

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NOS. 884-895 OF 2016

UNION OF INDIA ETC.

.....PETITIONER (S)

VERSUS

THE UNITED PLANTERS ASSOCIATION
OF SOUTHERN INDIA ETC. ETC. & ORS.

..... RESPONDENT(S)

WITH

TRANSFER PETITION (CIVIL) NO. 683 OF 2019

WITH

TRANSFER PETITION (CIVIL) NOS. 1456-1461 OF 2016

WITH

TRANSFER PETITION (CIVIL) NOS. 1473-1531 OF 2016

WITH

TRANSFER PETITION (CIVIL) NOS. 590-598 OF 2017

WITH

TRANSFER PETITION (CIVIL) NOS. 480-481 OF 2017

WITH

TRANSFER PETITION (CIVIL) NOS. 760-789 OF 2017

WITH

TRANSFER PETITION (CIVIL) NOS. 599-604 OF 2017

WITH

TRANSFER PETITION (CIVIL) NOS. 2127-2135 OF 2017

WITH

TRANSFER PETITION (CIVIL) NOS. 1263-1269 OF 2017

WITH
TRANSFER PETITION (CIVIL) NOS. 1253-1255 OF 2017

WITH
TRANSFER PETITION (CIVIL) NO. 2425 OF 2017

WITH
TRANSFER PETITION (CIVIL) NO. 659 OF 2018

WITH
TRANSFER PETITION (CIVIL) NO. 856 OF 2018

WITH
TRANSFER PETITION (CIVIL) NO. 1237 OF 2018

WITH
TRANSFER PETITION (CIVIL) NO. 1954 OF 2018

WITH
TRANSFER PETITION (CIVIL) NO. 218 OF 2019

O R D E R

DINESH MAHESHWARI, J.

1. By way of these petitions under Article 139A(1) read with Order XL of the Supreme Court Rules, 2013, the petitioners, led by the Union of India, have prayed for transfer of various writ petitions, pending before different High Courts challenging the constitutional validity of the Payment of Bonus (Amendment) Act, 2015 [being Act No. 6 of 2016]¹, to this Court.

2. As per the record, though the first set of transfer petitions in this batch, being T.P.(C) Nos. 884-895 of 2016, was entertained on 01.07.2016 by issuing notices but, in the next set of petitions, being T.P.

¹ Hereinafter also referred to as 'the Amendment Act of 2015'.

(C) Nos. 1456-1461 of 2016, while issuing notices on 26.09.2016, further proceedings in the related writ petitions pending before the Allahabad High Court were stayed. Thereafter, from time to time and until 06.08.2018, other transfer petitions comprising this batch were entertained and similar interim orders were passed, staying further proceedings in the writ petitions pending before the respective High Courts. In the next two matters, being T.P.(C) No. 1954 of 2018 and T.P.(C) No. 218 of 2019, notices were issued respectively on 26.11.2018 and 08.02.2019 but without any specific stay order. Thereafter, on 08.04.2019, T.P.(C) No. 683 of 2019 was entertained and while issuing notices, again, further proceedings in the subject writ petition before the High Court concerned were stayed.

3. It may be noticed that in T.P.(C) Nos. 1490-1491 of 2016, the respondent No. 1 Tata Motors Ltd. has stated no objection to the transfer of its case to this Court, being W.P.(C) Nos. 11112-13 of 2016 pending before the High Court of Karnataka. Similarly, in T.P.(C) Nos. 590-598 of 2017, one of the respondents, the State of Madhya Pradesh, has stated no objection if the subject writ petition pending before the High Court of Madhya Pradesh is transferred to this Court. Similar has been the stand of the State of Madhya Pradesh in T.P.(C) Nos. 760-789 of 2017 and of the State of Bihar in T.P.(C) No. 856 of 2018. The State of Himachal Pradesh has also not stated any specific objection in relation to the prayer for transfer in T.P.(C) No. 1237 of 2018. Similarly, the respondent Nos. 1

and 2 in T.P.(C) Nos. 885-886 of 2016, being Karnataka Employers Association and Sai Security Printers Pvt. Ltd., have also stated no objection if W.P.(C) No. 5311 of 2016 pending before the High Court of Karnataka is transferred to this Court. However, several of the other respondents in this batch of matters have strongly opposed the prayer for transfer of the respective writ petitions to this Court on various grounds, as shall be noticed a little later.

4. Shorn of unnecessary details, the aspects relevant for the present purpose are as follows:

4.1. By the said Amendment Act of 2015, two major changes were introduced to the Payment of Bonus Act, 1965²: one being the amendment of clause (13) of Section 2, raising the salary limit from Rs. 10,000/- to Rs. 21,000/- per month for the purpose of coverage under the Act; and the other being raising the wage ceiling for calculating the bonus under Section 12 from Rs. 3,500/- to Rs. 7,000/- per month or the minimum wages for the scheduled employment as fixed by the appropriate Government, whichever be the higher. Further, by way of Explanation to Section 12, it was clarified that the expression “scheduled employment” shall have the same meaning as assigned to it in clause (g) of Section 2 of the Minimum Wages Act, 1948. These amendments were given retrospective effect in Section 1 of the Amendment Act of 2015 by providing that it shall be deemed to have come into force on 01.04.2014.

2 Hereinafter also referred to as ‘the Act of 1965’ or simply as ‘the Act’.

4.2. The said amended provisions, i.e., clause (13) of Section 2 as also Section 12 of the Act of 1965, with necessary explanatory notes, are extracted as under: -

“2. Definitions. – In this Act, unless the context otherwise requires,-

(13) “employee” means any person (other than an apprentice) employed on a salary or wage not exceeding [twenty-one thousand rupees]³ per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;”

“12. Calculation of bonus with respect to certain employees.—Where the salary or wage of an employee exceeds [seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher]⁴ per mensem, the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wage were [seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher]⁵ per mensem.

[*Explanation.* —For the purposes of this section, the expression “scheduled employment” shall have the same meaning as assigned to it in clause (g) of section 2 of the Minimum Wages Act, 1948.]⁶”

4.3. The said amendments have been challenged in various writ petitions pending before different High Courts mainly on two counts: first, against the requirement of payment of bonus as per the amended provisions with retrospective effect from the year 2014-15; and secondly, against the validity of linkage to the minimum wages in regard to the calculation of bonus.

³ Substituted for “ten thousand rupees” by Act 6 of 2016, S. 2 (w.r.e.f. 01.04.2014).

⁴ Substituted for “three thousand and five hundred rupees” by Act 6 of 2016, S. 3(i) (w.r.e.f. 01-04-2014).

⁵ Same as footnote 4 *ibid*.

⁶ Inserted by Act 6 of 2016, S. 3(ii) (w.r.e.f. 01-04-2014).

4.4. As per the facts projected before us, the petitions filed in various High Courts in challenge to the aforesaid Amendment Act of 2015 have been entertained with different interim orders in some of the petitions inasmuch as some of the High Courts have directed that the amendment shall take effect only from the financial year 2015-16 whereas one High Court has directed to implement the same from the financial year 2016-17. Another High Court has directed that no coercive action shall be taken against the writ petitioners.

4.5. As noticed, in the wake of challenge to the Amendment Act of 2015 in different High Courts; and the respective High Courts having passed different interim orders, the petitioners led by the Union of India seek transfer of all the pending writ petitions to this Court. Some of the respondents in these petitions have filed their reply, either opposing or supporting these petitions, as per their respective stands.

5. Learned counsel for the parties have also filed their respective written submissions and the learned Additional Solicitor General has, in terms of our order dated 22.11.2021, filed a composite convenience compilation of the respective submissions, projecting divergent viewpoints.

5.1. We have heard Mr. K.M. Nataraj, learned Additional Solicitor General for the petitioners; and Mr. Abhijit Chatterjee, Mr. K. Kasturi, Ms. Suruchii Aggarwal and Mr. Gopal Sankaranarayanan, learned senior

counsel as also Mr. Rajiv Tyagi and Mr. R. Anand Padmanabhan, learned counsel for the respective respondents at length.

5.2. Having regard to the short question before us in this batch of transfer petitions, it does not appear necessary to expand or elongate this order with reference to a wide variety of submissions made before us; suffice it would be to take note of the principal and material submissions in support of the prayer for transfer of the writ petitions to this Court, or in opposition thereto, or in support of the alternative proposition of transferring the writ petitions to one High Court.

6. Mr. K.M. Nataraj, the learned ASG has pointed out that the said issues, relating to the retrospective operation of the amended provisions and linkage of calculation of bonus with minimum wages for the scheduled employment, are forming the subject-matter of more than 140 writ petitions filed across the country in as many as 18 High Courts. The learned ASG would submit that with large number of petitions involving similar and akin issues being taken up in different High Courts, there is every likelihood of conflicting views being expressed by different High Courts, which may lead to an undesirable situation. In the given circumstances, according to the learned ASG, withdrawing all such writ petitions to this Court for analogous hearing would be in the best interest of the parties as also for maintaining consistency in operation of the statute. As regards a line of submissions by some of the parties that, if at all, the matters may be transferred to one High Court, the learned ASG

has submitted that such a course may not serve the best interest of the parties; and would cause hardship to the parties whose petitions are pending before other High Courts and who may not be able to effectively contest the matter before any High Court other than their jurisdictional High Court.

7. *Per contra*, the learned senior counsel Mr. Abhijit Chatterjee appearing for contesting respondents, including in T.P.(C) No. 786 of 2017, has submitted that if the contention regarding the possibility of conflicting decisions by different High Courts is accepted, it would practically mean that every challenge to the validity of a central statute shall have to be decided by this Court, which is not the mandate and framework of the constitutional scheme. According to the learned counsel, mere possibility of divergence of views or interpretations cannot be a ground for transfer of all the proceedings to this Court. The learned counsel has strongly relied upon a 3-Judge Bench decision of this Court in the case of ***Union of India v. M/s Cummins Technologies India Pvt. Ltd. & Ors. Etc.***: Transfer Petition (Civil) Nos. 1481-1482 of 2021, decided on 20.09.2021, to submit that in the said case, the prayer for transfer was declined by this Court even though it was argued on behalf of the petitioner-Union of India that the same issue pending in various High Courts was having implications on a large number of matters and also ramifications of huge amount payable under a central statute.

7.1. It has also been submitted that the Union of India, having a huge establishment of its law officers and legal advisors will not face any difficulty in conducting the writ petitions in different High Courts whereas transfer of writ petitions to this Court may cause difficulties to various litigants located at different places.

7.2. The learned senior counsel has also argued that the proposition of consolidation of all the writ petitions before one High Court also deserves not to be accepted because no one High Court would be convenient to the writ petitioners who have filed their respective petitions in their jurisdictional High Courts. The learned counsel, however, submitted in the alternative that if at all the petitions are to be consolidated before one High Court, the same may be transferred for analogous hearing before the Calcutta High Court, where the related writ petitions have already appeared in the cause list for hearing and disposal. The learned counsel has referred to the case of ***Institute of Chartered Accountants of India v. Southern Petrochemical Industries Corporation Limited and Anr.*** : (2007) 15 SCC 649 wherein this Court adopted the course of transferring various writ petitions pending before different High Courts, and involving similar issues relating to the constitutional validity of Para 33 of Accounting Standards 22 framed by the Institute of Chartered Accountants of India, to the Calcutta High Court, where the petitions were ready for hearing.

8. Ms. Suruchii Aggarwal, the learned senior counsel appearing for the contesting respondents in T.P.(C) No. 1954 of 2018 has similarly opposed the prayer for transfer with the additional submission that in the event of transfer of matters to this Court, the parties will lose their right of appeal against the final judgment of the High Court. Apart from the decision in ***M/s Cummins Technologies India Pvt. Ltd.*** (supra), the learned counsel has also referred to the decision of this Court in ***Lunawat Construction Company v. Union of India & Anr.: (2019) 5 SCC 467.***

9. Yet further, similar nature submissions have been made by Mr. Gopal Sankaranarayanan, the learned senior counsel for the respondent Nos. 1 and 3, being Bowreah Jute Mills Private Limited and Indian Jute Mills Association in T.P.(C) No. 892 of 2016. It has additionally been submitted that the issues being adjudicated by the Calcutta High Court in the petition filed by them are not merely confined to the broader issues mentioned in the transfer petitions but there are other factual issues, specific and unique to their case, which cannot be clubbed together with any other case. Further detailed submissions have been made as regards the status of these contesting respondents and the operation of law as regards the jute industry; and the impact of impugned amendments on this industry has also been highlighted which need not be dilated in this order. However, the emphasis in these submissions had been that the writ

petition of these respondents, being of its own peculiar nature, deserves not to be transferred.

10. As indicated hereinbefore, more or less similar submissions have been made by the learned senior counsel Mr. K. Kasturi as also by the other learned counsel for the respondents, which are not being repeated for the sake of brevity. We may, however, take note of an additional viewpoint projected by Mr. Rajiv Tyagi, learned counsel for the contesting respondent in T.P.(C) No. 683 of 2019 that with the linkage of qualifying wages to minimum wages in terms of the amended Section 12, the wages prescribed by different States shall have different implications and in this view of the matter too, it would be appropriate if the pending writ petitions are considered by the respective High Courts in light of the particular provisions operating in each State relating to minimum wages rather than bringing all such cases before this Court as a Court of first instance.

11. Having given thoughtful consideration to the rival submissions and having examined the record, even when we agree with the submissions that the writ petitions related with this batch of matters might carry substantially the same questions of law concerning the constitutional validity of the Payment of Bonus (Amendment) Act, 2015 but, for a variety of other relevant reasons, we are disinclined to transfer these matters in this Court or even to one High Court.

12. In the first place, we feel that in the scheme of the Act of 1965 and in relation to the questioned amendments, variance in some of the

questions and some of the factual aspects is likely to occur because of the innate role of the appropriate Government in the ultimate calculation of bonus with respect to certain employees in terms of the amended Section 12 of the Act of 1965; and such an appropriate Government may be the Central Government or may be the Government of the particular State in terms of the definition contained in clause (5) of Section 2 of the Act of 1965 that reads as under:-

- “(5) “appropriate Government” means—
- (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;
 - (ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;”

12.1. Thus, when the wage ceiling in terms of the amended Section 12 has its correlation also with the minimum wages for the scheduled employment as fixed by the appropriate Government, the decision on the questions being raised in the respective writ petitions, may have to be addressed with reference to the relevant decision of the appropriate Government, depending on the nature of establishment; and that may include the particular State Government too.

12.2. Moreover, the role of the appropriate Government even as regards the power of exemption is seen in Section 36 of the Act of 1965 and in this view of the matter too, in our view, the decision of individual writ petitions by the jurisdictional High Courts shall be in the best interest of the respective parties. Section 36 of the Act of 1965 reads as under: -

“36. Power of exemption. – If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act.”

13. Apart from the above, having regard to the subject-matter and the variety of questions likely to arise in the matter, it does appear appropriate to have the benefit of the views of the jurisdictional High Courts before the questions of law are taken up for consideration in this Court, if occasion so arises; and such a course appears better serving the cause of justice, including protecting the right of seeking judicial review after the decision of the Court of first instance.

13.1. In ***Lunawat Construction Company*** (supra), this Court considered it proper to have the benefit of findings of the High Court in relation to the subject-matter and hence, conversely sent the writ petitions pending in this Court to the High Court with other transferred cases while observing as under:-

“By filing Writ Petition (C) No. 96 of 2011 under Article 32 of the Constitution of India, the petitioner therein has challenged the constitutional validity of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 (Annexure P-15). In connected writ petition and the transferred case, the petitioners have claimed similar reliefs, which are claimed in the lead Writ Petition No. 96 of 2011.

2. Having heard the learned counsel for the parties and on perusal of the record of the case, we deem it just and proper to send these writ petitions and the transferred case to the High Court of Bombay for their disposal on merits in accordance with law.

3. In our view, no prejudice is likely to cause to the parties, if these writ petitions and the transferred case are sent to the High Court for their hearing on merits of the controversy instead of deciding the issue by this Court in the first instance. On the other hand, we are of the view that once the High Court renders its decision, this Court will have the benefit of the findings of the High Court, if occasion arises.

4. In view of the foregoing discussion, both the writ petitions and the transferred case, WPs (C) Nos. 96 of 2011, 36 of 2012 and TC (C) No. 30 of 2010 are sent to the High Court for their disposal on merits in accordance with law. We request the High Court to decide the writ petitions expeditiously.”

14. Apart from the above, it is noticeable from the latest decision of the 3-Judge Bench in ***M/s Cummins Technologies India Pvt. Ltd.*** (supra) that even when the cases were indicated to be pending in different High Courts involving similar issues concerning constitutional validity of Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 and it was submitted that the issues might have implication on a number of matters pending across the country with ramification of huge amount payable under the said Act, this Court expressed disinclination to entertain the transfer petitions for the reason that various High Courts were already seized of the matter and it was also noticed that before one High Court, the pleadings had been exchanged. Therefore, while declining the prayer for transfer, this Court expected expeditious disposal of the pending petitions before the respective High Courts. The order so passed by this Court on 20.09.2021 reads as under: -

“The Court is convened through Video Conferencing.

Heard Mr. Tushar Mehta, learned Solicitor General, Mr. S. V. Raju, learned Additional Solicitor General appearing for the Union of India, learned counsel appearing for Respondent No. 1, who is on caveat, and carefully perused the record.

These transfer petitions have been filed by the Union of India under Article 139A read with Article 142 of the Constitution of India seeking transfer of two Writ Petitions to this Court, i.e., (i) Writ Petition No. 9443/2020 titled 'M/s. Cummins Technologies vs Union of India' pending before the High Court of Madhya Pradesh at Indore and (ii) Writ Petition No.7767 / 2020 titled 'M/s. SPL Infrastructure Private Limited v. Assistant Commissioner of State Tax, Narasannapeta and Ors.' pending before the High Court of Andhra Pradesh at Amaravati. In both these Writ Petitions, the constitutional validity of Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 has been challenged.

In addition to the aforementioned two Writ Petitions, we are informed that the constitutional validity of Section 16(2)(c) of the CGST Act has been challenged in 34 other writ petitions, which are stated to be pending across nine High Courts in the country.

According to learned Solicitor General, since the issue has implication on a number of matters pending across the country and also ramifications of huge amounts payable under the said Act, it would be appropriate if this Court hears all the matters.

Even though learned Solicitor General insisted for transfer of cases pending before various High Courts to this Court, we are not inclined to entertain these transfer petitions, for the reason that various High Courts are already seized of the matters. In particular, in the matter before the High Court of M.P., Indore Bench, counter affidavit is already stated to have been filed.

In view of the above, we request the High Court of Madhya Pradesh, Indore Bench to dispose of the Writ Petition No.9443/2020, pending adjudication before it, as early as possible and preferably within a period of two months' time from the date of communication of this Order.

Parties are at liberty to advance their respective arguments before the High Court of Madhya Pradesh, Indore Bench.

So far as other Writ Petitions, which are pending before various High Courts, it is open for the parties to bring this Order to the notice of the concerned High Courts and seek expeditious disposal of their cases.

The Transfer Petitions are disposed of in the afore-stated terms.

Pending applications, if any, shall also stand disposed of."

15. We need not multiply the reference to various other orders passed by this Court relating to the prayer for transfer because, ultimately, the decision to transfer or not, to this Court or to one High Court, has been taken by this Court in exercise of its jurisdiction under Article 139A of the Constitution of India with reference to the given set of facts and circumstances. No hard and fast rule or any structured formula is provided nor appears desirable; a comprehensive view of all the facts and relevant surrounding factors is the best guiding light for exercise of this jurisdiction under Article 139A of the Constitution of India.

16. In the present set of facts and circumstances, for what has been noticed and discussed hereinabove, we are clearly of the view that transfer of the pending writ petitions from the respective High Courts is not called for. The likelihood of divergence of views, looking to the framework of the statute itself, cannot be a ground for transfer. Equally, there appears no reason to transfer the matters to any one High Court; rather it appears just and proper that the petitions in the jurisdictional High Courts are decided with reference to their own factual background and the law applicable. Hence, we do not consider it necessary to deal with the cases cited in support of the proposition for transfer of the matters to any one High Court, like the decision in the case of ***Institute of Chartered Accountants of India*** (supra).

17. Accordingly, the prayer for transfer of the subject petitions is declined and all the interim stay orders are vacated while providing that it

shall be permissible for the parties to request the respective High Courts for expeditious hearing and disposal of the pending writ petitions. For that matter, we would also request the respective High Courts to proceed with the matters expeditiously, while assigning them reasonable priority.

..... J.
(DINESH MAHESHWARI)

..... J.
(VIKRAM NATH)

**NEW DELHI;
JULY 11, 2022.**