

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2114 OF 2014
WITH
NOTICE OF MOTION NO. 99 OF 2016
IN
WRIT PETITION NO. 2114 OF 2014**

Mahanagar Telephone Karmachari Front Petitioner
Vs.
Mahanagar Telephone Nigam Ltd and Ors Respondents

Mr. Ashok Shetty for the Petitioner
Mr. Sandip Morne for Respondent nos. 1 & 2
Mr. Rahul D. Oak a/w Mr. Siddhesh Shetye for Respondent no. 4
Mr. Vijay Vaidya for Respondent no. 6.

**CORAM : NARESH H. PATIL &
Z. A. HAQ, JJ.
DATE : 21st AUGUST 2017.**

P.C.

1 This Writ Petition is filed by the petitioner with following prayers:

“(a) That this Hon'ble Court after going through the records relating to the said verification of membership of Trade Unions by secret ballot may be pleased to hold and declare that the entire procedure is illegal, arbitrary, and contrary to the Code of Discipline and also contrary to the Full Bench Judgment of the Hon'ble Bombay High Court in the case of Air India Ltd., and may be further pleased to quash and set aside the letters/circulars No. B-11 (2)/2011-Vfn-MTNL dated 18.11.2013; letter No. B.11 (2)/2011-4. Vfn-S-II dated 05.03.2014 issued by the office of the Dy. Chief Labour Commissioner (Central), letter no. 32 (13)/2011-vfn/voII.III dt. 28.02.2014 and the decision taken in the minutes of the meeting held on 25.03.2014 with regard to secret ballot election in MTNL Mumbai issued by the Respondent No. 12 & 13;

(b) In the alternative this Hon'ble Court may be pleased to direct the Respondent nos. 1, 2, 11, 12, 13 & 14 to frame and adopt the same Rules as framed in BSNL for recognition and verification of membership of Trade Unions and grant all such facilities/benefits as

applicable to the unions in BSNL the sister concern of MTNL;

(c) That pending the hearing and final disposal of this Petition, this Hon'ble may be pleased to stay the effect, operation and implementation of the said circular No.-B 11 (2)/2011 – Vfn – MTNL dated 18.11.2013; letter No. B.11 (2)/2011 – 14. Vfn – S – II dated 05.03.2014 issued by the office of the Dy. Chief Labour Commissioner (Central); letter no. 32 (13)/2011-vfn/voII.III dt. 28.02.2014 and the decision taken in the minutes of the meeting held on 25.03.2014 with regard to secret ballot election in MTNL Mumbai issued by the Respondent no. 12 & 13 in holding verification of membership through secret ballot until further order”.

2 The counsel appearing for the petitioner refers to Full Bench Judgment in the case of **Air India Employees' Guild Vs. Air India Limited**¹. In para 19 of the Full Bench Judgment it is observed as under:

“In the light of that, we may answer the reference as under:

(1) The ratio of the Judgment of the Supreme Court in Automobile Products of India Employees Union (supra) and Association of Engineering Workers (supra) and the judgment of Division Bench in Associated Engineering (supra) applies to verification of membership of the unions and establishments, covered under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act.

(2) The method of secret ballot to ascertain majority of membership is derogatory to the Code of Discipline.

(3) The judgment of the Division Bench of this Court in O.N.G.C. (supra) was not correctly decided and is consequently overruled.

(4) Considering the question involves a finding of fact, we are not called upon to answer the issue whether the method of secret ballot to ascertain the majority of membership would in the facts of this case be arbitrary. We leave the question for decision by the appropriate Bench hearing the Petitions, in the light of our answer to the questions raised before us.

¹ [2007(1)Mh.L.J.659]

Reference answered accordingly. The Registry to place the Petition before the appropriate Bench

Reference answered accordingly”.

3 The counsel appearing for respondent nos. 4 & 6 submits that for last 9 years, no elections were held.

4 After hearing the counsel appearing for the respective parties, we find that since last many years, Appropriate Authority could not decide the issues as to which Union be treated as Recognised Union to represent itself to the employer i.e. Mahanagar Telephone Nigam Ltd.

5 The counsel appearing for the respondents submit that the recognition period starting from 2014 to 2016 is already over. Therefore, we do not find that any purpose would be served by keeping the petition pending. The impugned order would become automatically inoperative.

6 In the facts, we direct Appropriate Authority, Regional Labour Commissioner (Central) to take appropriate decision by following prescribed procedure and in accordance with law in deciding the issue.

7 Petition stands disposed of.

8 In view of the disposal of Writ Petition, Notice of Motion does not survive and stands disposed of accordingly.

[Z. A. HAQ, J.]

[NARESH H. PATIL, J.]