

Chaitanya



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

APPEAL NO. 585 OF 2009
IN
WRIT PETITION NO. 2007 OF 2009

CHAITANYA
ASHOK
JADHAV

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Shri. Manish Ashok Badkas,
“ANUPAM” 74,
Sethi Nagar, UJJAIN (MP).

Appellant.
(Original
... Petitioner)

Versus

1. M/s. Novartis India Ltd.,
Biochemic Sector, Sandoz House,
Dr. Annie Besant Road, Worli,
Mumbai-400 018.

2. The Managing Director,
M/s. Novartis India Ltd.,
Biochemic Sector, Sandoz House,
Dr. Annie Besant Road, Worli,
Mumbai-400 018.

Respondents
(Original
... Respondents)

WITH
WRIT PETITION NO. 433 OF 2015

Federation of Medical and Sales
Representatives Association (FMRAI) a
Registered Trade Union, having its
Office at 48, Chanchal Smruti, Dr.
J.D.Ambedkar Road, Wadala,
Mumbai -400 031.

... Petitioner

Versus

1. Wockhardt Limited

Wockhardt Towers, C-3, G-Block,
Bandra-Kurla Complex,
Mumbai-400 051.

2. Mr. Devendra Mehta
National Sales Manager
Wockhardt Limited
Wockhardt Towers, C-3,
G-Block, Bandra-Kurla Complex,
Mumbai-400 051.
3. Mr. K.A. Narayanan
Sr. Vice-President (Legal)
Wockhardt Towers, C-3, G-Block,
Bandra-Kurla Complex, Mumbai-
400 051.
4. Ms. Farhat A. Saxena
Deputy General Manager
Wockhardt Towers, C-3, G-Block,
Bandra-Kurla Complex, Mumbai-
400 051.
5. Mr. Deepak Naik
Senior Vice-President (Marketing)
Wockhardt Towers, C-3, G-Block,
Bandra-Kurla Complex,
Mumbai-400 051.
6. Merind Limited
(A Division of Wockhardt
Enterprises
Wockhardt Limited,
Wockhardt Towers C-3, G Block
Bandra-Kurla Complex, Mumbai
400051

... Respondents

**WITH
WRIT PETITION NO. 798 OF 2008**

1. Federation of Medical and Sales
Representatives Association of
India, 48, Chanchal Smruti, Katrak
Road, Wadala,
Mumbai- 400 031.
2. Mr. Balakanti Ramaiah,
H. No. 6-2-293,
Srinagar Colony, Besides
N.G. Colony, NALGONDA-508001,
Andhra Pradesh.
3. Subrata Biswas
6, PNB Colony, Behind 4th Phase)
Adarsh Nagar, P.O. Sonari (North)
JAMSHEDPUR.
4. Sadanand Admodar Joshi
30, New Baradwari, Sakchi.
JAMSHEDPUR 831 001
(Jharkhand).
5. Mr. Kalam Mohammed Akhtar
Ayub C/o. J. J. Tailors, 31 B.C.
Madurari Road, TIRUNELVEDI-627
001 (Tamil Nadu).
6. ~~Devpriya Bandyopadhyay~~
~~E.C.T.P., Phase – I, Flat No. 4/16,~~
~~KOKATA-700 107 (West Bengal)~~
(Deleted).
7. Rajnikanta Rath
Rath Bhavan, At Balisahiu, Post
Madhupatna DIST. CUTTACK-

753010 (Orissa)

8. Mr. Anupam Kumar
c/o Krishnanad Chaudhary
Bolghar PCO, Bhola Talkije Chouk
Punjab Colony, SAMASTIPUR-484
101
9. T. T. Vivekanandan
86 Valgal Colony Anna Nagar,
MADURAI 625 020 (Tamil Nadu)
10. Arup Sengupta
P-30, Satgram Housing Colony
Kolkata 700 061.
11. Amarta Chaudhary
94-A, Kankilita Road,
KOLKATA- 700 029
12. Mr. Indu Bhushan Prasad,
C/o Federation of Medical & Sales
Representatives Association of
India, 48 Chanchal Smruti, Katrak
Road, Wadala, Mumbai 400031
13. Subhash Chandra Bhattacharjee
c/o late Shri S.N.Bhattacharjee,
Shri Palli Patra, P.O.Bengal Enamel
743 122
14. Mr. Amitabha Debpriya Ghosh
Benodini Avenue, P/O Hatiara,
KOLKATA 700059 (West Bengal)
15. Mr. Harish Narain,
Narain Niwas, K.D.N. Path, Gosain

Tols, PATNA-800013 (Bihar).

16. Mr. Akshaya Kumar Mohapatra
Ainthapali, Jharsuguda Road
Budharaja, SAMBALPUR 768 122
(Orissa).
17. Mr. Shakti Dev Banerjee
C/o B. S. S. R. Union
D.S. Colony, DHANBAD 824 601
18. Mr. Binay Prasad Singh
H/O Sri Asad Singh
Bijay Colony, Nawatoli
Daltraonganj -822 101
(Jharkhand)
19. Mr. Sajeeb Chatterhee
OSRU Rest House, 5th Lane
Extension, Spectrum, Gandhi
Nagar, Behrampur (Ganjam)
760 001
20. Mr. Sanjoy Kumar Chatterjee
c/o W.B.M.S.R.U. Rest House
138, N. S. Road, ASONSOL 713
301
21. Mr. Deepak Mukherjee
H/O Late Tara Shankar Daripa 1st
Feeder Road, Rabindra Sarani)
BANKURA 722 101 (West Bengal)
22. Mr. Sujoy Ghosal
87/5/1A, Raja S.C. Mullick Road,))
Kolkata 700 047

23. Mr. Utpal Kundu
FE 130, Sector III, Salt Lake City
Kolkata 700 091
(West Bengal)

24. Mr. Partha Sarathy Dey
114/7, D.H. Road, Udyanpally
Barisha KOLKATA -700 008
(West Bengal)

... **Petitioners**

Versus

1. Wockhardt Limited
Wockhardt Towers Bandra Kurla
Complex Bandra (East),
Mumbai - 400 051.

2. Merind Limited
(A Wockhardt Enterprises),
M/s. Wockhardt Limited,
Wockhardt Towers, Bandra Kurla
Complex, Bandra (East),
Mumbai 400 051.

3. Tridos Laboratories Ltd.,
(A Division of Wockhardt
Enterprises) Wockhardt
Towers, Bandra Kurla
Complex, Bandra (East)
Mumbai 400051

... **Respondents**

**WITH
WRIT PETITION NO. 1643 OF 2010**

Shri Sanjay Gupta,
181, Mahadev Totla Nagar,
Near Bengali Chauraha,
Indore- 452 016 (MP)

... **Petitioner**

Versus

M/s. Lupin Limited,
159, CST Road, Kalina,
Santacruz (East),
Mumbai- 400 098.

... Respondent

**WITH
WRIT PETITION NO. 2477 OF 2010**

Ralli Group Employees' Union,
Ralli House, 21, D.S. Marg,
Fort, Mumbai- 400 001

... Petitioner

Versus

M/s. Rallis India Ltd
Ralli House, 21, D.S. Marg,
Fort, Mumbai- 400 001.

... Respondent

**WITH
WRIT PETITION NO. 2893 OF 2015**

NICHOLAS EMPLOYEES' UNION
having its Registered office
At 48 Chanchal Smriti, Katrak Road,
Wadala, Mumbai 400 031

... Petitioner

Versus

1. M/S. PIRAMAL HEALTHCARE LTD,
(earlier known as NICHOLAS
PIRAMAL INDIA LTD.)
having its Registered Office at
Piramal Tower Ganpatrao Kadam
Marg, Lower Parel, Mumbai, Pin
Code: 400 013
2. Mr. Ajay Piramal

Chairman
Piramal Healthcare Ltd.
Piramal Tower, Ganpatrao Kadam
Marg, Lower Parel, Mumbai Pin
Code: 400 013

3. N. B. GAD
Then President - Marketing & Org.
Division Now operating from
Administrative office at A-Wing,
6th floor, 247 Park, LBS Marg
Vichroli (W), Mumbai – 400083
4. RAMESH BALGI
Then Vice President - Corporate
HRD Now operating from
Administrative office at)
A-Wing, 6th floor, 247 Park, LBS
Marg Vichroli (W), Mumbai –
400083
5. M/S ABBOTT HEALTHCARE PVT.
LTD.
having its registered office at 4
Corporate parks, Sion Trombay Rd.
MUMBAI-400 078

... Respondents

-
- Mr. Mayuresh Nagle** a/w Mr. Rajvardhan S. Rane, for the Appellant in App/585/2009 and for the Petitioner in WP/1643/2010, WP/2477/2010.
- Ms. Jane Cox** a/w Mr. Vinayak Suthar i/by Mr. Manmohan A. Amonkar, for the Petitioner in WP/433/2015, WP/2893/2015
- Mr. R. D. Bhat**, for the Petitioner in WP/798/2008.
- Mr. Avinash Jalisatgi** a/w Mr. Piyush Shah, Mr. Satish Hegde, Mr. Mulanshu Vora, for the Respondent in APP/585/2009.

Mr. V. P. Sawant, Senior Advocate a/w Mr. R. V. Paranjape, Mr. T. R. Yadav, for the Respondent in WP/433/2015, WP/798 / 2008.

Mr. V. P. Sawant, Senior Advocate a/w Ms. N. R. Patankar, for the Respondent in WP/2893/2015.

Mr. J. P. Cama, Senior Counsel a/w Mr. T. R. Yadav, for Respondent in WP/1643/2010.

Mr. Anand Pai a/w Mr. Vipul Patel i/by Haresh Mehta & Co., for the Respondent No. 1 in WP/2477/2010.

Mr. Vijay Vaidya a/w Mr. Vipul Patel i/by Haresh Mehta & Co., for the Respondent Nos. 1, 2 & 5 in WP/ 2893/2015.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

**RESERVED ON : 01 OCTOBER 2025
PRONOUNCED ON : 03 NOVEMBER 2025**

JUDGMENT: *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

PRELIMINARIES

2. Appeal No. 585 of 2009 was admitted, and a Rule has been issued in the related Petitions. In any case, with the agreement of and at the request of learned counsel for the parties, all these matters were taken up for final hearing, and the learned counsel for the parties were thoroughly heard.

3. Appeal No.585 of 2009 pertains to the assignment of a Division Bench. The connected Writ Petitions pertain to the assignment of the learned Single Judge. However, since the issue involved was common, the Writ Petitions were directed

by an Administrative Order to be placed before the Bench hearing Appeal No.585 of 2009. Accordingly, the learned counsel for the parties agree that this Bench should address all these matters for final disposal.

4. These matters concern the determination of territorial jurisdiction of Labour/Industrial Courts in Maharashtra to entertain complaints of unfair labour practices alleged to be perpetrated by employers who have their registered/ head / administrative offices within the State of Maharashtra upon the employees posted at and transferred to place/s outside the State of Maharashtra in the context of the provisions of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 [“MRTU Act”].

5. The employees/Unions contend that their employment was controlled from their registered/head/administrative offices within the State of Maharashtra [mainly Mumbai], where decisions regarding their transfer and/or termination, which constitute unfair labour practices, were made. Even their appointment, transfer, or termination letters were issued/dispatched from the offices within the State of Maharashtra. Therefore, a substantial part of the cause of action arose in Maharashtra, and the Labour/Industrial Courts in Maharashtra had the territorial jurisdiction to entertain the complaints.

6. The employees/Unions contend that the contrary view

of the Division Bench of this Court in **GlaxoSmithKline Pharmaceuticals Ltd. Vs. Abhay Raj Jain and Ors.**¹, that the situs of the employee is the sole governing factor to determine territorial jurisdiction in such matters under the MRTU Act, stands expressly, or in any event impliedly overruled by at least two subsequent decisions of the Hon'ble Supreme Court, in the cases of **Nandram Vs. Garware Polyester Limited**², and **Rakesh Kumar Verma Vs. HDFC Bank Ltd.**³

7. The employers maintain that the cause of action in such matters arises exclusively at the employee's situs because the effect of the transfer or termination befalls the employee there. Therefore, if the place where the employee was posted and the place to which he/she was transferred, or received the termination letter, are both outside Maharashtra, no part of the cause of action arises in Maharashtra, thereby excluding any territorial jurisdiction of the Labour/industrial Courts within Maharashtra. They stressed that the provisions of the MRTU Act apply only in the State of Maharashtra and have no extra-territorial application.

8. The employers maintain that the Division Bench's view in *GlaxoSmithKline*, emphasizing the situs of the employee, continues to represent the correct legal position, and the Hon'ble Supreme Court's decision in *Nandram* was distinguishable on facts. They also contended that since

¹ 2008 SCC OnLine Bom 756

² (2016) 6 SCC 290

³ 2025 SCC OnLine SC 752

GlaxoSmithKline was not specifically referred to in *Nandram*, there was no question of any express or implied overruling.

9. Typically, where a doubt is cast upon the decision of a coordinate Bench of coequal strength, the normal protocol is to propose a reference to a larger Bench. However, the learned Counsel for the employees/unions argued that this was not a case where they were urging this bench to simply take a contrary view, but that their case was that the view in *GlaxoSmithKline* stands either expressly or impliedly overruled by at least two subsequent decisions of the Hon'ble Supreme Court, in the cases of *Nandram* and *Rakesh Kumar Verma*.

10. The learned counsel for the employees/Unions pointed out that for over 15 years, employees who are victims of unfair labour practices have not secured any adjudication on the merits of their dispute, and employers are only interested in tiring out employees and wilting their resistance. Therefore, they urged this Bench to consider examining this crucial aspect of express or implied overruling, rather than proposing a reference to a larger Bench in this batch of matters.

11. The issue of express or implied overruling needs consideration. It is not as if we, as a coordinate bench of coequal strength, are called upon to sit in appeal over *GlaxoSmithKline*. That would certainly be impermissible. But, given the subsequent decisions of the Hon'ble Supreme Court,

the issue of express or implied overruling does require consideration by this Bench because, if indeed *GlaxoSmithKline* is found to have been either expressly or impliedly overruled by any later Supreme Court ruling, then we would be obliged to follow the later decisions of the Hon'ble Supreme Court on the subject. No dispute was raised about this Bench's entitlement to examine whether there was such explicit or implicit overruling.

12. The employees have been clamoring for an adjudication on the merits of their unfair labour practice case for the past 15 to 18 years, as the issue of territorial jurisdiction remains unresolved. Employees who are out of employment or claim to be victims of unfair labour practices can hardly afford the luxury of prolonged litigation against their financially strong employers. They are at least entitled to know their position on this issue of territorial jurisdiction so they can explore alternative remedies, if necessary.

13. Besides, at least two learned single Judges of this Court, [Gupte J. in an interim order made in the case of **Federation of Medical and Sales Representatives' Association of India (FMRAI) and Anr. Vs. M/s. Sun Pharmaceuticals Industries Ltd. And Ors.**⁴ and Marne J. in the final order in the case of **Raptakos Brett & Co. Ltd. Vs. Pawan Sharma**⁵, based on the Hon'ble Supreme Court's ruling in *Nandram*, have refused to

⁴ 2016 SCC OnLine Bom 8679

⁵ 2025 SCC OnLine Bom 3289

follow the Division Bench precedent in *GlaxoSmithKline*, holding that this precedent is overruled and does not reflect the correct legal position.

14. Accordingly, we heard Ms Jane Cox, Mr R D Bhat, and Mr Mayuresh Nagle for the workmen/unions and Mr J P Cama and Mr V P Sawant, the learned Senior Advocates, and the learned Counsel Mr Avinash Jalisatgi, Mr Piyush Shah, Mr Anand Pai, and Mr Vijay Vaidya for the employers, in support of the rival versions.

SUBMISSIONS ON BEHALF OF THE EMPLOYEES/ UNIONS

15. Ms Jane Cox (for the Petitioner in WP/433/2015 and WP/2893/2015) made submissions as to how, on facts, the cause of action had substantially accrued within the State of Maharashtra and submitted that the situs of the employee's place of employment could never have been regarded as the sole governing factor for determining the territorial jurisdiction under the MRTU Act. She submitted that *GlaxoSmithKline* was expressly or, in any event, impliedly overruled by the Hon'ble Supreme Court in the case of *Nandram*.

16. Ms Cox submitted that the fact that *GlaxoSmithKline* was not explicitly mentioned in *Nandram* makes no difference whatsoever. She argued that the views of the Hon'ble Supreme Court in *Nandram* and of the Division Bench of this

Court in *GlaxoSmithKline* are entirely opposite and contradictory. Furthermore, in *Nandram*, the Hon'ble Supreme Court reversed the decision of the learned Single Judge of the Bombay High Court, which had cited and followed the Division Bench ruling in *GlaxoSmithKline*. Therefore, she contended that *GlaxoSmithKline* is either expressly or, at the very least, implicitly overruled.

17. Ms Cox referred to an interim order of the learned Single Judge of this Court in *Sun Pharmaceuticals Industries Ltd.* and the final order of the learned Single Judge in the case of *Raptakos Brett & Co. Ltd.* to submit that these decisions, have, in terms, held that the law laid down in *GlaxoSmithKline* no longer represents the correct position in law given the decisions of the Hon'ble Supreme Court in the case of *Nandram*, *Rakesh Kumar Verma* and **Bikash Bhushan Ghosh Vs Novartis India Ltd**⁶.

18. Ms. Cox also pointed out that the decision of the Division Bench of this Court in *GlaxoSmithKline* was questioned before the Hon'ble Supreme Court. However, during the pendency of the challenge before the Hon'ble Supreme Court, the parties entered a compromise, and the SLP was disposed of by observing that the question of law was left open to be decided in an appropriate case before the appropriate forum. Accordingly, she submitted that there was never any final seal of approval for the law laid down in

⁶ (2007) 5 SCC 591

GlaxoSmithKline. In any event, she submitted that the Supreme Court's decision in *Nandram* expressly or, in any event, impliedly overrules *GlaxoSmithKline*.

19. Ms Cox also relied upon several decisions, including **Abbott India Ltd. and Ors. Vs. All India Abbott Employees Union⁷**, **Church of South India Trust Association V/s. Telugu Church Council⁸**, **Omprakash Shrivastava Vs. Union of India⁹**, **Hotel Sahara Star and Anr. Vs. State of Maharashtra and Ors.¹⁰** amongst others, and sought to distinguish the various decisions relied upon by the learned counsel for the employers.

20. Ms Cox submitted that in all these matters, the decisions which constitute unfair labour practices were made in offices within the State of Maharashtra. The appointment, transfer and even termination letters were issued from the offices within the State of Maharashtra. She submitted that though the location of the head office, etc., by itself, may not confer territorial jurisdiction, similarly, even the situs of the workman cannot be the sole determinative factor.

21. Ms Cox submitted that the MRTU Act is legislation intended to protect the welfare of the employees. She submitted that orders made by the Labour and Industrial Court within the State of Maharashtra can always be enforced

⁷ 2011 SCC OnLine Bom 1812

⁸ 1996 (2) SCC 520

⁹ 2006(6) SCC 207

¹⁰ 2008 (5) Bom CR 263

by employing the coercive machinery against the decision-makers, who are primarily located and operating within the State of Maharashtra. She submitted that in several cases, the principles of CPC have been applied by Hon'ble High Courts and the Hon'ble Supreme Court for determining territorial jurisdiction. She therefore submitted that there was nothing wrong with importing these principles to industrial adjudication, as was done by the Hon'ble Supreme Court in several decided cases.

22. Ms Cox argued that the issue of territorial jurisdiction never goes to the core of jurisdiction. She stated that in most cases, this objection was not raised initially, or even if it was, the employers did not immediately contest the adverse orders. She contended that such an objection can be waived and was, in fact, waived. She maintained that these objections are often raised to weaken the resistance of the workman and the unions representing him.

23. Ms Cox also pointed out that, in one case, after holding that the Labour and Industrial Court lacked jurisdiction, the Court proceeded to rule against the employees on the merits. She submitted that this was impermissible and, in any event, even the determination on merits suffers from perversity. She pointed out that more than 15 years have passed during which the employers have succeeded in denying the employees even an adjudication on the merits of their complaints.

24. For all the above reasons, Ms Cox submitted that we should declare the law in *GlaxoSmithKline* stands expressly or, in any event, impliedly overruled and, on that basis, interfere with the orders of the Labour and Industrial Court declining to exercise their jurisdiction.

25. Mr R. D. Bhat (representing the Petitioner in WP/798/2008) submitted that the federation's Petition challenges orders of the Labour Court and the Industrial Tribunal dismissing the Petitioner's complaint of unfair labour practices on merits. He pointed out that the Labour Court and the Industrial Tribunal had concurrently held that they had the territorial jurisdiction to entertain the complaint. The employers never challenged this finding. He submitted that such concurrent findings of fact suffer from no perversity whatsoever and warrant no interference at the behest of the Respondents. He submitted that the objection to territorial jurisdiction is capable of waiver and has, in fact, been waived by the employer.

26. Mr Bhat, therefore, submitted that it was not open to the employers to now belatedly question the territorial jurisdiction of the Labour and the Industrial Courts, by raising such an issue in the reply filed in this Writ Petition. He submitted that such an attempt must be rejected by imposing exemplary costs on the employer.

27. Mr Bhat, without prejudice, submitted that the MRTU

Act does not indicate the factors for the determination of territorial jurisdiction. He therefore submitted that the well-known tests in this regard must be applied. He submitted that there was no prohibition to draw sustenance from the principles in the CPC. He relied on several decisions referred to by him in his written submissions and compilations to support these arguments.

28. Mr Bhat submitted that the principle of “*forum conveniens*” would apply to these matters and would afford a complete answer to the arguments raised by Mr Cama and Mr Sawant in support of the employers. He submitted that objections regarding territorial jurisdiction are now being raised only to delay and frustrate the workman. He submitted that the facts on record, as noticed and accepted by the Labour and Industrial Courts, amply established that the cause of action had arisen within the State of Maharashtra and therefore, the Labour and Industrial Court in Maharashtra had the territorial jurisdiction in the matter.

29. Mr Nagle (representing the Appellant in Appeal No. 585 of 2009 and the Petitioner in WP/1643/2010 and WP/2477/2010), while adopting the arguments made by Ms Cox and Mr Bhat, submitted that there were findings of fact that the Petitioner was appointed and confirmed as Medical Representative by Hindustan Ciba Geigy Ltd. in 1992. In July 1997, M/s. Sandoz (India) Limited and M/s. Hindustan was amalgamated/merged into the resultant 1st Respondent

company, i.e. Novartis India Ltd.

30. Mr Nagle submitted that Novartis India Ltd. has, admittedly, its registered address and head offices in Mumbai. The Appellant was appointed and confirmed from the offices in Mumbai. The impugned termination letter was also issued from the offices in Mumbai while the Petitioner was posted in Ujjain (Madhya Pradesh). He submitted that the situs of the workman at the time of issuance of the termination letter could never have been the sole determining factor. He submitted that *GlaxoSmithKline* no longer represents the correct legal position and that, therefore, the Appeal may be allowed, and appropriate relief be granted to the Employee.

31. In Writ Petition No. 1643/2010, Mr Nagle, representing the Petitioner, made submissions on the conduct of the employer, which objected to the legal proceedings at Indore, citing want of territorial jurisdiction because the cause of action substantially accrued in Maharashtra, and after proceedings were instituted in Maharashtra, again [though belatedly] objected to the territorial jurisdiction of the Court in Maharashtra. He also argued that such an objection was misconceived, did not go to the root of jurisdiction, was waived, and urged that we allow this Petition with exemplary costs.

32. Thus, based on the above arguments, the learned counsel for the employees /union submitted that the Appeal

and the Writ Petitions be allowed with costs.

SUBMISSION ON BEHALF OF THE EMPLOYERS

33. Mr Cama (representing the Respondent in WP/1643/2010) submitted that the provisions of the MRTU Act apply only within the State of Maharashtra. He therefore submitted that the principles regarding the determination of territorial jurisdiction based even upon the accrual of a part of the cause of action cannot be imported to adjudication under the MRTU Act by applying the Code of Civil Procedure (CPC). He submitted that orders made by the Labour and Industrial Courts within Maharashtra would not even be capable of implementation beyond Maharashtra's territorial limits.

34. Mr Cama further submitted that the impact of holding that *GlaxoSmithKline* no longer represents the correct position in law would be to entitle even the employers to institute proceedings in the State of Maharashtra seeking restraint upon workmen whose situs of employment is beyond the territorial limits of Maharashtra in matters of attempted illegal strike, etc. He submitted that such an interpretation would render the provisions of the MRTU Act completely unworkable. He therefore maintained that the view in *GlaxoSmithKline* still represents the correct position in law regarding territorial jurisdiction under the MRTU Act.

35. Mr Cama argued that these are not cases in which the

Courts or Tribunals in two different States could be said to have concurrent jurisdiction because part of the cause of action allegedly arises in both States. He submitted that the MRTU Act applies only within the State of Maharashtra and has no extraterritorial application. He contended that, in all these matters, the cause of action has arisen solely outside the territorial limits of Maharashtra because the impact of the alleged unfair labour practice was felt substantially at the employee's situs outside the State of Maharashtra. Therefore, he maintained that the extent of the MRTU Act cannot be expanded by adopting the principles of CPC, and that the Labour or Industrial Courts in Maharashtra cannot usurp territorial jurisdiction in such cases.

36. Finally, Mr Cama submitted that *Nandram* was distinguishable because the crucial decision to close the Pondicherry office was taken at the Aurangabad office, and termination was only consequential. He submitted that it is on account of this peculiar factor that the Hon'ble Supreme Court ruled that the Labour and Industrial Courts within the State of Maharashtra would have the territorial jurisdiction. He submitted that *GlaxoSmithKline* was neither referred to nor overruled by *Nandram*.

37. Mr V P Sawant, the learned Senior Advocate, referred to the scheme of the MRTU Act with particular emphasis on Sections 3 to 7 and the Notifications issued thereunder by the State Government. He also referred to the provisions of

Section 28 concerning the appointment of Investigating Officers to visit the situs of unfair labour practices and to make efforts to promote a settlement.

38. Mr. Sawant submitted that it would be almost impossible to enforce the orders made by the Labour Courts and the Industrial Tribunals within the State of Maharashtra at a situs beyond the territorial limits of Maharashtra. He submitted that in all such matters, the territorial jurisdiction would have to be determined based upon the place where the cause of action has substantively arisen, i.e. at the situs of the employee's place of employment, which was outside the State of Maharashtra.

39. Regarding *Nandram*, Mr Sawant adopted the arguments raised by Mr Cama and submitted that the Hon'ble Supreme Court's decision turned on the peculiar facts and was therefore distinguishable. He too maintained that *GlaxoSmithKline* was neither referred to nor specifically overruled, and that the argument of implied overruling was misconceived.

40. Mr. Sawant relied on the following judgments: - (1) **Shrikant V Gawas Vs. Tulsiani Chambers Premises Co-op. Soc Ltd¹¹**; (2) **Torrent Pharmaceuticals Ltd. Vs. Member, Industrial Court, Chandrapur and Anr¹²**; (3) **Anil Murlidharan Vs. Larson**

¹¹ 2007 SCC OnLine Bom 1356

¹² 2002 (2) Mh.L.J. 331

& Toubro¹³; (4) State of Maharashtra & Ors. Vs. Zilla Krida Sankul Karmachari Sanghatana¹⁴; (5) Alchemist Ltd. Vs. State Bank of Sikkim¹⁵; (6) State of Punjab Vs. Amar Singh Harika¹⁶; (7) Lalbhai Tricumlal Mills Ltd. Vs. Dhanubhai Motilal Vin & Ors¹⁷ (8) Workmen of Sri Ranga Vilas Motors (P) Ltd. Vs. Sri Rangavilas Motors (P) Ltd.¹⁸; (9) Bikash Bhushan Ghosh & Ors. Vs. Novartis India Ltd. & Anr.¹⁹; (10) Laxman Baburao Repal Vs. Nagar District Urban Central Co-operative Bank Ltd., Ahmednagar & Ors²⁰; (11) Emerald Valley Estates Ltd. Vs. Secretary for Kerala, Estates and Staffs' Union of South India & Anr.²¹; (12) V. G. Jagdishan Vs. Indofos Industries Limited²²; (13) GlaxoSmithKline Pharmaceuticals Ltd. (supra) (14) Eastern Coalfields Ltd. & Ors. Vs. Kalyan Banerjee²³ and (15) Ramlal's Vs. Labour Court, Patiala & Ors.²⁴.

41. Mr Avinash Jalisatgi adopted the arguments made by Mr Cama and Mr Sawant. His written submissions are very similar to the arguments raised by the learned senior counsel on behalf of the employers. In addition, Mr. Jalisatgi referred

¹³ 2019 SCC OnLine Bom 8688
¹⁴ 2022 SCC OnLine Bom 855
¹⁵ (2007) 11 SCC 335
¹⁶ AIR 1966 SC 1313
¹⁷ 1955 Indian Law Reports 921
¹⁸ (1967) 2 SCR 528
¹⁹ (2007) 5 SCC 591
²⁰ 1979 (38) FLR 279 (Bom)
²¹ (1979) I LLN 141
²² (2022) 6 SCC 167
²³ (2008) 3 SCC 456
²⁴ 1986 I LLN 903

to the decision in **J. Balaji Vs. Hindu, New Delhi and Anr.**,²⁵ to submit that the situs of the head office is an entirely irrelevant factor and territorial jurisdiction must be determined solely based on the situs of the employee's place of employment.

42. Mr Jalisatgi, who appears for the employer in Appeal No. 585 of 2009, submitted that the employee concerned in this appeal was a Medical Representative (“MR”). He pointed out that an MR was held not to be a “workman”, as defined under Section 2(s) of the Industrial Disputes Act (“the ID Act”), in the case of **H. R. Adyanthaya And Ors. Vs. Sandoz (India) Ltd. And Anr.**²⁶. However, under the special definition of an “employee” under section 3(5) of the MRTU and PULP Act, an MR, being a sales promotion employee, was included. He submitted that this was a case of legislation by reference, and that an anomalous situation would arise if an MR, who is not a workman under the ID Act, were conferred the status of a workman, even in states to which the MRTU Act admittedly does not apply. He submitted that such an absurd or anomalous situation can only be avoided by sustaining the view in *GlaxoSmithKline*.

43. Mr Jalisatgi submitted that the MRTU Act addresses various aspects, such as the recognition of trade unions, the declaration of illegal strikes and lockouts, etc. He submitted that this Act could operate only within the territorial limits of

²⁵ 2023 SCC OnLine Del 5352

²⁶ (1994) 5 SCC 737

the State of Maharashtra, and that if the view taken in *GlaxoSmithKline* is upset or held no longer good law, it would result in chaos in industrial adjudication. He submitted that there would be a serious issue regarding the enforceability of orders made by Labour Courts or Industrial Tribunals within the State of Maharashtra, as such orders would be impossible to execute or enforce beyond the State's territorial limits.

44. Mr Anand Pai argued that the employee's place of employment was the only vital factor for determining territorial jurisdiction. Other aspects, such as the location of the head office or the place from which the transfer or termination order was sent, are entirely irrelevant. Consequently, he contended that the decision in *GlaxoSmithKline* reflects the correct legal position, and it cannot be said to have been overruled. Mr Pai, in addition to relying upon some of the decisions referred to earlier, cited **Paritosh Kumar Pal v. State of Bihar and Ors.**²⁷ to submit that it is only the situs of employment of the workman that is determinative and not any other factors like the location of the head office, etc.

45. Mr Pai submitted that the subject of Labour and Industrial Law falls within the concurrent list in the 7th Schedule to the Constitution of India. Therefore, he submitted that it would be incorrect to apply a law restricted to the territorial limits of the State of Maharashtra to any employee

²⁷ 1984 SCC OnLine Patna 345

or workman complaining of unfair labour practices outside the State of Maharashtra. He submitted that such extraterritorial operation of the MRTU Act is not contemplated and, in fact, would be illegal and ultra vires.

46. Mr Vaidya, apart from adopting the submissions made by the other counsel for the employers, submitted that all acts which are alleged to be unfair labour practices emanated and affected the workman outside the State of Maharashtra. Accordingly, there was no nexus whatsoever between the alleged unfair labour practices and the head or other offices within the State of Maharashtra. Accordingly, he submitted that the Labour and Industrial Court within the State of Maharashtra would have no territorial jurisdiction to entertain the complaints of such employees.

47. Mr Piyush Shah referred to the provisions of Sections 30 and 55 of the MRTU Act and submitted that, for non-compliance with any interim or other orders, the police can institute prosecution, or the orders of the Labour and Industrial Court can be enforced by coercive means. He submitted that the police and law enforcement agencies of the State of Maharashtra would obviously have no jurisdiction to enforce orders of the Labour and Industrial Court under the MRTU Act within areas outside the territorial limits of Maharashtra. Therefore, Mr Shah submitted that any interpretation which would amount to conferring an extraterritorial jurisdiction upon such authorities is

impermissible.

48. Based on all the above-referred arguments, the learned counsel for the employers maintained that the view taken by the Division Bench of this Court in *GlaxoSmithKline* represents the correct approach for determining the territorial jurisdiction of the Labour and Industrial Courts under the MRTU Act. They maintained that the decision of the Hon'ble Supreme Court in the case of *Nandram* has made no dent whatsoever on the precedential value of *GlaxoSmithKline*. Accordingly, they submitted that the Appeal and the Writ Petitions instituted by and on behalf of the workman may be dismissed.

EVALUATION / CONSIDERATION OF THE RIVAL CONTENTIONS

49. As noted at the outset, based on the pleadings and the opposing contentions, the main issue to be determined in all these cases is whether the location or situs of the employee claiming to have become a victim of unfair labour practices as defined under the MRTU Act should be the only governing factor or the key factor in establishing the territorial jurisdiction of the Labour Court or the Industrial Tribunal under the provisions of the MRTU Act?

50. The Division Bench of this Court in the case of *GlaxoSmithKline*, after reversing the learned Single Judge, has

held that the situs of the workman would be the sole governing factor that would determine the territorial jurisdiction for deciding the complaint of unfair labour practices under the MRTU Act. The Division Bench has held that when the employee alleging unfair labour practice by way of a transfer or termination was, at the time of such transfer or termination posted and transferred to places, both outside Maharashtra, no cause of action could be said to have accrued within the State of Maharashtra, and the Labour or Industrial Courts within Maharashtra would have no territorial jurisdiction to entertain such complaints under the MRTU Act.

51. The Division Bench held that the facts like the registered/head/controlling office being in Maharashtra, the decisions of transfer or termination being made in Maharashtra, the appointment or transfer or termination letters being dispatched from Maharashtra, etc. were irrelevant factors when determining the issue of territorial jurisdiction, and not even a part of the cause of action could be regarded as accruing in Maharashtra based upon such factors.

52. The Division Bench decision in *GlaxoSmithKline* was challenged before the Hon'ble Supreme Court by filing Special Leave Petition (Civil) No. 26000 of 2008. However, pending any decision on the merits, the employee resigned from service. Therefore, the Federation of Medical and Sales

Representatives' Associations of India (FMRAI), which had filed the Special Leave Petition, sought leave to withdraw the Petition while keeping the question of law open.

53. The Supreme Court, by its order dated 21 November 2008, disposed of the Special Leave Petition by observing that it was being “*dismissed as withdrawn.*” However, the question of law was left open for decision in an appropriate case before the appropriate forum. For the convenience of reference, we transcribe the Hon’ble Supreme Court’s order dated 21 November 2008 disposing of the FMRAI’s Special Leave Petition (Civil) No.26000 of 2008 against the decision of the Division Bench of this Court in *GlaxoSmithKline* (supra): -

“We are informed by the learned senior counsel appearing for the parties that Mr. Abhay Raj Jain, respondent no.2 herein and the complaint before the Industrial Tribunal, has resigned from the service.

In that view of the matter, this special leave petition is dismissed as withdrawn. However, the question of law is left open to be decided in an appropriate case before the appropriate Forum.”

54. By referring to the Hon’ble Supreme Court’s above order, the learned Counsel for the employees/union contended that the law point decided by the Division Bench of this Court in *GlaxoSmithKline* could no longer be regarded as having any precedential value or, in any event, the law point could be re-agitated in a subsequent case, and the forum where such law point was re-agitated could take a view different from that taken by the Division Bench in the case of

GlaxoSmithKline. Ms Cox relied upon the decision of the Division Bench of our Court in *Hotel Sahara Star*, which, *prima facie*, supports such a contention.

55. However, the learned counsel for the employers argued that the Supreme Court's order dated 21 November 2008 merely indicates that the Hon'ble Supreme Court had not examined the merits of the view taken by the Division Bench of this Court in *GlaxoSmithKline*. They contended that by leaving the question of law open, what the Hon'ble Supreme Court meant was that in an appropriate case, the Hon'ble Supreme Court would consider the legality or the merits of such a view. But the learned counsel maintained that it was not open for any Court or Tribunal in the country to revisit the question of law decided by the Division Bench in *GlaxoSmithKline*, because this view was not interfered with in Special Leave Petition No. 26000 of 2008.

56. The above argument on behalf of the employers seems excessively broad. The decision of the Division Bench of our Court in *Hotel Sahara Star*, at least *prima facie*, does not support such an argument. Nonetheless, this dispute need not hold us up on these issues because, in the case of *Nandram*, the Hon'ble Supreme Court itself appears to have adopted a view that is wholly incompatible with that taken by the Division Bench in *GlaxoSmithKline*, even though the material facts in both cases were not significantly different.

57. The Counsel on behalf of the employers, however, contend that the Supreme Court decision in *Nandram* should be restricted to its peculiar facts and not be regarded as laying down any law contrary to that which was laid down in *GlaxoSmithKline* by the Division Bench of this Court. Subject to consideration of this argument, we observe that at least the controversy regarding the expression “*leaving the question of law open to be decided in an appropriate case before the appropriate forum,*” as appearing in the Hon’ble Supreme Court’s above-referred order dated 21 November 2008, need not be decided in these matters.

58. The real controversy now is whether the decision of the Division Bench in the case of *GlaxoSmithKline*, which holds that the situs of the workman is the sole governing factor in determining territorial jurisdiction to hear complaints under the MRTU Act, is explicitly or implicitly overruled by the Hon’ble Supreme Court’s decision in the case of *Nandram*. In other words, is the decision of the Division Bench in *GlaxoSmithKline* compatible with or reconcilable to the Hon’ble Supreme Court’s decision in *Nandram*?

59. Since the learned counsel for the employers seek to distinguish *Nandram* on the facts, those facts need to be adverted to and compared with the facts in *GlaxoSmithKline*. A precedent, as is well accepted, is only binding for the *ratio decidendi* or the legal principle it establishes. The facts in no two cases are likely to be identical in all respects. Therefore,

the comparison and enquiry must concern material facts. The Supreme Court decisions, which bind all other Courts and Tribunals, cannot be watered down or their precedential value unduly diminished by attempting to distinguish them based on non-significant or non-material factual differences.

60. The facts in *Nandram* are set out in the decisions of the learned Single Judge of the Bombay High Court (at Aurangabad), reported in 2011 SCC OnLine Bom 1908, and in the decision of the Hon'ble Supreme Court, reported in 2016 (6) SCC 290. Nandram was employed by Garware Polyester Ltd. (the employer) initially as a Boiler Attendant in 1983 at Aurangabad. Subsequently, he was promoted to Junior and Senior Supervisor in 1987 and 1995, respectively. In 2000, Nandram was transferred to Silvassa in Gujarat. The following year, he was transferred from Silvassa to Pondicherry. On 12 April 2005, Nandram's services were terminated with effect from 15 April 2005 due to the employer's closure of its establishment at Pondicherry. There was no dispute that the employer's registered office was at Aurangabad, and the decision to close the establishment at Pondicherry and, consequently, to terminate Nandram's services was also taken at the registered office in Aurangabad.

61. Nandram filed a complaint under the MRTU Act before the Labour Court at Aurangabad, alleging that the cause of action had arisen there. The employer challenged the territorial jurisdiction of the Labour Court, arguing that

Nandram's employment at the time of his dismissal was centered in Pondicherry. They also claimed that Nandram's transfer from Silvassa (Gujarat) to Pondicherry involved locations outside Maharashtra, and thus beyond the territorial jurisdiction of the Labour Court in Aurangabad. Consequently, they argued that the Labour Court at Aurangabad lacked the jurisdiction to hear the case.

62. The Labour Court refused to dismiss Nandram's complaint on the ground of lack of territorial jurisdiction because, according to the Labour Court, the question of jurisdiction was a mixed question of law and fact. The employer challenged the Labour Court's decision before the Industrial Court, as permitted under the provisions of the MRTU Act.

63. The Industrial Court upheld the employer's objection on the ground of alleged lack of territorial jurisdiction and dismissed Nandram's complaint before the Labour Court, holding that it was not maintainable there at Aurangabad. The learned Member of the Industrial Court cited and relied on the decision of the Division Bench of the Bombay High Court in the case of *GlaxoSmithKline* to establish that the only relevant factor in such matters was the situs of the workman at the time of transfer or termination, and that the issue of the registered or head office, or the office where the decision to transfer or terminate was made, was entirely irrelevant.

64. Nandram questioned the Industrial Court's judgment and order dated 4 July 2009 before the Single Judge of this Court by instituting Writ Petition No. 4968 of 2009. The learned Single Judge of this Court (by judgment and order dated 7 June 2011, reported in 2011 SCC OnLine Bom 1908) dismissed the Writ Petition, again, by citing and entirely relying upon the decision of the Division Bench of this Court in the case of *GlaxoSmithKline*. The entire decision of the learned Single Judge is based solely on the view taken by the Division Bench in the case of *GlaxoSmithKline*.

65. Nandram, undeterred, challenged the decision of the learned Single Judge before the Hon'ble Supreme Court by filing Civil Appeal No. 1409 of 2016. The Hon'ble Supreme Court, vide its decision delivered on 16 February 2016 and reported in (2016) 6 SCC 290, reversed the learned Single Judge and held that the Labour Court at Aurangabad would have been well within its jurisdiction to consider Nandram's complaint under the MRTU Act.

66. For the convenience of reference, we transcribe below paragraph Nos. 3, 4, 5, and 6 of the Hon'ble Supreme Court's judgment and order reversing the learned Single Judge's decision: –

“3. Aggrieved, the respondent Company took up the matter before the Industrial Court at Aurangabad in revision. The Industrial Court at Aurangabad vide order dated 4-7-2009 set aside the order passed by the Labour Court and dismissed the complaint of the appellant

holding that the Labour Court at Aurangabad did not have territorial jurisdiction to entertain the complaint of the appellant, since the termination took place at Pondicherry. The appellant moved the High Court of Judicature of Bombay at Aurangabad in Nandram v. Garware Polysters Ltd. [Nandram v. Garware Polysters Ltd., 2011 SCC OnLine Bom 1908] The High Court by judgment dated 7-6-2011 affirmed the view taken by the Industrial Court and held that the situs of employment of the appellant being Pondicherry, the Labour Court at Aurangabad did not have territorial jurisdiction to go into the complaint filed by the appellant. Thus aggrieved, the appellant is before this Court.

4. Though the learned counsel on both sides had addressed in detail on several issues, we do not think it necessary to go into all those aspects mainly because in our view they are only academic. In the background of the factual matrix, the undisputed position is that the appellant was employed by the Company in Aurangabad, he was only transferred to Pondicherry, the decision to close down the unit at Pondicherry was taken by the Company at Aurangabad and consequent upon that decision only the appellant was terminated. Therefore, it cannot be said that there is no cause of action at all in Aurangabad. The decision to terminate the appellant having been taken at Aurangabad necessarily part of the cause of action has arisen at Aurangabad. We have no quarrel that the Labour Court, Pondicherry is within its jurisdiction to consider the case of the appellant, since he has been terminated while he was working at Pondicherry. But that does not mean that the Labour Court in Aurangabad within whose jurisdiction the management is situated and where the management has taken the decision to close down the unit at Pondicherry and pursuant to which the appellant was terminated from service also does not have the jurisdiction.

5. In the facts of this case both the Labour Courts have the jurisdiction to deal with the matter. Hence, the Labour Court at Aurangabad is well within its jurisdiction to consider the complaint filed by the appellant. Therefore,

we set aside the order [Nandram v. Garware Polysters Ltd., 2011 SCC OnLine Bom 1908] passed by the High Court and the Industrial Court at Aurangabad and restore the order passed by the Labour Court, Aurangabad though for different reasons.

6. The Labour Court shall consider the complaint on merits and pass final orders within six months from today. The parties are directed to appear before the Labour Court on 8-3-2016.”

67. The material facts in *GlaxoSmithKline* are not significantly different. There, the Division Bench of this Court was also concerned with an employer with its registered office in Mumbai and engaged in the manufacture and sale of pharmaceutical products. The employer operated factories in Thane and Nashik, Maharashtra, as well as in Ankleshwar, Gujarat. The employees, including Abhay Jain and others, were medical representatives employed by the employer, and their services could be transferred both within and outside Maharashtra.

68. Abhay Jain was initially posted in Udaipur, Rajasthan. Through a transfer letter issued from the registered head office in Mumbai, Abhay Jain was transferred from Udaipur to Imphal, Manipur. However, Abhay Jain declined to report to the new location, citing the area as disturbed, and lodged a complaint before the Industrial Court in Mumbai, accusing the employer of unfair labour practices.

69. The employer argued that the Industrial Court in Mumbai lacked territorial jurisdiction because the employee's

situs, when he was served the transfer order in Rajasthan, and the place to which he was transferred, i.e., Manipur, were outside the State of Maharashtra. Therefore, it was urged that no part of the cause of action arose within Maharashtra, entitling any Court or Tribunal within Maharashtra to exercise territorial jurisdiction to entertain the complaint.

70. The Industrial Court, however, entertained the employees' complaint and stayed the transfer. The employer, aggrieved, instituted Writ Petition No. 760 of 2022, which was dismissed by the learned Single Judge of this Court, who also held that the complaint was maintainable before the Industrial Court at Mumbai.

71. The employer appealed to the Division Bench, and in the appeal, the Division Bench posed unto itself the following question at Para 6, as under: -

“6. The point which arise for determination in the case in hand is that :

Q. Whether the Industrial Court and the Labour Court under the M.R.T.U. & P.U.L.P. 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?”

72. The Division Bench then answered this question by holding that:-

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

73. At paragraph 32, the Division Bench held that: -

“32. In the case in hand, undisputedly, the unfair labour practice is alleged to have been employed on account of transfer of the respondent from Udaipur to Imphal and, therefore, it cannot be said that any part of the cause of action in relation to the alleged unfair labour practice had arisen within the territory of the State of Maharashtra. The appellant, therefore, is justified in contending that this aspect of the matter was totally ignored by the Industrial Court as well as by the learned Single Judge and hence the impugned orders in that regard cannot be sustained and are liable to be set aside while following the appeal. In the result, therefore, the appeal is allowed; the impugned orders are hereby set aside and it is held that the Industrial Court at Mumbai has no jurisdiction to entertain the complaint filed by the respondent considering the facts and circumstances of the case and, therefore, the said complaint is liable to be dismissed and is accordingly hereby dismissed.”

74. Upon a meaningful comparison of the material facts in both cases, we are unable to accept the argument that the

Hon'ble Supreme Court's decision in *Nandram* is distinguishable on the facts or that it was made in a materially different factual situation from that in *GlaxoSmithKline*. In both cases, the employee's situs at the time the transfer order was served was outside Maharashtra. Even Nandram's termination occurred while he was at the transferred place, i.e., Pondicherry. Still, the Hon'ble Supreme Court, after taking cognizance of the circumstances, such as the place from which the decision to transfer or terminate was made, etc., held that a part of the cause of action, sufficient to confer territorial jurisdiction upon the Courts in Maharashtra, arose in Aurangabad. The diametrically contrary view taken by the learned Single Judge, relying entirely on *GlaxoSmithKline*, was thus reversed.

75. The only so-called distinguishing feature pointed out by the learned Counsel for the employers was that the decision to terminate Nandram's services was a consequence of the decision made at the head office at Aurangabad to close the operations at the Pondicherry office. Now, this is hardly any material distinguishing fact or feature. Even without the so-called distinguishing feature, the views in the two decisions would be no different. To determine territorial jurisdiction, the Division Bench of this Court in *GlaxoSmithKline* did not focus on the reason for the transfer or the decision that led to it. The entire focus was on the circumstance that the employee, Abhay Jain, was transferred from Rajasthan to

Manipur, both outside the territorial jurisdiction of the Maharashtra Courts and Tribunals, even though the decision to transfer may have been made at the head office in Maharashtra.

76. The Division Bench in the case of *GlaxoSmithKline* reasoned that since the impugned transfer was from and to places outside Maharashtra, “*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...*”. The Hon’ble Supreme Court did not approve such an approach in *Nandram*, where the employee was also transferred from Gujarat to Pondicherry, both outside the territorial jurisdiction of the Maharashtra Courts and Tribunals. Since the decisions for transfer and termination were made at Aurangabad, the Hon’ble Supreme Court held that the cause of action had equally accrued within the State of Maharashtra and that the Courts within the State of Maharashtra had territorial jurisdiction to entertain a complaint under the MRTU Act.

77. The Hon’ble Supreme Court, in terms, observed: “*The decision to terminate the appellant having been taken at Aurangabad necessarily part of the cause of action has arisen at Aurangabad.*” Thus, the situs test, which was the basis for the decision of the Division Bench in *GlaxoSmithKline*, was in terms departed from by the Hon’ble Supreme Court when deciding *Nandram*. Therefore, there is no significant difference between the material facts in *Nandram* and *GlaxoSmithKline*. The so-called

distinguishing feature was quite irrelevant. Based on the same, neither can the precedential value of *Nandram* be whittled down, nor can the decision of the Hon'ble Supreme Court be confined or unduly restricted.

78. In fact, before the learned Single Judge at Aurangabad, Nandram's employer cited and relied heavily on the Division Bench's decision in *GlaxoSmithKline*, arguing that there was no difference in the fact situation between Nandram's case and the Division Bench's decision in *GlaxoSmithKline*. Based on this, the employer persuaded the learned Single Judge at Aurangabad to dismiss Nandram's complaint for lack of territorial jurisdiction. Now, just because the Hon'ble Supreme Court has reversed the learned Single Judge, the employers claim that the facts in the two cases were different. Such a volte face rings hollow and cannot be accepted. Such opportunistic flip-flops seem routine when the aim is to frustrate employees and crush their resistance.

79. The argument that since *Nandram* does not specifically refer to the decision of the Division Bench of this Court in the case of *GlaxoSmithKline*, there is no question of overruling involved does not appeal to us. Although the Hon'ble Supreme Court, in *Nandram* may not have specifically referred to the decision of the Division Bench of this Court in the case of *GlaxoSmithKline*, still, it is apparent that the view taken by the Hon'ble Supreme Court is diametrically opposed to the view in *GlaxoSmithKline* concerning the issue of

determination of territorial jurisdiction to entertain complaints under the MRTU Act. The two decisions are irreconcilable on the issue of territorial jurisdiction.

80. Besides, the record clearly shows that the Hon'ble Supreme Court reversed the decision of the learned Single Judge of this Court, which had not only referred to but had also been based entirely on the decision in *GlaxoSmithKline*. The view taken by the Division Bench of this Court in a case of *GlaxoSmithKline* is now clearly inconsistent with the view taken by the Hon'ble Supreme Court in *Nandram*. The two decisions cannot stand without contradicting themselves.

81. Thus, there is no case made to distinguish the Hon'ble Supreme Court's decision *Nandram* or to insist we follow the Division Bench of this Court in *GlaxoSmithKline*, even though the two decisions are not compatible or reconcilable. The argument that, because *Nandram* does not specifically refer to *GlaxoSmithKline*, no overruling is involved, cannot be accepted. There is no such requirement for any specific reference, either in principle or in precedent. No specific form is provided for implied overruling.

82. **Bradley Scott Shannon**, Associate Professor of Law, in his research paper "*Overruled by Implication*", Florida Coastal School of Law Seattle Law Review²⁸, has explained the general concept of overruling by implication. He states that when the Supreme Court [in the U.S.] does overrule precedent, it often

²⁸ (Vol 33:151, Seattle University Law Review, pages 151 to 189)

does so expressly. In that situation, lower Courts are obliged to follow the overruling decision. But the Supreme Court sometimes overrules prior holdings only by implication. Even if it were true that the decision referred to was not in harmony with some of the previous decisions, we had supposed that a later decision in conflict with prior ones had the effect of overruling them, *whether mentioned and commented on or not*²⁹.

83. Thus: *“Although a lower court is bound by a prior decision of a high court until that decision is overruled, there are circumstances in which a prior decision will be overruled implicitly rather than explicitly. A lower court is not bound to follow a decision that has been implicitly overruled*³⁰*. Therefore, it should be apparent that no special language is necessary to overrule a prior decision; the simple existence of some later, irreconcilably inconsistent holding by the same court is sufficient*³¹*. Indeed, it does not seem particularly important whether the later court intended to overrule its prior holding or whether it was even aware that it was doing*

²⁹ Asher v. Texas, 1289 U.S. 129, 131-32 (1888)

³⁰ 18 JAMES WM. MOORE, MOORE'S FEDERAL PRACTICE § 134.05[06], at 134-46 (3d ed. 2008). See also Hugh Baxter, *Managing Legal Change : The Transformation of Establishment Clause Law*, 46 UCLA L. REV. 343, 445-46 (1998) (“Deciding that the Supreme Court’s own cases implicitly have overruled an earlier precedent defers to, rather than defies, the Court’s authority.”).

³¹ Conversely, the mere inclusion of language in a Court’s opinion that “Case A is hereby overruled,” if not supported by a holding to that effect, would not, in fact, result in the overruling of Case A. This is but a corollary of the larger notion that, with respect to precedent, a holding is binding, whereas dicta is not. See *infra* Part III.A.

so³².

84. In the Indian context, a reference can usefully be made to the decision of the Hon'ble Supreme Court in the case of **S E Graphites Pvt. Ltd. Vs State of Telangana and Ors**³³, on the aspect of implied overruling. In this case, the High Court dismissed the Appellant's writ petitions following the decision of the Coordinate Bench of the High Court in **Ankamma Trading Co. Vs Commissioner**³⁴, along with other decisions taking the same view. This was despite the Appellant pointing out to the High Court that the Hon'ble Supreme Court had impliedly overruled the decision in *Ankamma Trading Co.* in the case of **Innovatives Systems Vs State of AP**³⁵. However, the High Court did not accept this contention because in *Innovatives Systems*, the Hon'ble Supreme Court *had not expressly stated that it was overruling the decision in the case of Ankamma Trading Co.*

85. The Hon'ble Supreme Court in *S E Graphites Pvt. Ltd.* noted that in *Innovatives Systems*, it had taken a view contrary to the High Court's view in the case of *Ankamma Trading Co.* Therefore, "*there is hardly any doubt that the effect of the said order is to impliedly overrule the principle enunciated by the Division Bench of the High Court in Ankamma Trading Co. or other decisions following the same.*"

³² See Maurice Kelman, *The Force of Presedent in the Lower Courts*, 14 WAYNE L. REV. 3, 24 (1967)

³³ 2020, 14 SCC 521

³⁴ 2011 SCC Online, AP 1205

³⁵ (2020) 14 SCC 542

86. The Hon'ble Supreme Court in the case of *S E Graphites Pvt. Ltd.* at paragraphs 10 and 11 made the following observations which, in our opinion, afford complete answers to the arguments urged on behalf of the employers on the aspect of the implied overruling of *GlaxoSmithKline* (supra):-

“10. Concededly, this Court was conscious of the decision in Ankamma Trading Co. In that, the judgment under challenge before it in the appeal concerned was founded on the view already taken by the coordinate Bench of the same High Court [including in Ankamma Trading Co.]. It has been so recorded by this Court, In that sense, the legal position expounded in Ankamma Trading Co., stood impliedly overruled, even though that decision has not been adverted to or expressly overruled by this Court.

11. The argument of the respondent proceeds that the decision in Innovatives Systems, neither refers to any specific provision nor has it expressly overturned the decision of the Division Bench of the High Court in Ankamma Trading Co. Thus, it cannot be considered as a binding precedent. We are not impressed by this submission. Indeed, the decision of this Court in Innovatives Systems, is a brief judgment. That, however, would make no difference. For, it is well established that once a special leave petition has granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. Resultantly, the order impugned before the Supreme Court became an order appealed against and any order passed thereafter would be an appellate order and attract the doctrine of merger despite the fact that the order is of reversal or of modification or of affirming the order appealed against and including is a speaking or non-speaking one. This legal position has been restated in Kunhayammed. Having said this, we must reject the argument of the respondent State that the decision of this Court in Innovatives Systems, and other decisions following the same, cannot be considered as binding precedent.”

87. Again, in the case of **C.N. Rudramurthy Vs. K. Barkhatullah Khan and Ors**³⁶, the Hon'ble Supreme Court was concerned with the decision of the Karnataka High Court, which had insisted upon following its earlier decision in the case of **Padmanabha Rao Vs. State of Karnataka**³⁷, even though, in the cases of **Shobha Surendar Vs. H. V. Rajan**³⁸, and **D. C. Bhatia Vs. Union of India**³⁹, the Hon'ble Supreme Court had taken a view that did not align with the Karnataka High Court's decision in *Padmanabha Rao*. *Padmanabha Rao* had relied on an earlier decision of the Hon'ble Supreme Court in **Rattan Arya v. State of Tamil Nadu**⁴⁰, and therefore, the Karnataka High Court chose to follow *Padmanabha Rao*, by holding that *D.C. Bhatia* or *Shobha Surendar*, had no application.

88. The Hon'ble Supreme Court in *C. N. Rudramurthy*, (supra) did not approve this approach of the Karnataka High Court and observed thus: -

“6.In Shobha Surendar Case the High Court had proceeded to rely upon Padmanabha Rao Case; when the matter was brought to this Court though no specific reference was made to Padmanabha Rao case this Court stated that the law laid down in D.C. Bhatia case would be applicable, it was not open to the High

³⁶ 1998, 8 SCC 275

³⁷ ILR 1986, KAR 2480

³⁸ 1998, 8 SCC 281

³⁹ 1995, 1 SCC 104

⁴⁰ 1986 3 SCC 385

Court to state that it would prefer to follow the decision in Rattan Arya Case. Indeed, it is a matter of Judicial discipline that requires that when this Court states as to what the law on the matter is, the same shall be binding on all the courts within the territory of India. This mandate of Article 141 of the Constitution is not based on any doctrine of precedents but is an imprimatur to all courts that the law declared by this Court is binding on them. If that is so, it was not open to the High Court to consider the effect of the decisions in Rattan Arya Case, its scope, what was decided therein and whether there could be any distinction between that decision and the decision rendered in D.C. Bhatia case. The clear pronouncement made by this Court in Shobha Surendar Case was that D.C. Bhatia case was applicable with reference to Section 31 of the Karnataka Rent Control Act and, therefore, in view of that decision, the High Court's decision was upset in another matter whether the High Court had followed the Padmanabha Rao case . In effect, Padmanabha Rao case stood impliedly overruled. Thus, it was not at all open to the High Court to have tried to explain the decision of this Court and ought to have implicitly followed the decision of this Court. The law declared by provisions of the Karnataka Rent Control Act so it was not open to the learned Judge to take any other view in the matter. Thus we are of the view that the decision issued by the High Court to the parties to work out their direction issued by the High Court to the parties to work out their remedies under the Rent Control Act is not at all correct"

89. Further, the Hon'ble Supreme Court, in the above context, also made the following observations at paragraph 8:

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"8. ... Though this Court did not specifically refer to the decision in Padmanabha Rao case it is needless to say that the same stood overruled because the law declared by this Court was contrary to what was stated in

Padmanabha Rao case. Therefore that argument also is not sound and needs to be rejected.”

90. In the matters at hand, we have no hesitation in holding that the decision of the Division Bench of this Court in the case of *GlaxoSmithKline* is inconsistent with and contrary to the decision of the Hon’ble Supreme Court in the case of *Nandram*. The two decisions on the issue of territorial jurisdiction of the Labour and Industrial Courts under the MRTU Act are irreconcilable.

91. The circumstance that the Hon’ble Supreme Court in the case of *Nandram* may not have specifically referred to the decision of the Division Bench of this Court in the case of *GlaxoSmithKline* is not quite relevant. Accordingly, the latter decision of the Hon’ble Supreme Court in the case of *Nandram* must prevail, and the decision of the Division Bench of this Court in the case of *GlaxoSmithKline* must yield and be held to have been impliedly overruled by the Hon’ble Supreme Court.

92. In the case of *M/s. Sun Pharmaceuticals Industries Ltd.*, the learned Single Judge of this Court (S. C. Gupte, J.) in an interim order, after noticing the conflict between the decision of the Division Bench of this Court in *GlaxoSmithKline* and the decision of the Hon’ble Supreme Court in *Nandram* held that the learned counsel for the Petitioners was right in submitting that the Hon’ble Supreme Court in the case of *Nandram* has taken a view “*which is directly contrary to the*

view of the Division Bench of our Court in the case of GlaxoSmithKline (supra)”. The learned Single Judge further held that: - “Though the decision of GlaxoSmithKline Pharmaceuticals Ltd. (supra) was not, in terms, referred to in the Supreme Court decision in Nandram (supra), the order impugned in Nandram was itself based on the decision of the Division Bench in the case of GlaxoSmithKline Pharmaceuticals Ltd.”

93. The learned counsel for the employers, however, submitted that an interim order made by the learned Single Judge has no precedential value. Though this submission is correct, we have referred to the said order, which was cited before us, only to indicate that even the learned Single Judge found inconsistency between the view taken by our Division Bench in *GlaxoSmithKline* and the decision of the Hon’ble Supreme Court in *Nandram*. As discussed above, that is also the conclusion we have reached, independent of the views expressed by the learned Single Judge in his interim order referred to above.

94. In *Raptakos Brett & Co. Ltd.*, another learned Single Judge (Sandeep V. Marne, J.) after a detailed survey of the precedents on the subject has held that even the issuance of a transfer order at Mumbai, transferring an employee posted beyond the territorial limits of the State of Maharashtra would confer jurisdiction upon the Labour or Industrial Courts within the State of Maharashtra to entertain complaints of

unfair labour practices under the MRTU Act. The learned Single Judge was concerned with the employer having its corporate office at Mumbai, which had appointed a medical representative in 1990 and posted him in Sriganganagar (Rajasthan). By transfer order dated 21 November 2019, issued from the corporate office in Mumbai, the employee, a medical representative, was transferred from Sriganganagar (Rajasthan) to Shahjanpur (Uttar Pradesh) because the management had decided to close operations at Sriganganagar (Rajasthan).

95. The employee filed a complaint before the Industrial Court at Mumbai and sought interim relief. No interim relief was granted on the merits. Still, the employee did not comply with the transfer order from Rajasthan to UP. Therefore, the employer, after holding a domestic inquiry, dismissed the employee by order dated 24 December 2020. The dismissal order was the subject matter of a separate complaint No.40/2021 filed before the Labour Court at Mumbai, which is stated to be pending.

96. The employer objected to the Industrial Court's territorial jurisdiction, but the objection was rejected by an order dated 04 May 2020. This order was the subject matter of challenge before the learned Single Judge in Writ Petition No.2545 of 2023. The mainstay of the employer's arguments rested on the decision of the Division Bench in the case of *GlaxoSmithKline* and the decisions of the learned Single

Judges following *GlaxoSmithKline*.

97. The learned Single Judge did consider the decision of the Division Bench in the case of *GlaxoSmithKline* and the decisions in the case of *Torrent Pharmaceuticals Ltd.* and *Anil Murlidharan*, but held that these decisions could no longer prevail given the later decisions of the Hon'ble Supreme Court in the case of *Nandram* and *Rakesh Kumar Verma*. This was a final order; therefore, the objection raised in the context of Gupte J's order cannot prevail.

98. Again, we refer to the above decision solely to show that another learned Single Judge of our Court, after a detailed review, concluded that the view of the Division Bench of our Court in *GlaxoSmithKline* was inconsistent with the Hon'ble Supreme Court's decision in *Nandram*. Incidentally, the learned Single Judge also held that *GlaxoSmithKline* does not conform to the latest decision of the Hon'ble Supreme Court in *Rakesh Kumar Verma*. We also agree with the learned Single Judge's reasoning on this point.

99. In *Rakesh Kumar Verma*, the Hon'ble Supreme Court was concerned with the employees of the HDFC Bank posted at Patna and Delhi. Their orders of appointment contained a clause conferring exclusive jurisdiction on the Courts in Mumbai for any dispute arising out of their employment with HDFC Bank. Upon termination of the employees, they instituted suits at Patna and Delhi. However, the Bank

objected to the territorial jurisdiction of the Courts at Patna and Delhi to entertain such suits, given the clause in their appointment letters conferring exclusive jurisdiction on the Courts in Mumbai.

100. The employees contended that no part of the cause of action giving rise to their termination had accrued in Mumbai. Therefore, the clause conferring exclusive jurisdiction on the Courts in Mumbai was ineffective, and, on that basis, the Courts in Patna and Delhi could never lack territorial jurisdiction. The Hon'ble Supreme Court, inter alia, held that a contract between the parties cannot confer jurisdiction on a Court that did not have jurisdiction in the first place. Therefore, the question to be determined was whether the Courts in Mumbai had the territorial jurisdiction to entertain such a suit, apart from those in Patna and Delhi.

101. For this, the Hon'ble Supreme Court drew sustenance from Section 20 of the CPC and noted that, in the case before it, the decision to employ the two employees was taken in Mumbai. The appointment letters were issued, the decisions to terminate their services were made, and they were dispatched, all from Mumbai. Based on these factors, the Hon'ble Supreme Court rejected the contention that no part of the cause of action accrued in Mumbai and held that the Courts in Mumbai had jurisdiction to entertain the suit.

102. The learned single judge deciding *Raptakos Brett*

observed that although the decision in *Rakesh Kumar Verma* did not address the provisions of the MRTU Act, it nonetheless served as an authority for the proposition that factors such as the location of the head office or registered office where the appointments, transfers, or termination letters were issued are relevant when determining territorial jurisdiction, contrary to the view of our division bench in *GlaxoSmithKline*. Thus, the arguments which had found favour with the Division Bench in *GlaxoSmithKline* were emphatically rejected by the Hon'ble Supreme Court.

103. The decision of our Division Bench in *GlaxoSmithKline* essentially holds that the situs of employment at the time of service of the transfer or termination order is the only governing factor that determines the issue of territorial jurisdiction. The Division Bench decision asserts that factors such as the place where the decision to transfer or terminate is made are completely irrelevant, do not form part of the cause of action, and cannot be considered when determining territorial jurisdiction. Such a view, with respect, seems quite inconsistent not only with the law established by the Hon'ble Supreme Court in *Nandram* in the specific context of the MRTU Act, but also with the ratio of the decision of the Hon'ble Supreme Court in the case of *Rakesh Kumar Verma*, which was decided in 2025.

104. Issues of territorial jurisdiction cannot be decided solely on the basis of the employee's situs at the time the unfair

labour practice was allegedly committed against him, her, or them. The situs of their employment may be a factor, but it cannot be the only governing factor, as held by our Division Bench in *GlaxoSmithKline*. Similarly, the mere location of the head office or registered office also cannot always be the sole governing factor. However, such a factor cannot be dismissed as irrelevant, especially when it is shown that the decision to transfer or terminate was made at the head or registered office. The situs of a defendant or respondent cannot be regarded as an irrelevant factor, particularly when the head or registered office is the nerve centre from which all such decisions alleged to constitute unfair labour practices are made and executed.

105. In fact, factors such as the appointment, transfer, or termination of office, the location of the nerve centre of the establishment, or the origin of decisions alleged to be unfair labour practices are all relevant and cannot be considered irrelevant for determining where the cause of action or a part of the cause of action arises. The employee's situs test may also not be irrelevant, but elevating it to the sole or conclusively determinative test may not be appropriate.

106. Besides, if the cause of action arises at two places, then the Courts exercising jurisdiction over both places would have concurrent jurisdiction. The complainant would then have a choice. Suppose the choice is made of a court or forum within whose jurisdiction a part of the cause of action arises. In that

case, such a court or forum cannot decline jurisdiction by focusing solely on the employee's situs, as was the approach in *GlaxoSmithKline*.

107. There is also nothing wrong in holding that the cause of action in such matters may have accrued within the territorial limits or jurisdiction of one or more courts. The Hon'ble Supreme Court, in *Nandram*, accepts this position specifically in the context of the MRTU Act. The Hon'ble Supreme Court, in *Rakesh Kumar Verma*, accepts this position generally in the context of determining territorial jurisdiction. Typically, the situs of the defendant or respondent, or the place where the offending decision is made, has a direct nexus to determining territorial jurisdiction, and such a factor cannot be dubbed as irrelevant or any less crucial.

108. Section 20 of the Code of Civil Procedure 1908 (CPC) provides that for all cases not covered by Sections 16 to 19, suits may be filed at the plaintiff's option in the Courts where the cause of action, wholly or partly, arises; or where the defendant resides, or carries on business or personally works for gain. In **Laxman Prasad Vs Prodigy Electronics Ltd**⁴¹ and in **Indian Performing Rights Society Ltd. Vs Sanjay Dalia & Anr**⁴², the Hon'ble Supreme Court explained that Section 20 of CPC has been designed to secure that justice might be brought as near as possible to every person's hearthstone and that the

⁴¹ 2008 1 SCC 618

⁴² 2015 10 SCC 161

defendant should not be put to the trouble and expense of traveling long distances in order to defend himself in cases in which he may be involved.

109. There is no question of extra-territoriality involved in such a situation. Suppose the cause of action has indeed accrued or even partly accrued within Maharashtra, and the jurisdiction of the Courts in Maharashtra, where the MRTU Act admittedly applies, is invoked. In that case, there is neither any extension of the MRTU Act to territories outside Maharashtra nor any issue of extra-territoriality. Besides, once it is established that the controlling or nerve centre is within Maharashtra and the key personnel allegedly responsible for perpetrating unfair labour practices are within Maharashtra, there could be no serious issues of enforceability as were sought to be projected by the Employers. Of course, if it is established that no part of the cause of action has arisen in Maharashtra, the Courts there would have no territorial jurisdiction. Therefore, the crucial issue is determining whether any cause of action or part has indeed arisen within Maharashtra. Once this is established by applying the well-known principles, no extraterritoriality issues arise.

110. Mr Sawant, the learned counsel for the employer, then referred to the aspect of the cause of action substantially arising at a specific place as the decisive factor. He argued that the cause of action in such cases arises primarily at the location where the employee is posted at the time of transfer,

or at the place to which they are transferred, and at no other location. He asserted that no cause of action originates at the site of the head office or the registered office of the establishment, or the office from which the employee's employment is managed, or from where the transfer or termination order is issued or dispatched. He contended that these latter factors are either irrelevant or, in any event, not significant in determining where the substantial cause of action has accrued.

111. As held by the Hon'ble Supreme Court in the cases of *Nandram* and *Rakesh Kumar Verma*, a location such as the head office, registered office, or corporate office where the decision to terminate or transfer is made can indeed be considered the place where the substantial cause of action arises. This is because, without such a decision—[alleged to constitute an unfair labour practice]—the employees would not be affected by it. Therefore, Mr Savant's contention that only the situs of employment can be the sole or governing factor for determining where the substantial cause of action has accrued, with respect, cannot be accepted.

112. Mr Savant's above contention is neither supported by the provisions of the MRTU Act nor by other local or central legislation governing industrial dispute resolution. The general principles for establishing the territorial jurisdiction of Courts and Tribunals, or those embodied in the CPC, also do not endorse such an approach. Mr Sawant, however, stressed

the decision of this Court in *Lalbhai Tricumlal Mills Ltd.* to submit that such a proposition flows from this decision. He pointed out that this was one of the decisions relied upon by the Division Bench in *GlaxoSmithKline*.

113. In *Lalbhai Tricumlal Mills Ltd.*, the employee was employed by the Petitioner Mills at their branch office in Mumbai, and his services were terminated on 27 August 1953 when the branch office was closed. He wrote to the Mills' registered office in Ahmedabad, complaining about his dismissal and seeking reinstatement. Because he received no response, the employee filed an application before the Labour Court in Mumbai for his reinstatement and compensation.

114. The employer argued that the Labour Court in Mumbai lacked territorial jurisdiction to hear and dispose of the complaint because, although the employee was posted at the Mumbai branch office, the termination was carried out from Ahmedabad. The Labour Court dismissed this objection, and it was this dismissal that was challenged before the Division Bench of the High Court. In a sense, the employer's contention was the reverse of what is involved in this batch of matters.

115. *Lalbhai Tricumlal* was a decision under the Bombay Industrial Relations Act, 1946, which lacked specific provisions for determining general aspects such as the cause of action or issues of territorial jurisdiction in relation to such a cause. The situation is not markedly different under the

MRTU Act. Both Acts include provisions for designating Labour or Industrial Courts and for defining the areas over which they shall exercise territorial jurisdiction. After taking note of these provisions in Sections 9 and 77 [similar to those referred to by Mr Savant and Mr Shah in the context of MRTU Act], this Court observed: *“but what the Court must consider is in respect of what matters arising within that territorial jurisdiction the Labour Court has been empowered to dispose of applications filed before it”*.

116. This Court also noted that the Bombay Industrial Relations Act does not deal with the causes of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. However, the Division Bench observed: - *‘But applying the well known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction. And therefore the correct approach to this question is to ask ourselves—where did this dispute substantially arise—and in our opinion the only answer to that question can be that the dispute substantially arose in Bombay and not in Ahmedabad. What is the dispute? The dispute is not as to whether the employee approached the employer in Ahmedabad and no agreement was arrived at. The dispute is whether the employer was justified in dismissing the employee, and inasmuch as the employment was in Bombay and the dismissal was in Bombay, it is difficult to understand how it can possibly be urged that the dispute did not substantially arise in Bombay.’*

117. Based on the above observations, Mr Sawant contended that the test to be applied in such matters is to determine

where the cause of action substantially arose and, further, this decision is an authority for the proposition that the cause of action always substantially arises at the situs of the employee's place of employment. The decisions of Courts are not to be read or construed as if they were statutes. In any event, with respect, our reading of this decision does not align with Mr Savant's reading or construction. That is also not how the Hon'ble Supreme Court, in the case of *Rangavilas Motors (P) Ltd.* or the Division Bench of this Court in *Laxman Baburao Repal*, have read or construed the decision of the Division Bench.

118. Firstly, after making the above observations, the Division Bench explicitly left the issue of the Ahmedabad Court having territorial jurisdiction open, as is evident from the following observations: -

“We express no opinion as to whether the Ahmedabad Court would equally have jurisdiction or not. We are only concerned with deciding whether on these facts the Bombay Labour Court has jurisdiction, and in our opinion if as in this case the employee was employed in Bombay and dismissed in Bombay and he is making a complaint about his dismissal and wants reinstatement and compensation, the Bombay Labour Court has jurisdiction to decide this application. We therefore agree with the Industrial Court in the view it has taken.”

119. Secondly, in *Laxman Baburao Repal*, another Division Bench of this Court explained the import of the decision in *Lalbai Tricumlal Mills Ltd.* Though this decision was referred to by the subsequent Division Bench which decided

GlaxoSmithKline, the reading of the decision in *Lalbhai Tricumlal Mills Ltd.* by the Division Bench which decided *GlaxoSmithKline* does not align with the reading of the very same decision by the earlier Division Bench in the case of *Laxman Baburao Repal*.

120. In *Laxman Baburao Repal*, the employer contended that, at the relevant time, the provisions of the Bombay Industrial Relations Act had not been extended to the Marathwada region, where the workman was transferred, posted, and eventually discharged. The employer contended that, though the decision to hold an enquiry and discharge the workman may have been made at the head office in Ahmednagar, where the Act applied, the situs of the workman's employment was determinative of territorial jurisdiction. For this, reliance was placed on *Lalbhai Tricumlal Mills Ltd.* to urge that the cause of action 'substantially' arises only at the place where the workman is employed at the time of transfer or termination and never at the head office where such a decision may have been made.

121. The Division Bench rejected the employer's contention after explaining the import of the decision in *Lalbhai Tricumlal Mills Ltd.* in the following terms at paragraphs 18 to 22:

"18. Now the petitioner therein was employed at Bombay branch of a concern having its head office at Ahmedabad, and the closure of the branch had resulted in his dismissal. On employee's

*claiming relief in the Labour Court at Bombay, the employer challenged its jurisdiction, contending that the dispute as to his reinstatement must be deemed to have been arisen at Ahmedabad and not in Bombay. This Court rejected the contention and held that the dispute in the circumstances must be deemed to have arisen in Bombay. **This gives an impression as if the place of petitioner's employment was held by the Court to be decisive. Close perusal of the judgment however belies this impression.** Firstly the question whether it could also be said to have arisen at Ahmedabad is expressly left open. Secondly the following passage from the judgment, constituting the core of the ratio, support the petitioner rather than the respondent:*

“But what we are concerned with to decide is: where did the dispute substantially arise? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction.”

19. *This statement of law is approved by the Supreme Court in several cases including the case of Workmen v. Rangaviles Motors (P) Ltd. [AIR 1967 SC 1040.] , and, is applied to the question of jurisdiction as to where the dispute raised by the workman, can be said to have arisen.*

20. *This test thus requires ascertaining where substantially the dispute arose and not where the petitioner was employed or dismissed, as assumed by Mr. Rane. Firstly such a test can never be inflexible and must necessarily depend on facts of each case. The Head office at Ahmednagar cannot be excluded from the place of dispute when the disciplinary control vested with management at Ahmednagar where the decision to hold enquiry and dismiss the petitioner was taken, and where the petitioner was required to approach in compliance with the proviso to section 42(4) of the Act. The dispute substantially, if not wholly, shall have to be held as having arisen at Ahmednagar. This would be so notwithstanding that, on the facts and circumstances before it, this Court held the same to have arisen substantially in Bombay in the above case though the Head office was located at Ahmedabad itself. **Even section 20 of the Civil Procedure Code,***

contemplates accrual of causes of action of a given case at more than one place. Second alternative requirement for jurisdiction, namely the residence of the defendant as conceived under the above ratio, which was not available in that case, is satisfied in the present case. Underlying approach appears to be the test of enforceability of the order in the event of claimant's claim being upheld. The order in the present case can be effectively enforced at Ahmednagar within the jurisdiction of the Poona Labour Court. Looked at from any point of view the Poona Labour Court appear to be competent to try and dispose of the dispute.

21. *It shall have to be borne in mind that the Act is essentially a remedial piece of legislation. The provisions thereof have to be interpreted as liberally as possible so as to achieve the object namely to enable the employees, to seek redress of their grievances. We are thus unable to uphold the view of the lower Courts on the question of jurisdiction. The order of the Tribunal is liable to be quashed.*

22. *As the Industrial Court has dismissed the appeal on this preliminary point, the application deserves to be allowed and is liable to be remanded to the Industrial Tribunal to enable it to dispose of on merits."*

122. Therefore, we cannot accept Mr Sawant's argument that ***Lalbhai Tricumlal Mills Ltd.*** is an authority for the proposition that a complaint of unfair labour practice can only be heard by the court within whose territorial jurisdiction the cause of action substantially arises and that the cause of action invariably substantially arises at the employee's situs. As noticed above, the Hon'ble Supreme Court, in the case of ***Rangavilas Motors (P) Ltd.***, or the Division Bench of this Court in ***Laxman Baburao Repal***, have also not read or construed the decision of the Division Bench in that manner.

123. Mr Cama, Mr Sawant and other learned counsel

appearing on behalf of the employers then proceeded to argue that even a reference to the provisions or principles of CPC is quite alien to industrial adjudication. They submitted that ordinarily, when it comes to industrial disputes, the disputing parties cannot even directly approach a Labour or an Industrial Court with their grievances. A dispute must be raised and first admitted to conciliation before conciliation officers appointed by the appropriate government. Only if the conciliation proceeding fails and the conciliation officers submit a failure report can the appropriate government consider if it is necessary and then make a reference for industrial adjudication before the Tribunal or the Labour Court, as the case may be.

124. According to them, all the above factors militate against importing the provisions or principles of CPC into industrial adjudication. Accordingly, they submitted that arguments based on a part of the cause of action or on concurrent jurisdiction of two courts in the matter should be rejected.

125. Upon due consideration of the above contentions, we are unable to agree with the Learned Counsel for the employers. No statutory provisions or precedents supporting such contentions were cited. While it may be true that the provisions of CPC may not have been made specifically applicable, still, the principles regarding accrual of cause of action and the determination of the territorial jurisdiction as provided in the CPC cannot be held to be entirely alien to

industrial adjudication, especially when the statutes in question make no special or specific provisions in this regard.

126. There are several instances where the Hon'ble Supreme Court has applied these principles for determining whether a particular government, which had made a reference to the Industrial or Labour Court, was indeed the appropriate government competent to make such a reference because the dispute had some territorial nexus with the State making the reference.

127. In the case of *Bikash Bhushan Ghosh*, the workmen were transferred to Siwan (Bihar), Farrukhabad (UP), and Karimganj (Assam) by letters of transfer dated 03 October 1994. The workman, alleging that these transfer letters were malafide and issued to victimise them for their trade union activities, sought the intervention of the Labour Commissioner, West Bengal, since the employer's head office was in Calcutta, West Bengal, from where the transfer orders were issued. The conciliation proceedings were initiated, but during their pendency, the workmen's services were terminated by letters dated 15 April 1995. The workmen, contending that the terminations were unauthorised, arbitrary and illegal because no domestic inquiry was held prior thereto, raised an industrial dispute.

128. The State of West Bengal, in exercise of its jurisdiction under Section 10(1)(c) read with Section 2-A of the Industrial

Disputes Act, 1947, referred the dispute to the 3rd Industrial Tribunal, West Bengal, for its adjudication. The employer objected to the reference when challenging the award made by the Industrial Tribunal on the ground that the State of West Bengal lacked territorial jurisdiction to make the reference because no part of the cause of action had arisen within the State of West Bengal.

129. The Hon'ble Supreme Court held that the transfer and termination orders were issued from Calcutta. The termination orders were made because the Appellants had refused to comply with the transfer orders. Therefore, the transfer and termination orders had some nexus with each other, and therefore, it would not be correct to contend that the State of West Bengal was not the appropriate Government.

130. The Hon'ble Supreme Court examined the decision of the Full Bench of the Patna High Court in the case of *Paritosh Kumar Pal*, which was relied upon by Mr Pai, the learned counsel for the employer. It held that a portion of the cause of action unquestionably arose in Calcutta, thereby granting the status of the appropriate Government to the State of West Bengal. Moreover, in this case, the court applied the principles of CPC and accepted that in some instances, two States might have the necessary jurisdiction under Section 10(1)(c) of the Industrial Disputes Act. Even if other State Governments also had jurisdiction, this does not imply that the State of West Bengal would lack the jurisdiction to make a reference,

although part of the cause of action originated within West Bengal's territory.

131. The Hon'ble Supreme Court also referred to the provisions of Sections 20 and 21 of the CPC and the principles therein in the context of the determination of territorial jurisdiction, and the effect of an order on an award made by the Tribunal lacking territorial jurisdiction. These provisions provide that an objection based on territorial jurisdiction never goes to the root of the matter, and unless the same is raised at the earliest instance, the same is rarely entertained. This provision suggests that an objection based on territorial jurisdiction can even be waived.

132. Accordingly, in *Bikash Bhushan Ghosh*, the reference by the Government of West Bengal exercising the jurisdiction of 10(1)(c) of the Industrial Disputes Act was upheld after noting that at least a part of the cause of action had certainly arisen at Calcutta. For this, the Hon'ble Supreme Court drew sustenance from the provisions of CPC. Therefore, to contend that the provisions of CPC are completely alien to industrial adjudication is too broad a proposition that can be accepted in these matters.

133. Similarly, in the case of *Rangavilas Motors (P) Ltd.*, the concerned workman was engaged as a foreman. He was transferred from Bangalore to Krishnagiri. He questioned the validity of the transfer. The employer initiated disciplinary

proceedings against the workman for refusing to obey the transfer order and finally removed him from service. The State of Mysore made a reference for industrial adjudication. The validity of the said reference was questioned on the ground that the State of Mysore was not the appropriate government and lacked the territorial jurisdiction to make the reference.

134. The Hon'ble Supreme Court held that there should clearly be some nexus between the dispute and the territory of the State, and not necessarily between the territory of the State and the industry concerning which the dispute arose. The Hon'ble Supreme Court referred to its earlier decision in **Indian Cable Co. Ltd. vs. Its Workmen**⁴³, in which it was observed that the Industrial Disputes Act contained no provisions bearing on the question of territorial jurisdiction, *which must, consequently, be decided on the principles governing the jurisdiction of the Courts to entertain actions or proceedings*. Thus, the Court held that at least a part of the cause of action certainly arose within the State of Mysore, which was therefore competent to make the reference.

135. Incidentally, the Hon'ble Supreme Court also referred to the decision of this Court in *Lalbahai Tricumlal Mills Ltd.*, but read and construed it differently from how Mr Sawant suggests it should be read. The Court, on the facts presented, clearly held that the dispute arose primarily within the

⁴³ (1962) 1 LLJ 409

jurisdiction of the Mysore Government. This case also involved the application of the principles of CPC, or '*the well-known tests of determining jurisdiction*', to resolve issues of territorial jurisdiction. Hence, even in this case, the broad proposition now put forth on behalf of the employers—that the CPC provisions or principles are inapplicable to determine territorial jurisdiction in industrial adjudication — was not accepted.

136. In short, therefore, the contention about the provisions of the CPC being completely alien to industrial adjudication, or that the issue of a part of the cause of action arising at one place being irrelevant to industrial adjudication, cannot be accepted. There is nothing to indicate that, in every case, the substantial cause of action only arises at the situs of the employee's employment. This is also not a proposition borne out by the decisions now relied upon on behalf of the employers. None of the decisions lead to such a restrictive inference, except, of course, the decision in the case of *GlaxoSmithKline*, and other decisions that follow this decision, which we have held, stand impliedly overruled.

137. Finally, the learned counsel for the employers relied upon *V. G. Jagdishan* to argue that its ratio conflicts with *Nandram* or that the factor used to distinguish *Nandram* in that case applies to the present set of matters. This cannot be accepted for reasons discussed hereafter.

138. In *V. G. Jagdishan*, the Hon'ble Supreme Court was concerned with a workman employed in Ghaziabad, whose services were also terminated there by the Ghaziabad office where he worked. Only after his termination in Ghaziabad did the workman move to Delhi, from where he served a demand notice on the management's head office in Delhi.

139. The Hon'ble Supreme Court held that the above circumstance was not sufficient to establish that the Courts in Delhi had territorial jurisdiction. There was no allegation that the Delhi office had anything to do with the appointment or termination of the workman. The facts in the present batch of matters are entirely different and offer no parallel. *Bikash Bhushan Ghosh* and *Nandram* were discussed but not departed from in the least.

140. Regarding *Bikash Bhushan Ghosh*, the Hon'ble Supreme Court observed that this case specifically established that part of the cause of action had arisen at both locations, unlike the previous case, where the Delhi court lacked jurisdiction. Similarly, regarding *Nandram*, the Court found that part of the cause of action had arisen in both Pondicherry and Aurangabad. It was determined that both the Labour Courts at Pondicherry and Aurangabad had jurisdiction to hear the matter, and therefore, the Labour Court at Aurangabad was well within its jurisdiction to consider the complaint. In contrast, the Hon'ble Supreme Court, in *V. G. Jagdishan*, noted that no part of the cause of action had arisen in Delhi.

141. Therefore, far from taking any contrary view, the Hon'ble Supreme Court, in the context of *Bikash Bhushan Ghosh* and *Nandram*, had accepted the legal position that where the part cause of action arises at both places, then the Courts at both places would have jurisdiction to entertain the complaints. Besides, the Court also accepted the proposition that a cause of action cannot be restricted only to the situs of the employee's employment and that the office from where the decisions were taken to transfer or terminate could also be regarded as the place where the cause of action or a part thereof arises to determine the issue of territorial jurisdiction.

142. The decisions of the learned Single Judges in *Torrent Pharmaceuticals Ltd.*, *Anil Murlidharan*, and *Zilla Krida Sankul Karmachari Sanghatana* all follow the ruling of the Division Bench in the case of *GlaxoSmithKline*. Since *GlaxoSmithKline* is impliedly overruled, the precedential value assigned to these decisions can be no different. Even they will have to be held as overruled.

143. Mr. Sawant also cited *Eastern Coalfields Ltd* and *Ram Lal v. Labour Court*, in which it was held that the location of the employer's head or corporate office could not be considered the sole determining factor. There can be no dispute about this principle. If the head or corporate office had no role in the alleged unfair labour practice, merely designating such an office might not be enough to establish territorial jurisdiction. However, by the same token, the situs

of the employee's employment also cannot be regarded as the only decisive factor. Both these factors, along with other relevant considerations, must be examined and balanced to determine where the cause of action, or part of it, may have arisen in relation to establishing territorial jurisdiction. Any emphasis on only one of these factors or elevating a single factor as the exclusive criterion for territorial jurisdiction is not supported by the decisions referenced by Mr. Sawant, except perhaps *GlaxoSmithKline* and decisions following that ruling.

144. In *J. Balaji*, relied upon by Mr Jalisatgi, the Division Bench of the Delhi High Court had recorded a categorical finding that the employee had joined his place of posting at Chennai. There was no challenge to the transfer at Chennai. The employee's services were terminated by an order issued in Chennai. No part of the cause of action arose in New Delhi, where the employee was posted prior to his transfer to Chennai. Therefore, the decision in *J. Balaji* is distinguishable since no part of the cause of action had arisen in New Delhi.

145. The decision in *H. R. Adyanthaya and Ors.*, relied upon by Mr Jalisatgi, is also not relevant. Admittedly, Medical Representatives are included within the definition of "employee" under Section 3(5) of the MRTU Act. Therefore, the circumstance that Medical Representatives may not be workmen under the ID Act is not relevant. In respect of a cause of action that has arisen within the State of

Maharashtra, a Medical Representative can surely maintain an action against the employer under the provisions of the MRTU Act, provided such a Medical Representative makes out a case of unfair labour practice.

146. In **Alchemist Ltd & Anr. Vs State Bank of Sikkim & Ors**⁴⁴, the Hon'ble Supreme Court has held that for the purpose of deciding whether the facts averred by the Appellant-Petitioner would or would not constitute a part of the cause of action, one must consider whether such facts constitute a *material, essential, or integral* part of the cause of action. If so, it forms part of the cause of action. If it is not, it does not form a part of the cause of action. In determining the said question, the substance of the matter and not the form thereof has to be considered. Even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless, it must be a "*part of the cause of action*", *nothing less than that.*"

147. Both *Nandram* and *Rakesh Kumar Verma* hold that the location where the decision to transfer or terminate is made—such as the head office— can be considered the place where the substantial cause of action arises, or in any event, a part of the cause of action arises. Therefore, even *Alchemist Ltd & Anr* supports the employees' case rather than the employers.

⁴⁴ (2007) 11 SCC 335

148. In the case of **Emerald Valley Estates Ltd (by Managing Director) Vs Secretary for Kerala, Estates and Staff's Union of South India, & Anr.**⁴⁵, the Court was concerned with an employee who was transferred from Kerala to Karnataka. After his efforts to secure a re-transfer to Kerala failed, he resigned and alleged that the transfer was an act of victimisation on account of his trade union activities. The Kerala State referred the resultant industrial dispute for adjudication to the Tribunal. The employer challenged the State of Kerala's jurisdiction to refer the dispute, arguing that only the State of Karnataka was the appropriate government competent to refer it.

149. The Kerala High Court rejected the employer's contention by observing that in deciding which of the states had jurisdiction to make a reference under Section 10 of the I D Act, what is stressed is that there should clearly be some nexus between the dispute and the territory of the state and not necessarily between the territory of the State and the industry concerning which the dispute arose. The Court held that it would be wrong to construe that, because the workman concerned went over to the State of Karnataka as a consequence of his transfer, the cause of action had arisen exclusively and wholly in Karnataka, and that the Kerala government was not the appropriate government to refer the dispute for industrial adjudication.

⁴⁵ 1979 1 LLM 141

150. The Court held that to confer jurisdiction for reference on a State Government concerned, it is not necessary that the cause of action wholly or exclusively should arise in that State. There may be cases where a part of the cause of action arises in two or more states. In such cases, two or more States may have concurrent jurisdiction. When the question of territorial jurisdiction arises, the issue is whether the cause of action substantially arose in the State. The Court noted that the establishment in the State of Kerala issued the notice of transfer, which was challenged on the ground that it constituted victimisation. Therefore, the Kerala State had the territorial jurisdiction to make the reference.

151. The other decisions relied upon by the learned counsel for the employers do not differ from what is stated, or is perceived as stated, in the decisions we have already discussed or analyzed. Based on the contentions raised and/or the decisions relied upon, we are not convinced that *GlaxoSmithKline* and subsequent decisions still reflect the correct legal position on the subject, or that such decisions are not impliedly overruled. Therefore, for all the reasons above, even after considering the various decisions cited by Mr Sawant, we are not persuaded that the situs of the employee's employment should be the sole determining factor for establishing territorial jurisdiction.

152. As regards the contention about enforceability, we note that the MRTU Act contains detailed provisions, inter alia, for

penalties and the recovery of money due from the employer. Section 29 provides for the parties on whom the orders of the Court shall be binding. In the cases before us, the records disclose that the employers' head or corporate offices are located within the State of Maharashtra. Though this factor, by itself, may not be the sole determinant of territorial jurisdiction, the records show that appointments, transfers, and termination orders were issued from offices located within the State of Maharashtra. These offices also made decisions regarding appointments, transfers, and terminations. The letters in this regard were also dispatched from these offices.

153. Therefore, if it is ultimately found that such acts constitute unfair labour practices, such orders will certainly bind the employer and the persons in management and control of the employer entity that operates within the territorial limits of the State of Maharashtra. The Division Bench has largely addressed such arguments in *Laxman Baburao*. Therefore, the argument of enforceability need not detain us at this stage.

154. The hypothetical examples given by Mr Cama, Mr Sawant, and Mr Jalisatgi about the effect of any injunction orders issued to workmen who may be outside the territorial limits of Maharashtra also need not detain us at this stage. The counsel for the employees attempted to address such contentions. But we refuse to be drawn into such issues at this

stage. These are not issues that arise in these matters, nor are they issues that need to be decided in these matters. Therefore, it would be hazardous to make any observations on such issues.

155. The Learned Counsel for the employers did urge that the above instances would be the logical fallout of the precedent in *Nandram*, or of the way we propose to construe *Nandram*. The Learned Counsel, with respect, however, fail to notice the dictum in **Quinn Vs. Leathem**⁴⁶ *that a case is only an authority for what it actually decides, and it cannot be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.*

156. The above dictum was approved and followed by the Hon'ble Supreme Court in several cases, including **Sarva Shramik Sanghatana Vs. State of Maharashtra**⁴⁷ and **Bihar School Examination Board Vs. Suresh Prasad Sinha**⁴⁸.

157. Furthermore, in these matters, we are concerned with the general proposition advanced by the employers in *GlaxoSmithKline*, namely, that the sole governing factor in determining territorial jurisdiction is the situs of an employee's employment. However, as we noted earlier, this

⁴⁶ [1901] AC 495

⁴⁷ AIR 2008 SC 946

⁴⁸ (2009) 8 SCC 483

reasoning or conclusion conflicts with the Hon'ble Supreme Court's subsequent rulings and is consequently impliedly overruled.

158. Based upon the territorial jurisdiction objection, the employees have been denied an adjudication on the merits for the last 15 to 18 years. In some cases, such an objection was not even raised at the earliest instance. Apart from some arguments of "inconvenience" urged across the Bar, there are no pleadings worth the name on the prejudice, if any, that the employers might suffer if the dispute is adjudicated at their hearthstone. The learned counsel for the employees contended that such technical objections are raised primarily to tire out the employees, wilt their resistance and force them to settle disputes on most iniquitous terms.

159. The Courts have regarded objections to territorial jurisdiction as different from objections to jurisdiction based on subject matter or other such fundamental matters. Section 21 of the CPC is founded on the premise that where a Court takes upon itself to exercise a jurisdiction it does not possess, its decision may amount to a nullity. However, it is well-settled that this does not apply to territorial or pecuniary jurisdiction, because the Court regards objections to such jurisdiction as merely technical and, unless raised at the earliest possible opportunity, they will not be entertained in appeal or revision for the first time.

160. In *Hira Lal Patni Vs Kali Nath*⁴⁹ and *Kiran Singh Vs Chaman Paswan*⁵⁰, the Hon'ble Supreme Court explained that the policy of the legislature has been to treat objections to both territorial and pecuniary jurisdictions as technical and not open to consideration by an Appellate Court unless there has been a prejudice on merits. These decisions lend support to the employees' contention that the objections are technical and, if not raised at the earliest instance, require establishing prejudice before they are upheld.

161. For all the reasons stated above, we hold that the view expressed by the Division Bench of this Court in *GlaxoSmithKline* and the decisions of the Learned Single Judges following such view stand impliedly overruled by the decision of the Hon'ble Supreme Court in *Nandram*.

162. Since the decision of the learned Single Judge appealed against or the decisions of the Labour/Industrial Courts petitioned against in all these cases primarily follow the decision of the Division Bench in *GlaxoSmithKline*, which *Nandram* impliedly overrules, we see no reason to hesitate in reversing the view in those decisions. The writ petition No. 798/2008 is treated separately for reasons discussed later.

ANALYSIS IN INDIVIDUAL MATTERS

APPEAL No. 585 of 2009

⁴⁹ AIR 1962 SC 199

⁵⁰ AIR 1954 SC 340

163. Moving on to the individual cases, we observe that in Appeal No. 585 of 2009, the Appellant Manish Badkas was appointed as a medical representative by Hindustan Ciba Geigy Ltd, based in Maharashtra, in November 1992 and was posted in Sagar, Madhya Pradesh. In 1996, he was transferred from Sagar to Ujjain, again within the State of Madhya Pradesh. In 1997, Hindustan Ciba-Geigy Ltd and M/S Sandoz (India) Ltd merged to form the new company, Novartis India Ltd (R1). Manish's services were terminated on 19 February 2003 due to a loss of confidence.

164. The record shows that the employer, Novartis India Ltd (R1), has its registered office in Mumbai. Manish was appointed and confirmed vide letters from the registered/head office at Mumbai. Even the impugned termination letter was issued from the registered/head office at Mumbai, allegedly without following the due process of law.

165. Manish filed a complaint bearing case No. (ULP) 134 of 2003 before the Labour Court at Mumbai, which, vide its order dated 1 November 2003, held that it had territorial jurisdiction in the matter and allowed Manish's interim application for subsistence allowance vide its judgment dated 3 November 2003.

166. The employer challenged both these orders of the Labour Court before the Industrial Tribunal by instituting a

revision application. The proceedings before the Industrial Tribunal were disposed of after the parties filed limited consent terms regarding the payment of a subsistence allowance. Matters were then sent back to the Labour Court to further determine the merits of Manish's case. On the remand, Manish filed his affidavit in lieu of examination-in-chief.

167. At this stage, the employer, once again relying on the decision of the Division Bench in the case of *GlaxoSmithKline*, applied to the Labour Court for dismissal of the complaint on the grounds of lack of territorial jurisdiction. The Labour Court accepted this application, and Manish's complaint alleging unfair labour practices was dismissed vide order dated 5 January 2009 for want of territorial jurisdiction.

168. The learned Single Judge rejected Manish's challenge to this order vide judgment and order dated 3 November 2009, again, relying upon the decision of the Division Bench in the case of *GlaxoSmithKline*. The learned single judge noted that the employee had relied on the Single Judge's view in *GlaxoSmithKline*, which the Division Bench had since reversed. It is against this judgment and order dated 3 November 2009 made in Writ Petition No. 2007 of 2009 that the present Appeal is filed.

169. The factual findings referred to above favour Manish. However, given the decision of the Division Bench in the case of *GlaxoSmithKline*, perhaps the Labour Court and the

Learned single judge had no option but to sustain the objection on the ground of want of territorial jurisdiction. The objection could have been rejected on the ground of waiver, but that aspect does not seem to have been pursued or considered.

170. Having now concluded that the decision of the Division Bench in the case of *GlaxoSmithKline* is impliedly overruled, we reverse the judgment and order dated 3 November 2009 in Writ Petition No. 2007 of 2009 and restore the Appellant's Complaint No. ULP 134 of 2003 to the Labour Court's file. Furthermore, we note that, in this matter, the substantial cause of action arose in Mumbai, and therefore, the Labour Court at Mumbai had territorial jurisdiction to entertain the complaint on its merits.

171. Accordingly, Appeal No. 585 of 2009 is allowed. The Respondent employer must pay costs of Rs. 50,000/- to Manish within four weeks of the date of uploading of this order.

WRIT PETITION NO. 433 OF 2015

172. In Writ Petition No. 433 of 2015, the allegations made by the petitioner are that the employer, which has its head office in Mumbai, to deter its employees from joining or continuing their association with the petitioner trade union,

ordered mass transfers of employees and eventually terminated their services for failing to comply with the transfer orders.

173. Accordingly, the Complaint bearing No. ULP 255 of 2003 was filed in the Industrial Court at Mumbai, alleging unfair labour practices. The Respondent-employer, relying on *GlaxoSmithKline*, objected to the Labour Court's territorial jurisdiction in Mumbai, arguing that the employer's head office has been in Ankleshwar, Gujarat, since 15 November 2002, and that all decisions to transfer/terminate were made in Ankleshwar.

174. The Industrial Court recorded the evidence of the parties and, by its judgment and order dated 21 April 2014, dismissed the Petitioner's complaint inter alia on the ground that it lacked territorial jurisdiction to entertain the same. After recording this finding, the Industrial Court, nevertheless, returned findings on merits and held that, even otherwise, no case of unfair labour practice was made out.

175. The objection regarding the lack of territorial jurisdiction was upheld, following the Division Bench decision in *GlaxoSmithKline*, which is now considered to be impliedly overruled. There was no evidence about the shift to Ankleshwar. Therefore, the view that the Industrial Court lacked territorial jurisdiction is erroneous, exceeds jurisdiction, and warrants reversal. Therefore, we hold that

the Industrial Court in Mumbai had territorial jurisdiction to entertain the complaint.

176. Insofar as the findings on merits, which the learned Industrial Judge has returned, we refer to the decision of the Hon'ble Supreme Court in the case of **RSDV Finance Co, Pvt Ltd Vs. Sri Vallabh Glass Works Limited**⁵¹, in which, it was held that *the Division Bench was totally wrong in passing an order on dismissal of the suit itself when it had arrived to the conclusion that the Bombay Court had no jurisdiction to try the Suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper Court and not to dismiss the suit.*

177. This decision is incidentally an authority for the proposition that objection to territorial jurisdiction should not be entertained unless such objection was taken in the Court of the first instance at the earliest possible opportunity; In all cases where issues are settled, then at or before such settlement of issues; and there has been a consequent failure of justice.

178. Besides, in this case, we find that the decision on the lack of territorial jurisdiction has also affected the findings on the merits, which were rather cursorily considered. The Industrial Court, on merits, has mainly observed "*However, evidence has been appreciated in respected of the transfer whether they were mala fide transfer and my answer on this*

⁵¹ 1993 2 SCC 130

issue is in the negative". The Industrial Court has, without much discussion, and prima facie incorrectly, invoked the principles of res judicata and denied relief on the merits because some of the employees settled their dispute by accepting VRS.

179. The Industrial Court did not decide on the evidence regarding the policy of de-unionisation and the intensification of the employees' agitation, which was followed by a spate of transfers and terminations. The impugned order primarily addresses the issue of territorial jurisdiction, and this objection was upheld entirely on *the basis of GlaxoSmithKline*. [See paragraph 25 of the impugned order].

180. Since we propose to remand the matter to the Tribunal for deciding the petitioner's complaint on merits, we refrain from making any observations on the findings recorded in the impugned order, as we wish to prejudice neither party. We clarify that the above observations are only prima facie and to justify the remand. Besides, as observed by the Hon'ble Supreme Court in *RSDV Finance Pvt. Ltd.*, the Industrial Court, having concluded that it lacked territorial jurisdiction, was not justified in deciding the matter on merits. The findings on merits appear to have been impacted by the finding on lack of territorial jurisdiction.

181. For the above reasons, we are satisfied that the Industrial Court's impugned Judgment and order dated 21

April 2014 need to be reversed, and the matter remanded to the Industrial Court for deciding the Petitioner's Complaint No. ULP 255 of 2003 on its merits and in accordance with the law.

182. The parties have already presented their evidence in the matter, and unless a case is made for further evidence, the Industrial Court is directed to consider and dispose of the complaint on its merits. This complaint will now have to be disposed of as expeditiously as possible and, in any event, within six months of the parties placing an authenticated copy of this order before the Industrial Court. The Respondent employer must pay costs of Rs.50,000/- to the Petitioner within four weeks of the date of uploading of this order.

WRIT PETITION No.798 OF 2008

183. Regarding Writ Petition No. 798 of 2008, the records show that approximately 50 complaints of unfair labour practices were filed in the Labour Court at Mumbai under the provisions of the MRTU Act. About 27 complaints were settled out of Court, and the remaining 23 complaints were decided by the Labour Court at Mumbai through a common order. The Labour Court rejected the objection regarding lack of territorial jurisdiction.

184. This was inter alia because the employer had failed to produce any evidence to support its claim that the head or

administrative office had been shifted to Ankleshwar. The employer challenged the common order before the Industrial Court. The Industrial Court did not interfere with the finding regarding territorial jurisdiction. However, on merits, the Industrial Court quashed the Labour Court's order and held that there was no unfair labour practice involved.

185. Mr Bhat argued that the employer took no further steps to contest the concurrent findings of the Labour Court and the Industrial Court regarding territorial jurisdiction. However, in this Petition, an affidavit has been submitted challenging the Labour Court's territorial jurisdiction, citing the Division Bench's decision in *GlaxoSmithKline*.

186. In this case, Mr Bhat, representing the employees, and Mr Sawant, representing the employer, focused solely on the issue of territorial jurisdiction and not on the merits. Therefore, while we find that the employer's objection based on a lack of territorial jurisdiction is/was untenable, we agree with the Learned Counsel that the learned Single Judge best decides the challenges to the impugned order on the merits.

187. The parties should consider whether any orders should be obtained from the administrative side for this purpose and take appropriate steps accordingly. Accordingly, we defer the hearing in this petition on the challenge to the Industrial Court's finding that no case of unfair labour practice was made out to enable the parties to obtain orders on the

Administrative Side.

WRIT PETITION No. 1643 of 2010

188. In Writ Petition No. 1643 of 2010, the Petitioner, a medical representative, received an appointment letter and a termination letter from the employer's head office/registered office in Mumbai.

189. The Petitioner challenged the termination by filing Case No. [ULP] 52 of 2002 before the Labour Court at Indore, wherein the employer raised the preliminary objection to the Labour Court at Indore entertaining the complaint on the grounds that the Labour Court at Indore lacked territorial jurisdiction.

190. Mr Nagle submitted that the Labour Court in Indore, by order dated 16 February 2006, disposed of the proceedings due to lack of territorial jurisdiction. Consequently, the Petitioner's dispute was ultimately referred by the appropriate government for industrial adjudication to the Labour Court in Mumbai.

191. Mr Nagle, by reference to paragraph 3 of the impugned award dated 10 February 2010, submitted that even during the conciliation proceedings, the employer gave in writing that they were not pressing the issue of territorial jurisdiction regarding the proceedings at Mumbai.

192. Mr Nagle submitted that, even otherwise, the records show that the Petitioner was appointed from the head office in Mumbai and that his salary was also paid from Mumbai. The show-cause notice, the charge sheet, and the termination order were issued from Mumbai. Considering all these aspects, Mr Nagle submitted that the reference made by the Government of Maharashtra was competent.

193. The records show that, despite this, the employer did raise the issue of the competence of the Government of Maharashtra to make the reference by alleging that the situs of the Petitioner's employment was in Indore and therefore, given the law laid down by the Division Bench in *GlaxoSmithKline*, the Government of Maharashtra was not competent to make the reference.

194. The Labour Court accordingly framed the issue, whether it had territorial jurisdiction to try the reference. By the impugned Award dated 10 February 2010, the Labour Court concluded that it lacked territorial jurisdiction because the very reference made by the government of Maharashtra was incompetent. The entire reasoning is based on the decision of the Division Bench in the case of *GlaxoSmithKline* .

195. Now that the decision of the Division Bench in the case of *GlaxoSmithKline* is held to be impliedly overruled, the impugned award will have to be set aside. However, even *de hors* this ground, the impugned award will have to be set

aside because it ignores several decisions of the Hon'ble Supreme Court holding that the Government of the State, which has nexus with the industrial dispute, is competent to make a reference.

196. In this case, the records do show that the Petitioner was appointed and paid a salary from the head office in Mumbai. The show-cause notice, charge sheet, and, eventually, the termination letter were also issued by the head office in Mumbai. This was more than sufficient to vest the Government of Maharashtra with jurisdiction to refer. The Labour Court misdirected itself both on law and in fact by holding that it had no territorial jurisdiction because the Government of Maharashtra was not competent to make the reference. Such a finding is vitiated by perversity and warrants interference.

197. Apart from all this, in this case, we would be failing in our duty if we did not deplore the employer's conduct. When the employee sought redress from the Indore Courts, the employer resisted, arguing that the Indore Courts lacked jurisdiction and that the cause of action had arisen in Mumbai.

198. When the Petitioner sought redress from the Authority/Courts in Mumbai, the employer made a volte face and urged that the Government of Maharashtra or the Labour Court in Mumbai lacked territorial jurisdiction. This was after

stating in writing before the Labour Commissioner that the objection regarding territorial jurisdiction would not be raised. By such tactics, the Petitioner has been denied adjudication on the merits for the last 17 to 18 years. The attempt is obviously to tire out the Petitioner, who can ill afford such litigation and delays.

199. Therefore, we set aside the impugned award dated 10 February 2010 and restore Reference IDA No. 174 of 2006 before the 7th Labour Court at Mumbai with directions to dispose of this Reference on merits as expeditiously as possible and in any event within a maximum period of one year from the date of the parties filing an authenticated copy of this order.

200. The employer-Respondent-M/s. Lupin Industries Ltd. are directed to pay costs of Rs. 1 lakh to the Petitioner in this matter within four weeks of the date of uploading of this order.

WRIT PETITION NO. 2477 OF 2010

201. In Writ Petition No. 2477 of 2010, the Petitioner filed a complaint under the MRTU Act, before the Labour Court at Mumbai, concerning transfers and termination of about 57 employees by the Respondent-employer. This was registered as ULP No. 203 of 2001 before the Industrial Court at Mumbai. The Industrial Court declined interim relief.

However, this order was reversed by this Court in Writ Petition No. 1228 of 2001, vide order dated 12 June 2003.

202. When the matter was pending before the Industrial Court, the services of 36 employees were terminated. Therefore, the Petitioners were forced to file a complaint No. 379 of 2003 before the Labour Court, Mumbai, challenging the termination on the ground of unfair labour practice.

203. In this case, it does not appear that the employer raised any objection based on territorial jurisdiction. The Petitioner's evidence was allowed to be concluded. While the evidence on behalf of the Respondent-employer was being presented, an affidavit/application was filed to question the territorial jurisdiction of the Labour Court by relying upon *GlaxoSmithKline* (supra).

204. The Labour Court, by its order dated 19 May 2009, upheld the objection based on territorial jurisdiction and dismissed the Petitioner's complaint No. 379 of 2003. The Petitioner instituted a Revision before the Industrial Court, being Revision Application No. 134 of 2009. This was also dismissed by the Industrial Court vide order dated 09 August 2010. Hence, this Petition.

205. Having held that the decision of the Division Bench in the case of *GlaxoSmithKline* is impliedly overruled, the impugned orders dated 19 May 2009 and 09 August 2010 must be set aside, and they are hereby set aside. Furthermore,

we observe that in this case, objections to territorial jurisdiction were not raised at the earliest stage. The objection was raised belatedly, after the Labour Court had substantially heard the evidence. The employer did not demonstrate any prejudice or failure of justice. This forms an additional reason why such an objection should not have been entertained or upheld.

206. Accordingly, we set aside the impugned orders dated 19 May 2009 and 09 August 2010 and restore the Petitioner's complaint No. 379 of 2003 before the Labour Court at Mumbai. The Labour Court should now dispose of this complaint on the merits as quickly as possible and, in any case, within a year of the parties submitting an authenticated copy of this order.

207. The Respondent-employer must pay costs of Rs. 50,000/- to the Petitioner within four weeks of the date of uploading of this order.

WRIT PETITION NO. 2893 OF 2015

208. In Writ Petition No. 2893 of 2015, the Petitioner – Union represents Medical Representatives who were transferred. The Petitioner contends that such transfers were in pursuance of the employer's declared objective of achieving "de-unionisation". Some of the Medical Representatives were also terminated. Although the transfers and termination orders

were served on the Medical Representatives outside the State of Maharashtra, the decision to transfer and terminate was made in Mumbai.

209. Therefore, the Petitioners filed ULP No. 486 of 2003 before the Industrial Court at Mumbai. The Industrial Court dismissed this on the ground that it lacked territorial jurisdiction, considering the Division Bench's decision in *GlaxoSmithKline*.

210. The records show that the Petitioners' appointments were made from Mumbai. The control was exercised from Mumbai. The salaries were paid from Mumbai. The settlements were signed in Mumbai; the transfer and termination orders were also issued there. Given the above facts, the finding regards territorial jurisdiction suffers from perversity. However, it appears that the Industrial Court has followed the Division Bench's decision in the *GlaxoSmithKline* case.

211. Having now established that the decision of the Division Bench in *GlaxoSmithKline* is impliedly overruled, the impugned order dated 10 March 2015 is hereby set aside. The Complaint ULP No.486 of 2003 is restored to the file of the Industrial Court, which shall decide the complaint on its merits as quickly as possible and, in any case, within one year from the date parties submit the authenticated copy of this order.

212. The Respondent employer shall pay costs of Rs. 50,000/- to the Petitioner within four weeks of the uploading of this order.

CONCLUSION

213. Thus, we dispose of all these matters by passing the following order:

(A) Appeal No.585 of 2009 :-

(i) Appeal No.585 of 2009 is allowed.

(ii) The impugned judgment and order of the learned Single Judge dated 03 November 2009 is set aside, and the Petitioner's complaint ULP No.134 of 2003 is restored to the file of the Labour Court at Mumbai.

(iii) The Labour Court is directed to dispose of this complaint on its own merits and in accordance with law as expeditiously as possible and in any event, within one year from the date of the parties placing the authenticated copy of this order before it;

(iv) Besides, the Respondent - M/s. Novartis India Ltd is directed to pay costs of Rs. 50,000/- to the Appellant within four weeks of the date of uploading of this order.

(B) Writ Petition No. 433 of 2015

(i) Writ Petition No.433 of 2015 is allowed.;

(ii) The Industrial Court's impugned judgment and order dated 21 April 2014 are set aside. The Petitioner's complaint, ULP No. 255 of 2003, is restored to the file of the Industrial Court at Mumbai.

(iii) The Industrial Court is directed to dispose of the complaint on merits and in accordance with law as expeditiously as possible and in any event, within one year from the date of the parties placing the authenticated copy of this order before it;

(iv) The Respondent – Wockhardt Ltd shall pay costs of Rs. 50,000/- to the Petitioner within four weeks of the date of uploading of this order.;

(C) Writ Petition No.798 of 2008:-

(i) Writ Petition No.798 of 2008 is partly allowed (but not disposed of) in the sense that the findings of the Labour Court and the Industrial Court that they had territorial jurisdiction to entertain the complaint are upheld.

(ii) However, as requested, the parties are at liberty to obtain orders on the administrative side for this petition to be heard by the Learned Single Judge to consider the challenge to the impugned order dated 03 November 2007 on merits since the learned counsel for both the parties did not advance any arguments on the merits of the matter and submitted that the matter could be restored to the file of the learned Single

Judge in case the objection based on territorial jurisdiction was to be rejected.

(iii) The hearing in this petition on the challenge to the Industrial Court's finding that no case of ULP was made out is deferred to 8 December 2025 to enable the parties to obtain orders on the Administrative Side.

(D) Writ Petition No.1643 of 2010 :-

(i) Writ Petition No.1643 of 2010 is allowed.

(ii) The impugned Award dated 10 February 2010 made by the Labour Court at Mumbai is set aside, and Reference (IDA) No.174 of 2006 is restored to the file of the Labour Court at Mumbai.

(iii) The Labour Court is directed to dispose of this Reference on merits as expeditiously as possible and, in any event, within one year from the date the parties submit the authenticated copy of this order.

(iv) The Respondent – M/s. Lupin Industries Ltd. must pay costs of Rs. 1,00,000/- to the Petitioner within four weeks of the date of uploading of this order.

(E) Writ Petition No.2477 of 2010 :-

(i) Writ Petition No.2477 of 2010 is allowed.;

(ii) The impugned order dated 19 May 2009 made by the Labour Court in Complaint (ULP) No.379 of 2003 and, impugned order dated 09 August 2010 made by the Industrial Court in Revision Application (ULP) No.134 of 2009 are set aside and Complaint (ULP) No.379 of 2003 is restored to file of the Labour Court at Mumbai.

(iii) The Labour Court is directed to dispose of this complaint on the merits as expeditiously as possible and in any event, within one year from the date of the parties placing the authenticated copy of this order before it.

(iv) The Respondent – Rallis India Ltd must pay costs of Rs. 50,000/- to the Petitioner within four weeks of the date of uploading of this order.

(F) Writ Petition No.2893 of 2015 :-

(i) Writ Petition No.2893 of 2015 is allowed.

(ii) The impugned order dated 10 March 2015 made by the Industrial Court is set aside. The Petitioner's complaint (ULP) No.486 of 2003 is restored to the file of the Industrial Court.

(iii) The Industrial Court is directed to dispose of the complaint on its own merits and in accordance with law as expeditiously as possible and, in any event, within one year from the date parties submit the authenticated copy of this order.

(iv) The Respondent – M/s. Piramal Healthcare Ltd must pay costs of Rs. 50,000/- to the Petitioner within four weeks of the date of uploading of this order.

214. In conclusion, and for all the above reasons, we allow Appeal No.585 of 2009 and dispose of the rule in all the connected petitions [except writ petition no. 798 of 2008], in the above terms.

(Advait M. Sethna, J.)

(M.S. Sonak, J.)

215. At this stage, the learned counsel for the employers pray for a stay on the Judgment and Order that we have just pronounced. After holding that the Industrial and Labour Courts have territorial jurisdiction, we have only remanded the matters to the concerned Courts for adjudication of the employees' complaints on merits. This adjudication is bound to take some time and therefore, we have granted a year's time in most of these matters to complete the adjudication. For last 15 to 18 years, the employees have been denied adjudication on merits. Accordingly, we see no good reasons to stay this Judgment and Order. The request is therefore declined.

216. All concerned must act on an authenticated copy of this order.

(Advait M. Sethna, J.)

(M.S. Sonak, J.)