conciliation Officer on 23-01-2012. Thereafter, on 13-02-2012 an industrial dispute was referred for adjudication to the Industrial Court. In said Reference Proceedings, a statement of claim was filed by the petitioner Union. The Management filed an application in said proceedings for striking out the statement of claim on the ground that the said claim was beyond the scope of the reference. The Industrial Court by order dated 27-09-2013 allowed the application moved by the Management and struck off the claim as submitted by the Union. It is said order which has been challenged in the present Writ Petition.

FACTUAL BACKGROUND

3. It would first be necessary to refer to certain facts that have bearing on the issues raised in the present Writ Petition. As noted above on 03-03-2011 the Union had submitted a fresh charter of demands to the Conciliation Officer. Accordingly, on 18-03-2011 a notice was issued by the Assistant Labour Commissioner-cum-Conciliation Officer calling upon the representatives of the Union as well as representatives of the Management to remain present in his office on 24-03-2011. The parties appeared before the Conciliation Officer and certain preliminary talks took place between said parties. In the meanwhile, on 14-07-2011, the Management transferred 140 employees out of Nagpur to various other places. Hence, on 16-07-2011 the Union filed an application before the Conciliation Officer stating therein that by transferring 140 employees, the Management had violated provisions of Section 33(1) of the Industrial Disputes Act, 1947 [for short, "the Act of 1947"]. Thereafter, on 20-07-2011 the Conciliation Officer issued a notice to the parties in which it was stated that the charter of demands as submitted by the Union on 03-03-2011 had been admitted by him in conciliation on 19-07-2011. It was further directed that conciliation proceedings would be held on 26-07-2011. On 21-07-2011 the Conciliation Officer stayed the order by which 140 employees had been transferred out of Nagpur. This order dated 21-07-2011 passed by the Conciliation Officer was challenged by the Management by filing Writ Petition No. 3535 of 2011. Said Writ Petition came to be dismissed by learned Single Judge on 09-08-2011. Being aggrieved thereby, the Management filed Letters Patent Appeal No. 355 of 2011. On 03-04-2012 aforesaid Letters Patent Appeal was allowed and the orders passed by the Conciliation Officer as well as by the learned Single Judge were set aside.

4. During aforesaid period, the Union had filed Complaint No. 245 of 2011 before the Industrial Court under Section 28 of the Act of 1971 challenging the transfer of

140 employees. However, aforesaid complaint came to be withdrawn on 23-08-2011. Subsequently, some employees filed separate complaints under Section 28 of the Act of 1971 challenging their transfer out of Nagpur. On 23-01-2012, the Conciliation Officer submitted a failure report to the Assistant Labour Commissioner, Nagpur. Thereafter, on 13-02-2012 an industrial dispute arising between the parties was referred to the Industrial Court for its adjudication in terms of Section 10(1) of the Act of 1947. The dispute as referred was mentioned in the schedule appended thereto. In aforesaid Reference Proceedings, the Union filed a statement of claim (Exhibit-8). As per aforesaid statement of claim, it sought to include the issue as regards transfer of 140 employees out of Nagpur. The Management on 13-06-2012 moved an application (Exhibit-10) for striking off the statement of claim from the Reference Proceedings on the ground that said statement of claim was beyond the scope of the reference. By the impugned order dated 27-09-2013 the application moved by the Management came to be allowed by the Industrial Court on the ground that the transfer order dated 14-07-2011 had been issued prior to commencement of the conciliation proceedings and hence said order of transfer constituted separate cause of action.

SUBMISSIONS OF PARTIES

5. Shri B.M. Khan, the learned Counsel appearing for the petitioner Union submitted that the Industrial Court committed an error in striking off the statement of claim submitted by the Union. It was submitted that the conciliation proceedings had commenced on 24-03-2011 itself when the Union was directed to file its reply to the charter of demands. As the order of transfer issued on 14-07-2011 was passed after commencement of the conciliation proceedings, the same was not permissible under Section 33 of the Act of 1947. As the order of transfer was issued during pendency of the conciliation proceedings, it was open for the Union to have agitated the same in the Reference Proceedings itself and hence the same had been done by moving the statement of claim. It was urged that the terms of reference were required to be liberally construed and incidental issues could be gone into therein. It was further submitted that though the jurisdiction of the Industrial Court was confined to the reference as made, it had sufficient power to go into the exact dispute between the parties as well as incidental issues as arising. In support of said submission, the learned Counsel relied upon the Judgments of the Supreme Court in [Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Others](#), and judgment of the Division Bench in [Ashok Jadhav & Ors. Vs. The Bombay Dock Labour Board & Ors.](#), reported in 1997 I CLR 919. To substantiate his submission that the order of transfer had been issued after commencement of the conciliation proceedings, the learned Counsel for the petitioner referred to the minutes of the proceedings held by the Conciliation Officer. Referring to the decision of the Supreme Court in [M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad](#), it was submitted that as the parties had been called for preliminary discussions, the conciliation proceedings had commenced from said stage itself. Reliance in this regard was also placed on the

judgment of the Karnataka High Court in [The Managment of S.K.F. Bearings India Ltd. Vs. Mr. S.M. Ravi Kumar and Others,](#) . It was then submitted that the finding recorded by the Industrial Court as regards the bar of Section 59 of the Act of 1971 being attracted with regard to the complaint filed by the Union was legally correct. It was submitted that as aforesaid complaint filed under Section 28 of the Act of 1971 had been withdrawn, provisions of Section 59 of the Act of 1971 were not attracted. In this regard, reliance was placed on the judgment of the Division Bench in [Consolidated Pneumatic Tool Company \(India\) Ltd. Vs. R.A. Gadekar and Others,](#) , judgment of the Full Bench in [C.S. Dixit Vs. Bajaj Tempo Ltd.,](#) , judgment of learned Single Judge in [M/s. S.S. Miranda Ltd. Vs. Shri Rangbahadur Singh and others,](#) and in [Hafizullah Khan Vs. Maharashtra State Road Transport Corporation,](#) . It was further submitted that it was permissible for the Union to prosecute the statement of claim in that regard as there was no adjudication of the complaint on merits. In this regard, reliance was placed on the decision of the Supreme Court in [Sarva Shramik Sangh Vs. Indian Oil Corporation Ltd. and Others,](#) . It was then submitted that under provisions of Section 33 of the Act of 1947 appropriate relief could be granted by the Conciliation Officer. In this regard, the learned Counsel relied upon the decision of the Supreme Court in [The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others,](#) , [Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another,](#) and in [Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others,](#) , [Gujarat Agricultural University Vs. All Gujarat Kamdar Karmachari Union,](#) and in [The Management of Bharathan Publication \(P\) Limited Vs. The Labour Officer-III and Bharathiyar Employees" Mazdoor Sangh,](#) . As regards the power to strike out pleadings, the learned Counsel relied upon the judgment of the Division Bench in [Ashapura Minechem Ltd. Vs. Pacific Basin IHX \(UK\) Ltd.,](#) to submit that pleadings could not be struck out as a matter of course. It is, therefore, urged that the impugned order passed by the Industrial Court deserves to be set aside, though the same was of an interlocutory nature as it caused prejudice to the legal rights of the petitioner-Union.

6. Per contra, Shri H.V. Thakur, the learned Counsel appearing for the respondent no. 1-Management supported the impugned order. He submitted that the statement of claim as made by the Union was beyond the scope of the dispute referred to the Industrial Court. He submitted that the jurisdiction of the Industrial Court was limited to the reference made to it and it could not go into any issues beyond such reference. He urged that it would not be open for the Industrial Court to go into an issue not included in the reference. If at all any separate issue was sought to be raised, an industrial dispute in that regard was required to be first raised. In support of said submission the learned Counsel placed reliance on the decisions of the Supreme Court in [State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma,](#) , [Mukand Ltd. Vs. Mukand Staff and Officers" Association,](#) , [National Engineering Industries Ltd. Vs. State of Rajasthan and Others,](#) , [Rai Sahib Ramdayal Ghasiram Oil Mills Vs. The Labour Appellate Tribunal and Another,](#) , [The Calcutta](#)

[Electric Supply Corporation Ltd. Vs. The Calcutta Electric Supply Workers" Union and Others,](#) , [Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another,](#) , Gujarat Engineering Company Vs. Ahmedabad Misc. Industrial Workers" Union, reported in 1961 II LLJ 660, Chairman/Director, National Bureau of Plants Genetics Resources, Indian Council of Agricultural Research, New Delhi and Anr., [The Chairman/Director and National Bureau of Plants Genetics Resources Vs. Shobha M. Dhore and Others,](#) , [Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another,](#) , [State of Bombay Vs. K.P. Krishnan and Others,](#) , Workmen Vs. British India Corporn. Ltd., reported in (1965) II LLJ 433, [U.P. Electric Supply Co., Ltd. Vs. The Workmen of S.N. Choudhary, Contractors and Another,](#) , [The Jaipur Udyog Ltd. Vs. The Cement Work Karmachari Sangh, Sahu Nagar,](#) , [Firestone Tyre and Rubber Company of India \(P\) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees" Union,](#) and [The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others,](#) . As regards the aspect of commencement of conciliation proceedings it was submitted that if the Conciliator for satisfying himself called upon parties for preliminary discussions, the same would not amount to commencement of the conciliation proceedings. He submitted that it was only after issuance of notice as contemplated by Rule 11 of the Industrial Disputes (Bombay) Rules, 1957 [for short, "the Rules"] that it could be said that the conciliation proceedings had commenced. According to the learned Counsel such notice under Rule 11 of the Rules had been issued on 20-07-2011. In this regard, the learned Counsel relied upon the judgment of the Division Bench in [East Asiatic and Allied Companies, Bombay Vs. Shelke \(B.L.\),](#) , decisions of learned Single Judge in [Suresh Vithoo Nare Vs. The Dharamsi Morarji Chemicals Company Limited and Others,](#) and [Gopinath Daulat Dalvi Vs. State of Maharashtra and Others,](#) . He, therefore, submitted that as the order of transfer had been issued on 14-07-2011 which was before commencement of the conciliation proceedings, the same could not be made the subject matter of the reference before the Industrial Court. Without prejudice to aforesaid submission, it was urged that transfer being an incident of service the same did not result in altering any condition of service. In this regard, the learned Counsel relied upon the decision of the Supreme Court in [Prasar Bharti and Others Vs. Amarjeet Singh and Others,](#) . As regards the scope of Section 33 of the Act of 1947 was concerned, he relied upon the decision of the Supreme Court in [Prasar Bharati and others \(supra\).](#) He then submitted that the impugned order dated 27-09-2013 striking out the statement of claim during pendency of the reference proceedings was purely an interlocutory order. He, therefore, submitted that no interference in writ jurisdiction was called for in the present proceedings. In this regard, he relied upon the decision of the Supreme Court in [Dena Bank Vs. D.V. Kundadia,](#) . He however submitted that the finding recorded by the Industrial Court as regards bar of Section 59 of the Act of 1971 not being attracted was contrary to law. As regards withdrawal of the complaint filed by the Union under Section 28 of the Act of 1971 challenging the order of transfer, it was submitted that as no liberty was granted by the Industrial Court to file fresh proceedings though such liberty

was sought, it was not permissible to raise said issue in the present proceedings. He submitted that provisions of the Code of Civil Procedure were applicable to the Industrial Tribunal and hence as the complaint was withdrawn without grant of any liberty, no fresh proceedings on the same cause of action could have been filed. In this regard, he relied upon the decision of the Supreme Court in [U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey](#), [K.K. Modi Vs. K.N. Modi and Others](#), and [Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others](#). He, therefore, submitted that there was no merit whatsoever in the present Writ Petition and the same was liable to be dismissed.

ISSUES FOR CONSIDERATION

7. I have carefully considered the aforesaid submission made by the learned Counsel. I have also gone through the relevant record and documents filed along with the Writ Petition. Accordingly, the following issues arise for determination.

"(a) What is the scope of a reference made under Section 10 of the Act of 1947 and the extent of powers of the Industrial Court while adjudicating such reference?;

(b) Whether the order of transfer dated 14-07-2011 has been issued after commencement of the conciliation proceedings?;

(c) Whether the bar under Section 59 of the Act of 1971 would apply to the complaint filed by the Union under Section 28 of the Act of 1971 in the present case?"

8. Under Section 10 of the Act of 1947 when a reference is made to the concerned Court or Tribunal, such Court or Tribunal assumes its jurisdiction from the order of reference. It cannot adjudicate matters beyond the purview of the industrial dispute referred to it. It cannot go into the question of validity of the reference. Similarly, in absence of any reference, the Court or Tribunal does not get any jurisdiction under Section 10 of the Act of 1947 to adjudicate any dispute. While construing the terms of reference, the order of reference itself has to be taken into consideration and if the Court or Tribunal goes into an issue which is not referred to it, it would be a case of such Court or Tribunal exceeding its jurisdiction. Similarly, no relief can be granted in respect of a matter that has not been referred to it for adjudication. The law in this regard is fairly well settled by various decisions of the Supreme Court of India. Reference in this regard can be made to the decisions in State Bank of Bikaner & Jaipur (supra), Mukand Ltd. (supra), National Engineering Industries Ltd. (supra), Rai Sahib Ramdayal Ghasiram Oil Mills and Partnership Firm (supra), Burmah-Shell Oil Storage and Distributing Company of India, Ltd., and others (supra), The Calcutta Electric Supply Corporation Ltd., (supra), Pottery Mazdoor Panchayat (supra), Gujarat Engineering Company (supra), Chairman/Director, National Bureau of Plants Genetics Resources, Indian Council of Agricultural Research, New Delhi and Anr., Akola (supra), Management of Bangalore Woollen, Cotton & Silk Mills Co. Ltd. (supra), State of Bombay (now Maharashtra) and another (supra), Workmen (supra), U.P. Electricity Supply Co. Ltd. (supra), The Jaipur Udyog Ltd. (supra), M/s. Firestone

Tyre and Rubber Co. of India (P) Ltd. (supra), and Sindhu Resettlement Corporation Ltd. (supra) relied upon by the learned Counsel for the respondent no. 1.

9. It would therefore be necessary to take into consideration the actual industrial dispute referred by the appropriate Government to the Industrial Court for adjudication in terms of Section 10 of the Act of 1947. It is not in dispute that on 03-03-2011, a charter of demands was submitted by the petitioner Union to the Conciliation Officer. After the matter was referred to the Conciliation Officer, deliberations took place between the parties and ultimately on 23-01-2012 the Conciliation Officer submitted a failure report. Pursuant thereto, on 13-02-2012 the Assistant Labour Commissioner, Nagpur made a reference to the Industrial Court under provisions of Section 10 of the Act of 1947 being so empowered in that regard by provisions of Section 12(5) of the Act of 1947. As per the Schedule appended to the order of reference dated 13-02-2012, the industrial dispute that has been referred can be described as under:-

[1] Whether, it is necessary to revise the wages, allowances and other service benefits in respect of employees working at M/s. V.I.P. Industries Limited, Hingna Road, Nagpur in terms of the demands made by the V.I.P. Industries Shramik Sangh on 24-10-2010?

[2] If yes, the nature of relief to which the employees would be entitled in respect of wages, allowances and service conditions as well as the extent thereof?

10. The aforesaid is the industrial dispute that was referred by the Appropriate Government to the Industrial Court for adjudication under Section 10 of the Act of 1947. In this background, the other issues relating to the statement of claim filed by the petitioner Union and opposition thereto by the respondent no. 1-Management on the ground that the same was in respect of an industrial dispute not referred for adjudication under Section 10 of the Act of 1947 will have to be considered.

11. The second issue that arises is whether the order transferring 140 employees out of Nagpur on 14-07-2011 had been issued by the respondent no. 1 after commencement of the consolidation proceedings. A perusal of the minutes of the deliberations that took place before the Conciliation Officer after the charter of demands was submitted to the Conciliation Officer have been placed on record. On 24-03-2011, the respective parties were directed to remain present before the Conciliation Officer. On said date, certain preliminary discussions with regard to the quantity of production to be undertaken in the respondent no. 1 Unit was adverted to and the respondent no. 1 was called upon to submit its say to the demands raised by the petitioner Union. Thereafter, aforesaid preliminary deliberations continued between the petitioner and respondent no. 1 before the Conciliation Officer. While aforesaid deliberations were in progress, on 14-07-2011 about 140 employees were transferred out of Nagpur. On 19-07-2011 the Conciliation Officer admitted 39 demands in the Conciliation Proceedings. Thereafter, on 20-07-2011 a notice was

issued by the Conciliation Officer informing the parties that Conciliation Proceedings would be held on 26-07-2011. Thereafter, conciliation proceedings continued and ultimately on 17-01-2012 the Conciliation Officer recorded that no settlement was possible and hence the conciliation proceedings were being closed. On that basis, a failure report was submitted to the appropriate Government.

12. Under Rule 11 of the Rules where the Conciliation Officer considers it necessary to intervene in any dispute not relating to a public utility service, he has to give formal intimation in writing to the parties concerned declaring his intention to commence the conciliation proceedings with effect from a particular date to be specified. In the present case such notice was issued on 20-07-2011 by the Conciliation Officer in which it was stated that 39 demands were admitted for conciliation on 19-07-2011 and the parties were directed to remain present on 26-07-2011. While considering the date of commencement of conciliation proceedings it would also be necessary to refer to the failure report dated 23-01-2012 submitted by the Conciliation Officer. In said failure report after referring to the preliminary discussions, it has been specifically recorded that conciliation proceedings took place between 26-07-2011 and 17-01-2012. In *East Asiatic (supra)* the Division Bench observed that steps taken by a Conciliation Officer for satisfying himself as to whether an industrial dispute that has been brought to his notice should be admitted in conciliation or not cannot be considered as part of the conciliation proceedings and preliminary enquiries could be conducted by the Conciliation Officer. In *Suresh Vithoo Nare (supra)* learned Single Judge while considering provisions of Rule 11 of the Rules has observed that the Conciliation Officer can declare his intention of commencing conciliation proceedings with effect from such date as may be specified. It was observed that if the Conciliation Officer considers it necessary to intervene, he has to give formal intimation in writing to the parties. It was further observed that mere issue of notice would not amount to entering into conciliation proceedings. Similar view has been taken by learned Single Judge in *Gopinath (supra)* that it is open for the Conciliation Officer to have preparatory meetings before taking the matter in conciliation.

13. It is, therefore, clear that when the Conciliation Officer receives any information about an existing or apprehended industrial dispute not relating to a public utility service, it is first necessary for him to consider whether it is necessary to intervene in the industrial dispute. There has to be a *prima facie* satisfaction regarding an existing or apprehended industrial dispute. It is only thereafter that the Conciliation Officer enters into conciliation with a view to attempt to negotiate the settlement between the parties. It is also necessary to note that the expression "conciliation proceeding" has been defined by Section 2(e) of the Act of 1947. Conciliation proceeding means any proceeding held by a Conciliation Officer or Board under the Act of 1947. In said context, if the provisions of Rule 11 of the Rules are taken into account then formal intimation in writing as contemplated therein with regard to declaring intention of the Conciliation Officer to commence conciliation proceedings

from a specific date is necessary. In this backdrop, if the notice dated 20-07-2011 is taken into account it specifically records that the proceedings had been admitted for conciliation on 19-07-2011 and the parties were called upon to remain present on 26-07-2011. It can therefore be said that in the present case the conciliation proceedings commenced from 26-07-2011 and continued till 17-01-2012 after which a failure report was submitted. The definition of the expression "conciliation proceeding" under Section 2(e) of the Act of 1947, the provisions of Rule 11 of the Rules, the notice dated 20-07-2011 issued by the Conciliation Officer and the failure report dated 29-01-2012 support aforesaid conclusion that the conciliation proceedings commenced from 26-07-2011. Prior to said date preparatory meetings had been held by the Conciliation Officer during which period 140 employees were transferred out of Nagpur.

14. Insofar as the decision of the Supreme Court in Lokmat Newspapers Pvt. Ltd. (supra) relied on by the learned Counsel for the petitioner is concerned, in para 20 thereof it has been observed that from the report of the Conciliation Officer it was found that the Management and the Union had been invited for preliminary discussions on 14-04-1982. In para 21 it has been observed that the matter was taken up for investigation from 14-04-1982 and thus conciliation proceedings commenced from said date. This indicates that the parties had been invited pursuant to the directions of the Conciliation Officer. In the present case such directions to both parties to remain present had been issued on 20-07-2011 and in said notice it was stated that the conciliation proceedings would be held on 26-07-2011. Though the learned Counsel for the petitioner emphasized on the use of the words "preliminary discussions" in para 20 of aforesaid judgment, a complete reading of paras 20 and 21 of above referred judgment indicate that said preliminary discussions were after invitation by the Conciliation Officer to both the parties. As noted above, in the present case such discussions were held after notice dated 20-07-2011 was issued. Hence, the observations therein cannot be made applicable to the facts of the present case especially when notice dated 20-07-2011 was issued by the Conciliation Officer declaring his intention to commence Conciliation Proceedings from 26-07-2011.

Hence, from the material on record, it is clear that the conciliation proceedings commenced on 26-07-2011 after the order of transfer dated 14-07-2011 was issued.

15. Insofar as the bar on account of provisions of Section 59 of the Act of 1971 is concerned, the learned Member of the Industrial Court has rightly held that insofar as Complaint (ULPA) No. 245 of 2011 is concerned, the same was withdrawn on 23-08-2011 and hence in view of law laid down by the Division Bench in Consolidated Pneumatic Tool Company (supra) as affirmed by the Full Bench in C.S. Dixit (supra) said bar was not attracted. This finding does not deserve to be interfered with. Moreover, the respondent no. 1 had not objected to the withdrawal of the complaint but had only objected to the grant of liberty to file a fresh

complaint. Hence, the bar under Section 59 of the Act of 1971 would not apply insofar as Complaint (ULPA) No. 245 of 2011 is concerned. Similarly, the finding recorded by the learned Member of the Industrial Court as regards the bar under Section 59 of the Act of 1971 in relation to Complaint Nos. 315 of 2011, 316 of 2011, 283 of 2011 and 284 of 2011 on account of their pendency is also correct.

Insofar as the decisions relied upon by the learned Counsel for respondent no. 1 in Dena Bank (supra), K.K. Modi (supra) and Sarguja Transport (supra) are concerned, as it has been found that the issue regarding transfer of 140 employees was not the subject matter of the reference made, it is not necessary to consider the effect of withdrawal of Complaint (ULPA) No. 245 of 2011 without any liberty being granted to file a fresh complaint.

16. Insofar as the submission of the learned Counsel for the petitioner that the issue of transfer as mentioned at serial no. 32 in the fresh charter of demands dated 24-10-2010 is concerned, the same relates to transfer of an employee from one department to another. The aforesaid charter of demands pertains to the employees at the unit of the respondent no. 1 at Nagpur and it cannot be said that the same intended to cover transfer of any employee to any other place. In para 13 of the impugned order, the learned Member of the Industrial Court has rightly held that Demand No. 32 in the charter of demands dated 24-10-2010 would not apply to any transfer out of Nagpur. The finding in that regard does not deserve to be interfered with.

17. Thus, considering the aforesaid findings I am of the view that no interference is called for with the impugned order. The finding that the transfer of 140 employees was made prior to commencement of the conciliation proceedings and hence the same was not the subject matter of the industrial dispute referred to for adjudication is found to be legally correct. The scope of aforesaid reference has rightly not been permitted to be expanded so as to consider an industrial dispute that was not referred for adjudication under Section 10 of the Act of 1947. In absence of any jurisdictional error no case has therefore been made out to exercise writ jurisdiction. The Writ Petition, therefore, fails and is dismissed with no order as to costs.

18. It is clarified that the observations made herein are restricted to consideration of the legality of the impugned order passed below Exhibit-10 and the same will not have the effect of deciding any other issues or affecting the decision on any matter relating to the validity of transfer of 140 employees.