

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.11157 OF 2019**

ATC Telecom Infrastructure Pvt. Ltd. ...Petitioner

vs

Rajendra Patil (Yadravkar), Maharashtra
Rajya Mobile Tower Suraksha Rakshak Sangh ...Respondent

WITH

WRIT PETITION NO.11821 OF 2019

Rajendra Patil (Yadravkar), Maharashtra
Rajya Mobile Tower Suraksha Rakshak Sangh ...Petitioner

vs

Manager ATC Telecom Infrastructure Pvt. Ltd. ...Respondent

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Mr. Sudhir Talsania, i/b. Mr. Hafeezur Rahman, for the Petitioner in Writ Petition No.11157 of 2019 and for the Respondent in Writ Petition No.11821 of 2019.

Mr. Meelan Topkar, for Respondent No.1 in Writ Petition No.11157 of 2019 and for the Petitioner in Writ Petition No.11821 of 2019.

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CORAM : S.C. GUPTE, J.

DATED: 31 JANUARY, 2020

P.C. :

. Heard learned Counsel for the parties.

2. Writ Petition No.11157 of 2019 challenges an order passed by the Industrial Court at Kolhapur on a complaint of unfair labour practice. The impugned order was a common order passed on two applications, namely, Exhibits U-2 and C-5. Exhibit U-2 was an

application filed by the Respondent union for interim relief. The case of the union was that the employees represented by it were entitled to be regularised in the services and the employer establishment (Petitioner herein) should not be allowed to terminate their services. (The employees were appointed as security guards.) On the other hand, the other application, Exhibit C-5 was taken out by the Petitioner herein, who was arraigned as Respondent No.1 to the complaint. The case of the Petitioner in that application was that, on the very face of it, the complaint did not indicate that the workmen concerned were employees of the Petitioner. Relying on the authorities starting from the case of **Cipla Ltd. Vs. Maharashtra General Kamgar Union**¹ and ending with **Sudhir Balkrishna Sumant vs. Executive Engineer, M.S.E.B., Barshi Division, Barshi**², it was submitted that the issue concerning direct master-servant relationship between the principal employer and the claimant could not be agitated in a complaint of unfair labour practice. It was submitted that under the existing contractual arrangement, master-servant relationship existed as between Respondent No.2, the agency appointed by the Petitioner, and the workmen represented by the union.

3. The Industrial Court apparently has come to a prima facie conclusion that there is no employer-employee relationship as between the Petitioner herein (original respondent no.1) and the workmen represented by the Respondent (original complainant), and on that basis, has rejected the application of the Respondent union (Exhibit U-2) for interim relief. So far as Exhibit C-5, which was the application of the

1 (2001) 3 SCC 101

2 2018 SCC OnLine Bom 1786

Petitioner herein, is concerned, it has been partly allowed. In the application, the Petitioner herein had prayed for dismissal of the Respondent union's application for interim relief as also dismissal of its complaint. The application was squarely on the basis of the very maintainability of the complaint on the basis of the law noted above. It was necessary for the Industrial Court to even decide this issue, since it properly forms a preliminary issue in the complaint.

4. It is agreed between the parties that this preliminary issue needs to be decided by the Industrial Court. Accordingly, Exhibit C-5 is remitted to the Industrial Court for deciding the maintainability of the complaint as against respondent no.1 to the complaint, based on the averments and prayer for dismissal of the complaint made under paragraph 12 of that application. It is made clear that the issue will have to be decided by the Industrial Court on the basis of pleadings of the parties. The law does not contemplate that in a complaint of unfair labour practice, the Industrial Court makes a full-fledged enquiry by leading of evidence on the nature of the contract, under which workmen are employed, and the identity of the real employer of the workmen. In keeping with this law, the Industrial Court is expected to decide the issue. The Industrial Court is requested to decide Exhibit C-5 as expeditiously as possible and preferably within a period of one month from the date this order is pointed out to the court. Both parties shall, to that end, appear before the Industrial Court on 7 February 2020 at 11.00 a.m. and produce an authenticated copy of this order. The Industrial Court may, thereupon, fix the schedule of hearings. The writ petition is disposed of accordingly.

5. The companion petition, Writ Petition No. 11821 of 2019, challenging the interim order passed by the Industrial Court at Kolhapur below Exhibit C-5, has no merit. The application, Exhibit U-2, seeks an order against both respondents to the application, that is to say, the principal employer, namely, ATC Infrastructure Services Ltd., and the contractor engaging the workmen represented by the complainant union, namely, Secured Security Solution Pvt. Ltd. The application prays for non-termination of services of the employees represented by the complainant union. So far as continuance of the employment is concerned, the application does not indicate against which of the respondents such order is claimed, whether it is against the principal employer or the agency actually appointing the employees. On the other hand, the applicant seeks a restrictive order against respondent no.1-the principal employer, restraining it from engaging any other contractor or engaging the services of other security guards. Such relief, obviously, could not have been granted as an interim relief in the present complaint. The impugned order, accordingly, is correctly passed and does not merit any interference. The writ petition is, accordingly, dismissed. It is, however, made clear that in case the complainant union has any case for interim reliefs to urge as against respondent no.2 to the complaint, it may have liberty to apply for such reliefs. All rights and contentions of the parties on merits in that behalf are kept open.

Smita
Gonsalves

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(S.C. GUPTE, J.)