IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12013 OF 2018

Imran Abdul Gani Shaikh
VERSUS
Maharashtra State Electricity Distribution Company Ltd Through
Executive Engineer
***

WITH
WRIT PETITION NO.12014 OF 2018

Balasaheb Dnyanoba Dongare
VERSUS
Maharashtra State Electricity Distribution Company Ltd Through
Executive Engineer
***

WITH
WRIT PETITION NO.12015 OF 2018

Shaikh Umar Shaikh Musa
VERSUS
Maharashtra State Electricity Distribution Company Ltd Through
Executive Engineer
***

WITH
WRIT PETITION NO.12016 OF 2018

Vijay Bhaskar Savant
VERSUS
Maharashtra State Electricity Distribution Company Ltd Through
Executing Engineer
***

WITH
WRIT PETITION NO.12017 OF 2018

Shaikh Kalim Shaikh Alim

VERSUS

Maharashtra State Electricity Distribution Company Ltd Through Executive Engineer

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Mr.S.G.Chapalgaonkar, Advocate for the Petitioners.
Mr.U.S.Malte, Advocate for Respondent No.1.
Mr.S.R.Yadav, AGP for Respondent No.2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2019

Per Court:

1 On 29.01.2019, after hearing the learned Advocates for the respective sides, I had passed the following order :-

> "*1. I have heard the learned Advocates for the respective sides who submit on instructions that they have no difficulty with this Court deciding these matters.*
>
> *2. The respondent Company has accepted the impugned awards and have not challenged them.*
>
> *3. It appears from the record that these petitioners had claimed to be the direct employees of the respondent company. However, in the statements of claims put forth by them in the Reference cases before the Labour Court under the Industrial Disputes Act, it is stated in paragraph 4 that these workers were shown to have been appointed through contractors, the said contracts were sham and bogus and the contractor was a camouflage. It is further averred that the Labour Court should conclude that these workers were the direct employees of the respondent.*
>
> *4. The Honourable Apex Court, in the matter of Vividh Kamgar Sabha vs. Kalyani Steels Ltd. and anr., AIR 2001 SC 1534 (in paragraph 5) and in*

the matter of Cipla Limited Vs. Maharashtra General Kamgar Union and Ors., 2001(2) Supreme 112 (in paragraphs 8 and 9), has laid down the law that such disputes where the contractor is alleged to be a camouflage, have to be adjudicated upon under the Industrial Disputes Act through a Reference case and the Tribunal has to conclude as to whether, the contract was sham or bogus and whether the contractor was a camouflage.

5. I find that an issue, as expected in view of the law laid down in Kalyani Steels Ltd. and Cipla Ltd. (supra), was not framed by the Labour Court. The actual order of Reference of the Deputy Commissioner, Labour is not on record. If it appears that the issues were not properly framed by way of the terms of Reference by the appropriate government, a direction will have to be issued for appropriately framing such terms of Reference to ensure that justice is done.

6. In view of the above, the petitioner shall add the Deputy Commissioner of Labour, Aurangabad as respondent No.2 in these matters. Addition be carried out forthwith. The learned AGP has graciously caused an appearance on behalf of the added respondent and submits that the Deputy Commissioner, Labour, Aurangabad would be available in this Court on the next date alongwith the files pertaining to the orders of Reference issued by him in all these matters.

7. By the consent of the parties, stand over to 13/02/2019 for passing orders."

2 The learned AGP expresses a regret that the added Respondent No.2 is unable to assist this Court today on account of ill health. He is, however, instructed to submit that an order passed by this Court would be considered in proper perspective.

3 I find that the issue of adding a party to a reference, if it is

noticed that the addition is necessary for proper adjudication of the dispute, is no longer res-integra in view of the law laid down in ***Hochtief Gammon vs. Industrial Tribunal, Bhubaneshwar, Orissa and others, AIR 1964 SC 1746***, ***Digamber Madye vs. Union of India, 2015 II CLR 540*** and ***the Manager, Maharashtra Krushi Udyog Vikas Mahamandal Ltd. vs. the State of Maharashtra and others, 2016 Marathwada Cases Reporter 222*** (Writ Petition No.4261/2014 (Aurangabad Bench) decided on 11.08.2015). If it is noticed that a particular party has been inadvertently left out from the industrial dispute without which the industrial dispute cannot be properly adjudicated upon, it is open to the litigating party to move an application even before the Labour Court or the Tribunal, as the case may be, for addition of such party and in view of the law laid down in the above referred cases, the Labour Court or the Tribunal can direct the addition of such party and can also simultaneously refer the matter to the appropriate Government for necessary correction in the order of reference.

4 I find that the law laid down by the Honourable Supreme Court in ***Kalyani Steel (supra)*** and ***Cipla Limited (supra)*** was not brought to the notice of the Labour Court which is dealing with the concerned reference cases under the Industrial Disputes Act, 1947. It also appears that the appropriate Government as well as the Conciliation Officer have lost sight of this aspect. Had it been brought to the notice of

these authorities, the appropriate Government would have added the contractor as "First Party Second" in the order of reference by which, the cases have been referred to the Labour Court for adjudication.

5 In view of the above, these Writ Petitions are partly allowed. The impugned awards dated 29.12.2017 are quashed and set aside. Reference (IDA) Nos.1800229/2014, 1800228/2014, 1800028/2015, 1800030/2015 and 1800031/2015 are remitted to the Labour Court-II, Aurangabad. The litigating sides would appear before the said Court on 18.03.2019 and formal notices are not necessary.

6 On 18.03.2019, the Petitioners/ Second Party Workmen shall move their individual applications for addition of the contractor as "First Party Second". If they are unaware as to who the contractor is, then they would move an application for seeking information about such contractor and the First Party shall accordingly supply such information. The Labour Court would then permit addition of the contractor as "First Party Second" in these reference cases and shall issue notice to such contractor in order to seek the contractor's participation in these reference cases. Simultaneously, the order of addition of the contractor would be conveyed to the appropriate Government for necessary correction in the order of reference.

7 Needless to state, the Labour Court shall frame an additional issue after addition of the contractor as under :-

"Does the Second Party Workman prove that the contract in between the First Party (Principal Employer) and the First Party Second (Contractor) is sham, bogus and a camouflage?"

8 If the above stated issue is answered in the affirmative, the other issues can be considered by the Labour Court on their own merits. Needless to state, all issues shall be dealt with together by the Labour Court.

9 As the reference cases have been registered in 2014 and 2015, the Labour Court shall endeavour to decide these identical cases as expeditiously as possible and preferably on or before 31.03.2020. Needless to state, all these cases shall be dealt with by the learned Judge, Second Labour Court, Aurangabad in order to avoid conflicting views.

kps (**RAVINDRA V. GHUGE, J.**)