

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.23682 OF 2016

Bharat Daga Wagh

..Petitioner

Versus

Maharashtra State Electricity

Distribution Company Limited and others

..Respondents

Mr. Amol Gatne for the Petitioner

Ms. Kavita Anchan i/by M/s. M. V. Kini & Co. for the Respondents.

CORAM : R. M. SAVANT, J.

DATE : 29th AUGUST, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the judgment and order dated 20.08.2016 passed by the Learned Member of the Industrial Court, Nashik, by which order the application Exh.U-2 for interim reliefs filed by the Petitioner came to be rejected.

2 The Petitioner is working as an Assistant Engineer with the Respondent/Maharashtra State Electricity Distribution Company Limited ("MSEDCL" for short). The Petitioner was issued a charge-sheet for committing a misconduct within the meaning of Regulation 88 of the Regulations framed by the MSEDCL. The gravamen of the allegation against the Petitioner was of seeking illegal gratification from a

consumer. The Petitioner was also involved in a trap case of the Anti Corruption Bureau of the State of Maharashtra and an FIR has been registered against the Petitioner under the Prevention of Corruption Act. The prosecution against the Petitioner is pending. In so far as the departmental proceedings are concerned, they are at the stage where only the final order is remaining to be passed, as a show-cause notice has already been issued to the Petitioner. It is at the said stage that the Petitioner invoked the provisions of the MRTU and PULP Act, 1971 and filed Complaint (ULP) No.148 of 2016 alleging unfair labour practice under Section 28 r/w Item Nos.5, 9 & 10 of Schedule IV of the said Act against the Respondents. In the said complaint, the Petitioner filed the instant application Exh.U-2 for interim reliefs. The Petitioner inter-alia sought the relief that the departmental proceedings should not be proceeded with pending the criminal case. In so far as the Respondent/MSEDCL is concerned, the stand taken is that the Petitioner is not a workman and therefore the complaint filed is not maintainable. The Respondent also sought to justify the holding of the departmental enquiry against the Petitioner. In so far as the application Exh.U-2 is concerned, the same has been rejected on twin grounds, firstly that the issue whether the Petitioner is a workman being a contentious issue between the parties, is required to be adjudicated and secondly, that in

view of the settled position of law in respect of the departmental enquiry being allowed to be proceeded with during the pendency of the criminal trial, the interim reliefs could not be granted to the Petitioner.

3 The Learned Counsel appearing on behalf of the Petitioner Mr. Amol Gatne sought to reiterate the case of the Petitioner before the Industrial Court that the departmental enquiry should not be proceeded with pending the criminal trial, as the same would cause prejudice to the Petitioner in the criminal trial. The Learned Counsel sought to place reliance on the unreported judgment of the Division Bench of this Court in Writ Petition No.4758 of 2014 and companion matters. It was also the contention of the Learned Counsel that the Industrial Court ought to have framed a preliminary issue as to whether the Petitioner is a workman. In my view, the said Division Bench judgment would not aid the Petitioner in his endeavour to obtain interim reliefs in the instant case. In the instant case, as indicated above, the departmental proceedings are at the stage where only the final order remains to be passed. The merits as regards the manner in which departmental enquiry was conducted can be obviously gone into at the appropriate stage. The contention of the Learned Counsel for the Petitioner that the issue whether the Petitioner is workman ought to have been framed as a preliminary issue also cannot be accepted in the light of the fact that the

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adjudication of the said issue as observed by the Industrial Court would require evidence to be led.

4 In my view, in the light of the pronouncement of the Apex Court in **Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd.** reported in **(1993) 3 SCC 679** also having regard to the fact that in the instant case, the departmental enquiry is at the final stage as also having regard to the fact that the issue as to whether the Petitioner is workman within the meaning of the said Act would have to be adjudicated, the order passed by the Industrial Court rejecting application Exh.U-2 cannot be faulted with. No case for interference in the writ jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]