

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

WRIT PETITION NO.2672 OF 2018

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Ashok Mallayya Yeligeti And Another ... Respondents

**ALONGWITH
WRIT PETITION NO.2673 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Mangesh V. Sarang And Another ... Respondents

**ALONGWITH
WRIT PETITION NO.2674 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Sachin Gajanan Koli And Another ... Respondents

**ALONGWITH
WRIT PETITION NO.2675 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Sanjay Sonu Rambade And Another ... Respondents

**ALONGWITH
WRIT PETITION NO.2676 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Krishna Arjun Wadkar And Another ... Respondents

**ALONGWITH
WRIT PETITION NO.2677 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Vinayak Ramchandra Alim And Another ... Respondents

**ALONGWITH
WRIT PETITION NO.2678 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Yogesh Jadhav And Another ... Respondents

**ALONGWITH
WRIT PETITION NO.2679 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Sarika Sachin Koli And Another ... Respondents

**ALONGWITH
WRIT PETITION NO.2680 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Balrajkishor Mataprasad Jalda And Another... Respondents

**ALONGWITH
WRIT PETITION NO.2681 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Harish Ishwarlal Dave And Another ... Respondents

**ALONGWITH
WRIT PETITION NO.2682 OF 2018**

Balrajkishor Mataprasad Misra & Another ... Petitioners
Versus
Namrata Nitin Vaity And Another ... Respondents

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Mr. Shoaib I. Memon for the Petitioners.

Mr. P.M. Mokashi for Respondent No.1.

Ms. Vaishali Nimbalkar, AGP for Respondent No.2.

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CORAM : S.C.GUPTE, J.

DATE : 18 JUNE 2018

(Judgment) :

. Heard learned Counsel for the parties.

2 These petitions challenge an order passed by the Labour Court on references made to it under Section 10 of the Industrial Disputes Act, 1947. The impugned order, passed on a Misc. Application being Exhibit U-4, directs impleadment of one Mohammdi Healthcare Systems (“MHS”), a proprietary firm of one Balraj Kishor Mishra, as a party to the references. The references were made at the instance of eleven workers, who claimed to be employed by Mohammdi Healthcare Systems Private Limited (“MHSPL”). Balraj Kishor Mishra is admittedly a director of MHSPL. At the stage of conciliation proceedings, a notice was issued to MHSPL, who did not contest or appear before Dy. Commissioner of Labour (Conciliation). The matter was thereupon referred to the Labour Court. MHSPL filed a written statement. In their written statement, they claimed that they had sent a letter to the Conciliation Officer pointing out that the proceedings were initiated against a wrong person; the workmen before the Court were not employed by MHSPL, the first party to the references, but by MHS. After this was pointed out to the Labour Court, the second party took out a misc. application, being Exhibit U-4 in the references, and

prayed for impleadment of MHS as a party to the references and allowing amendment in the statements of claims. By the impugned order, the Labour Court allowed this application. That order is challenged in the present petitions.

3 Learned Counsel for the Petitioners submits that by impleading MHS, the Presiding Officer has effectively curtailed the scheme of Section 10 of the Industrial Disputes Act. Learned Counsel submits that MHS was not noticed or heard in the conciliation proceedings and accordingly, the references are rendered defective; the Labour Court ought not to have directed impleadment of MHS, the proprietary firm.

4 Section 10 of the Industrial Disputes Act requires the appropriate Government to refer any industrial dispute to a Board for promoting a settlement thereof; or refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. Section 12 provides for a mechanism for conciliation between the parties. When such industrial dispute exists or is apprehended, the conciliation officer appointed under the Act may hold conciliation proceedings in the prescribed manner. The obligation to hold such conciliation proceedings in the prescribed manner exists only when the dispute relates to a public utility service and a notice under Section 22 has been given. In other matters, conciliation is optional. Insofar as such discretionary conciliation proceedings are concerned, the conciliation officer is expected to investigate the dispute and consider all matters affecting the merits and the right settlement thereof. The entire focus of this exercise is, however, to

come to a fair and amicable settlement of the dispute. If the conciliation officer is of the view that no settlement is arrived at between the parties, he is dutybound to make a report to the appropriate Government setting forth various steps taken by him for bringing about settlement between the parties. On consideration of such report, if the appropriate Government is satisfied that there is a case for reference, it may then make a reference. That is the scheme of the Act.

5 In the present case, the complainant-workmen approached the conciliation officer on the basis that they were workmen of MHSPL. Admittedly, no settlement could be arrived at between the parties in the conciliation proceedings and the matter was referred by the appropriate Government to the Labour Court for adjudication. At the stage of reference, MHSPL took a stand that they were not the employer of the concerned workmen and that the real employer was one Balraj Kishor Mishra, who was admittedly a director of MHSPL, but who also had a proprietorship concern by the name of MHS. It was submitted that this proprietorship concern was the correct party. In view of this stand, the Labour Court was of the view that the presence of MHS, the proprietorship concern, was necessary for proper adjudication of the case and accordingly, directed its impleadment. No fault can be found with the impugned order. The reference as such after impleadment of MHS cannot be said to be vitiated or bad in law. This is not a case involving obligatory conciliation. It is not that the newly added party, namely, MHS, the proprietorship concern, is denied opportunity to defend itself. Besides, in case the proprietorship concern is of the view that it is amenable for conciliation, it is open to it to make efforts through its advocate or otherwise for conciliation. It is not in

any way inconvenienced even in that respect. The industrial dispute before the Labour Court cannot be sent back to the stage of conciliation for want of notice to MHS.

6 Accordingly, there is no merit in the petitions. The petitions are dismissed.

(S.C. GUPTE, J.)

Rajesh
Vasant
Chittewan

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by Rajesh Vasant
Chittewan
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