

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8090 OF 2018

Dilip Bhaskar Medhe
Age: 50 Years, Occu: Service,
R/o: Takali Khatgaon, Ahmednagar,
Tq & Dist: Ahmednagar ...Petitioner

Versus

- 1) Bharat Sanchar Nigam Ltd (BSNL)
8th Floor, Telephone Building no. 2,
Fountain Mumbai-1
Through its Chief General Manager
Telecommunication
- 2) General Manager,
Bharat Sanchar Nigam Ltd (BSNL)
DTO Building, Near General Post Office,
Tq & Dist: Ahmednagar
- 3) Assistant General Manager (Planning)
Bharat Sanchar Nigam Ltd (NSNL)
Telephone Bhavan, Near Dhoot Hospital
Tq & Dist: Ahmednagar
- 4) Prakashrao Shamrao Patil
Security Agency, Sayaji Raje Avenue
Building, A-Wing, Flat No. 702,
Keshavnagar, Mandhawa, Pune
Through its proprietor ...Respondents

WITH
WRIT PETITION NO. 8091 OF 2018

Vilas Hiralal Thokal
Age: 56 Years, Occu: Service,
R/o: Plot No. Behind Water Tank,
Vasant Tekadi, Sandesh Nagar,
Aurangabad Road
Tq and Dist: Ahmednagar ...Petitioner

Versus

- 1) Bharat Sanchar Nigam Ltd (BSNL)
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Security Agency, Sayaji Raje Avenue
Building, A-Wing, Flat No. 702,
Keshavnagar, Mandhawa, Pune
Through its proprietor ...Respondents

WITH
WRIT PETITION NO. 8092 OF 2018

Eknath Bhimraj Shinde
Age: 49 Years, Occu: Service,
R/o: Nimblak, Near Pandurang Gawali,
Tq & Dist: Ahmednagar ...Petitioner

Versus

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Telecommunication

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- 4) Prakashrao Shamrao Patil
Security Agency, Sayaji Raje Avenue
Building, A-Wing, Flat No. 702,
Keshavnagar, Mandhawa, Pune
Through its proprietor ...Respondents

WITH
WRIT PETITION NO. 8093 OF 2018

Machindra Bhikaji Bhalerao
Age: 61 years, Occu: Service
R/o: Warwandi Tq: Rahuri,
Dist: Ahmednagar ...Petitioner

Versus

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Telephone Bhavan, Near Dhoot Hospital
Tq & Dist: Ahmednagar

- 4) Prakashrao Shamrao Patil
Security Agency, Sayaji Raje Avenue
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Keshavnagar, Mandhawa, Pune
Through its proprietor ...Respondents

WITH
WRIT PETITION NO. 8094 OF 2018

Bhaskar Narayan Gadekar
Age: 52 years, Occu: Service,
R/o: Plot No. 03, Shivaji Nagar,
Renukamata Colony, Kedgaon
Tq: Kedgaon, Dist: Ahmednagar ...Petitioner

Versus

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Tq & Dist: Ahmednagar
- 4) Prakashrao Shamrao Patil
Security Agency, Sayaji Raje Avenue
Building, A-Wing, Flat No. 702,
Keshavnagar, Mandhawa, Pune
Through its proprietor ...Respondents

WITH
WRIT PETITION NO. 8095 OF 2018

Ramesh Laxman Bansode,
Age: 45 Years, Occu: Service,
R/o: Kamblemala, Tq. Kedgaon,
Dist: Ahmednagar

...Petitioner

Versus

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 - 2) General Manager,
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 - 3) Assistant General Manager (Planning)
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Security Agency, Sayaji Raje Avenue
Building, A-Wing, Flat No. 702,
Keshavnagar, Mandhawa, Pune
Through its proprietor
- ...Respondents

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Mr. Parag V. Barde, Advocate for petitioners
Mr. Ashok V. Patil, Advocate for respondent no. 2

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 20th July, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
2. Petitioners claim to be working with respondents no. 1 to 3, since 2002. According to the petitioners, the work is of perennial nature and, yet, respondents indulge into practice of showing they are employees working through some agency/contract.
3. Petitioners had lodged complaints in industrial court at Ahmednagar, alleging unfair labour practices under items 5, 6, 9 and 10 of schedule-IV of Maharashtra Recognized Trade Unions and Prevention of Unfair Labour Practice Act, 1971, and claiming permanency in the service.
4. Pending decision in the complaints, applications-exhibit U-2 for interim relief had been filed by the

petitioners seeking direction not to terminate their services and to give them work regularly.

5. Respondent no. 2, resisted the claim of complaints stating that Bharat Sanchar Nigam Limited is a company registered under Companies Act and is a central government undertaking and, as such, central government is 'appropriate government' in relation to industrial disputes concerning any industry carried on by or under the authority of central government. Industrial court at Ahmednagar would not have power, authority or jurisdiction to entertain the complaints filed by the petitioners.

6. Referring to decisions of the supreme court in case of *Cipla Ltd. Vs. Maharashtra General Kamgar Union and others* reported in 2001-LLR, page no. 305 and *Vividh Kamgar Sabha Vs. Kalyani Steel Ltd.* reported in 2001-(1)-CLR, page no. 532, it was contended that there is no employer and employee relationship existing between Bharat Sanchar Nigam Limited and the petitioners.

7. Industrial court has considered that the petitioners

have not produced supporting documents showing employer-employee relationship existing between Bharat Sanchar Nigam Limited and the petitioners and industrial court, Ahmednagar would not have jurisdiction to deal with the matter since Bharat Sanchar Nigam Limited is a central government undertaking and central government would be the "Appropriate Government".

8. Learned counsel for the parties are *ad idem* that writ petitions bearing no. 1524 of 2009, 1525 of 2009 and 1526 of 2009 had been preferred by employees against order dated 26th June, 2009, passed by industrial court dismissing the complaints on the ground that there had been no employer-employee relationship between Bharat Sanchar Nigam Limited and the petitioners.

9. This court (Hon'ble Mr. R. V. Ghuge, J) had disposed of aforesaid group of writ petitions under order dated 24th August, 2017, without interfering with impugned orders of industrial court and *inter alia*, had allowed complainants to raise industrial dispute before Assistant Commissioner of Labour (Central), Pune.

10. The parties further point out that while these writ petitions had been preferred against final decision rendered by the industrial court, the situation in present writ petitions is that interim relief applications filed by the complainants have been rejected and the present writ petitions have been preferred against such negation of interim relief by industrial court.

11. Learned counsel for petitioners contends that the situation is almost the same, having regard to decision of industrial court on interim relief application. It cannot be gainsaid that for same reasons interim relief has been refused to be granted. Learned counsel for respondents purports to resist and contends, situation would not be said exactly to be the same.

12. Looking at the reasons, it appears that the industrial court, in similar factual situation, has declined to entertain interim relief application for want of availability of jurisdiction.

13. In the circumstances, it would be appropriate to give

similar treatment to present writ petitions as in writ petitions bearing no. 1524 of 2009, 1525 of 2009 and 1526 of 2009, in terms of paragraph no. 8 of decision dated 24th August, 2017 in said writ petitions.

14. In view of aforesaid, learned counsel for the petitioners, on instructions, states that the complaints, which are pending before the industrial court since long would be withdrawn by the petitioners and the petitioners would approach Assistant Commissioner Labour (Central) at Pune latest by 14th August, 2018.

15. Having heard the parties as aforesaid and taking into account that the situation arising out of final order of industrial court subjected to challenge in writ petitions no. 1524 of 2009, 1525 of 2009 and 1526 of 2009, and the one subsisting in the present writ petitions is similar and to curtail further procrastination of litigation, it would be worthwhile to issue similar direction. As such, following order:-

(A) The petitioners may raise industrial dispute before the Assistant Commissioner

Labour (Central) at Pune on/or before 14th August, 2018.

(B) Copies of industrial dispute would be supplied to the respondent / establishment at its office at Ahmednagar on/or before 14th August, 2018.

(C) The litigating sides shall appear before the Assistant Commissioner Labour (Central) at Pune on 20th August, 2018 by 3.00 p.m. and shall abide by the further dates of hearing as may be posted by the concerned authority.

(D) The 'Appropriate Government' shall deal with the said conciliation process and shall conclude the same in any case within 45 days from from the date of appearance of the parties on 20th August, 2018.

(E) In the event, the 'Appropriate Government' concludes that there is no industrial dispute, the petitioners would be at liberty to redress their grievance as is

permissible in law.

(F) In the event the 'Appropriate Government' finds that the conciliation proceedings have failed and the dispute deserves to be referred to the Industrial Tribunal (Central), it shall, thereafter, proceed to do so within a period of three weeks from the date of the failure of the conciliation proceedings.

(G) If the petitioners raise an industrial dispute on or before 14th August, 2018, they shall be protected by the interim orders of this court for a further period of ninety days from 14th August, 2018.

(H) It is clarified that in the event the respondent / establishment has work available for such employees, it may continue to engage these petitioners on the same terms and conditions and would be precluded from replacing these petitioners with new contract labours.

(I) Needless to state, in the event the industrial dispute is referred to the Industrial Tribunal (Central), said tribunal shall consider the reference on its own merits and without being influenced by observations of the Industrial Court, Ahmednagar in the impugned orders.

16. In view of aforesaid, present writ petitions accordingly stand disposed of without interference in impugned orders.

17. Rule made absolute in aforesaid terms.

18. Needless to refer to that in the circumstances, protection to petitioners operating in the matters, shall continue to operate till 14th August, 2018.

[SUNIL P. DESHMUKH, J.]

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