

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

WRIT PETITION NO. 5902 OF 1998

Bharat Electronics Ltd.
L-1, MIDC Industrial Area,
Taloja – 410 208, Dist. :
Raigad.

.... PETITIONER

V E R S U S

1. Bhiwaji Mhasku More
Podi No. 1, Near
Railway Cabin, Narayan
Bhodeshwar Chawl,
Panvel, Dist.Raigad.

2. K.B.Wagh,
Presiding Officer,
First Labour Court,
Thane.

.... RESPONDENTS

.....
Smt. M.H.Doshi, Advocate for Petitioner.
None for Respondents.

.....
CORAM : P.R.BORA, J.

JUDGMENT RESERVED ON : 2nd MARCH, 2017

JUDGMENT PRONOUNCED ON : 5th MAY, 2017

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JUDGMENT :

1. Heard learned counsel appearing for the petitioner. None has appeared for respondent No. 1. Respondent No. 2 is formal party.

2. The petitioner has challenged the order dated 16/07/1998 passed by the first Labour Court at Thane in Reference [IDA] No. 122/1989.

3. A dispute was raised by respondent No. 1 about his termination before the Dy. Commissioner of Labour seeking his reinstatement with full back-wages and continuity of service. The dispute so raised was referred by the Dy. Commissioner of Labour, Taddeo, Mumbai for its adjudication to the Labour Court at Thane.

4. While denying the allegations made by the respondent No. 1 as about commission of Unfair Labour Practices and denying the employee–employer relationship with the respondent No. 1, a preliminary objection was raised by the petitioner about the maintainability of the Reference application before the Labour Court at Thane. Preliminary objection was raised by the petitioner to the

effect that the 'appropriate Government' in respect of the petitioner/company is the Central Government and, therefore, the Reference sent by the State Government to the State authority was not maintainable for want of jurisdiction.

5. The learned Labour Judge instead of first deciding the issue of 'maintainability' as a preliminary issue, proceeded with the Reference and simultaneously decided all the issues involved in the Reference. The Labour Court directed the petitioner to reinstate the respondent No. 1 with continuity in service and full back-wages w.e.f. 30/12/1986. Aggrieved by, the present petition is filed.

6. The learned counsel for the petitioner, though has advanced elaborate arguments on all aspects of the matter including the finding recorded by the Labour Court as regards the maintainability of the Reference application, it appears to me that the present petition can be disposed of only on the point of maintainability without going into the merits of the other contentions raised in the petition.

7. The learned counsel for the petitioner has brought to my notice that while deciding Writ Petition No. 9699 of 2004 arising out of the decision by the Industrial Court in Reference [IDA] No. 27/1998, this Court **[CORAM : B.H.MARLAPALLE, J.]** has upheld the finding recorded by the Tribunal that Bharat Electronics Ltd. i.e. the present petitioner, since is fully owned by the Govt. of India, the appropriate Govt. for it is the Central Govt. I am reproducing herein below the entire said order, which reads thus,

" 1. Heard Mr. Ghaisas, the learned counsel for the petitioner who was employed under M/s Bharat Electronics Ltd.

2. Reference [it] No. 27 of 1998 was made by the State Government and a preliminary issue was raised regarding the appropriate Government for the said establishment. The Tribunal noted that 75% of the share holding of M/s Bharat Electronics Ltd. was in the name of the President of India and the remaining 25% shares of the respondents are owned by the financial institutions like nationalized banks, etc. and as the company is fully owned by the

Government of India, the appropriate Government would be the Central Government. Once these findings were recorded by the Industrial Court, it was not permissible for it to proceed to make observations on merits of the case and against the petitioner employee.

3. While upholding the findings recorded by the Tribunal regarding Central Government being the appropriate Government for M/s Bharat Electronics Ltd., it is directed that the findings recorded by the Tribunal on merits will not come in the way of the petitioner so as to re-agitate his challenge to the order of dismissal before the Central Government, Tribunal or any other forum as is available in law.

4. Save and except the above observations, petition is rejected summarily with liberty as is available in law. "

8. The learned counsel thereafter brought to my notice an another order passed by this Court [**CORAM : Dr. D.Y.CHANDRACHUD, J.]** on 13/07/2006 in Writ Petition No. 5654 of 2004, which reads thus,

" *This petition has been placed for orders under the caption of 'Orders'. With the consent of both the learned counsel and at their request the petition has been heard.*

At the hearing of the Petition, counsel appearing for the Respondents stated on instructions that the Respondents do not press the complaint. Complaint [ULP] 75 of 2004, filed by the union before the Industrial Court at Thane, having regard to the judgment of the learned Single Judge of this Court dated 11th April, 2005 in Vilas R. Gaikwad Vs. M/s Bharat Electronics Ltd. [Writ Petition No. 9699 of 2004] in which the finding of the Tribunal that the appropriate government was the Central Government has been confirmed. Learned counsel states that the union will adopt appropriate proceedings for seeking a reference to adjudication under section 10 of the Industrial Disputes Act, 1947. On the request of counsel appearing for the respondents, Complaint [ULP] 75 of 2004 is dismissed as withdrawn with liberty reserved to the Respondents to adopt appropriate proceedings for seeking a reference to adjudication under Section 10 of the Industrial Disputes Act. In the

event that such a request is made, the appropriate Government shall take expeditious steps in accordance with law for making a reference to adjudication. Issuance of this direction is not opposed by the petitioners. In these circumstances, the impugned order dated 17/04/2004 passed by the Industrial Court is by consent quashed and set aside. Complaint [ULP] 75 of 2004 is dismissed as not pressed with liberty reserved to the Respondents herein who are the original complainants to adopt appropriate proceedings in accordance with law as noted. The Petition is disposed of. "

9. The learned counsel thereafter brought to my notice one more order passed by this Court [**CORAM : NISHITA MHATRE, J.**] on 19/01/2011 in Writ Petition No. 279/1999, wherein also it has been confirmed that the State Govt. is not an appropriate Govt. for the petitioner/Corporation. The aforesaid Writ Petition was ultimately withdrawn by the petitioner in the said petition with liberty to approach the Regional Labour Commissioner [Central] to obtain a Reference for adjudication of the dispute.

10. After having considered the aforesaid Judgments, there remains no doubt that for the petitioner the appropriate Govt. is the Central Govt. and not the State Govt. The Labour Court has erred in rejecting the objection raised by the petitioner/company that Central Government was the appropriate authority in relation to the petitioner/company. In view of the fact that the appropriate Government in relation to the petitioner/company is Central Government, the Reference at the behest of the State Government was not maintainable and as such the impugned Award is without jurisdiction. The same, therefore, deserves to be set aside.

11. In normal course, it would have been appropriate to give liberty to the respondent No. 1/workman to approach the Regional Labour Commissioner [Central] to obtain a fresh Reference for adjudication of the dispute. However, having regard to the facts involved in the present petition, it appears to me that it would not be appropriate and also practicable to pass such an order.

12. The services of the respondent No. 1/workman

were admittedly terminated in the year 1986. The Reference of which was made after three years i.e. in the year 1989. It was decided in the year 1998 and the same was challenged before this Court in the year 1998. On 30/11/1998, this Court granted interim stay in so far as the direction to reinstate the respondent No. 1/workman is concerned. However, the petitioner/Company was directed to deposit the entire amount of back-wages w.e.f. 30/12/1986 within four (4) weeks. The respondent/workman was permitted to withdraw 50% of the said amount on furnishing security to the satisfaction of the Registrar of this Court. Remaining 50% of the amount was directed to be invested in fixed deposit with a nationalized bank. It was clarified by this Court in the said order that in the event of the respondent No. 1/workman failing to furnish security to the satisfaction of the Registrar of the Court, then that half amount shall also be invested in the fixed deposit. The record shows that in pursuance of the directions given by the Court, the petitioner/company within the given time deposited the sum of Rs. 57,626/- towards full back-wages of the respondent No. 1/workman w.e.f. 30/12/1986. The record further shows that though the respondent No. 1/workman was permitted to withdraw 50% of the said

amount, the respondent No. 1/workman did not withdraw the amount and the entire amount deposited by the petitioner/company has been, therefore, invested in fixed deposit and is lying with this Court. The record of the case further reveals that the respondent No. 1/workman though has been duly served and had initially appeared through his counsel in the year 1998, has not thereafter attended the present proceeding. As stated earlier, the respondent No. 1/workman has not even withdrawn 50% amount though he was permitted for that. In the aforesaid circumstances, it does not appear to me that there is any propriety in now giving liberty to the respondent No. 1/workman to approach the Regional Labour Commissioner [Central] to obtain a fresh Reference regarding his dispute.

13. More over, the respondent No. 1 had worked with the petitioner for a short period of less than three years. Further, nothing has been brought on record by the respondent No. 1 to show that he was appointed in the petitioner/company by following the due recruitment process. From the record, it further can not be certainly said whether the respondent No. 1 was appointed as an employee of the petitioner to work as a watchman at the

residential buildings of the Officers of the petitioner or whether it was a contract of providing security between the respondent No. 1 and the petitioner. Despite there being any such concrete evidence on record, the Labour Court has allowed the Reference and has directed the reinstatement of the respondent No. 1 with continuity of service and full back-wages w.e.f. 30/12/1986. The aforesaid order has been passed by the Labour Court on 16/07/1998. While awarding full back-wages for the period of about 12 years, no reasons are assigned by the Labour Court. More particularly in view of the fact that it has been admitted by the respondent No. 1 that he is doing the business of garments, the order granting full back-wages could not have been passed by the Labour Court. It shows non application of mind by the Labour Court. In absence of sufficient evidence, it appears to me that the Labour Court could not have passed impugned order. In view of the facts as above, I see no reason for giving liberty to the respondent No. 1 for approaching the Regional Labour Commissioner [Central] to obtain a fresh Reference for adjudication of the dispute which had undisputably arisen in the year 1986. There appears no propriety in passing such an order after long lapse of 30 years.

14. In the foregoing circumstances and for the reasons stated, the order dated 16/07/1998 passed by the Labour Court, Thane in Reference [IDA] No. 122/1989 is set aside and quashed.

The amount deposited by the petitioner in this Court shall be refunded to the petitioner with accrued interest thereon after expiry of the period of 90 days from the date of this order.

15. Writ Petition is, thus, allowed and Rule is made absolute in the aforesaid terms.

[P.R.BORA, J.]