

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2007 OF 2021

Adani Electricity Mumbai Ltd.	}	Petitioner
VS		
The Chief Conciliator, under	}	
Maharashtra Industrial Relations	}	
Act, 1946 and Ors.	}	Respondents

Mr. J. P. Cama, Senior Advocate with Mr. Avinash K. Jalisatgi, Mr. Vaibhav Jagdale and Mr. R. N. Shah i/b. Mr. Siddhesh S. Shetye for the petitioner.

Mr. Himanshu B. Takke, AGP with Mr. Manish Upadhye, AGP for respondent nos. 1 and 2 (State).

Mr. A. V. Bukhari, Senior Advocate with Mr. Kishorekumar S. Shetty, Mr. B. V. Bukhari and Ms. Fauzia T. Bukhari for respondent no. 3.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

**RESERVED ON: APRIL 6, 2022
PRONOUNCED ON: MAY 6, 2022**

JUDGMENT [Per Chief Justice]:

1. This writ petition dated 17th September 2021 tasks us to answer a short point, i.e., whether the provisions of the Maharashtra Industrial Relations Act, 1946 (hereafter "the MIR Act", for short) applies to the petitioning company, which is engaged in generation and supply of electricity. Urging that the provisions of the MIR Act do not apply to the petitioning company, the prayer in this writ petition is for striking down

the orders of reference dated 20th August 2019 (hereafter "the orders of reference", for short) and all subsequent orders passed by the Industrial Court, Mumbai in Reference (MIR-1C) Nos. 06 and 07 of 2019.

2. Preliminary objections have been raised by the respondent no. 3, Mumbai Electric Workers Union (hereafter "Union", for short), to the maintainability of the writ petition.

3. Mr. Bukhari, learned senior advocate appearing for the Union, at the outset, contended that the writ petition is grossly delayed and should, therefore, fail on such ground alone. Next, he referred to the materials on record and contended that the same unmistakably reveal participation of the petitioning company in the proceedings before the respondent no. 1, the Chief Conciliator under the MIR Act, and thereafter before the Industrial Court upon the orders of reference being made, without raising any demur as regards the applicability of the MIR Act. He also brought to our notice that even in previous proceedings that were initiated under the MIR Act, the predecessor-in-interest of the petitioning company, M/s. Reliance Infrastructure Limited, had participated without raising any demur. Having regard to such conduct of the petitioning company, it is contended that the instant proceeding has been instituted with the sole motive of tiring out the members of the Union and to scuttle all efforts under the provisions of the MIR Act to ensure and/or secure industrial peace and harmony upon determination of the *inter se* disputes between the employer and its workmen. Multiple authorities were cited by Mr. Bukhari in support of the

contention that the High Court ought not to entertain a proceeding of the present nature at the instance of an employer, which is not only in abuse of the process of law as well as of this Court.

4. *Per contra*, Mr. Cama, learned senior advocate appearing for the petitioning company has contended, relying on the decisions of the Supreme Court reported in (2004) 10 SCC 460 (**Mukand Ltd v. Mukand Staff & Officers' Association**) and (2001) 1 SCC 371 (**National Engineering Industries Ltd v. State of Rajasthan & Ors.**) that the High Court has the jurisdiction to entertain a writ petition when there is an allegation that no industrial dispute either exists between the parties or where the provisions of either the Industrial Disputes Act, 1947 or any other enactment under which proceedings are carried forward do not fall within the jurisdiction of the Industrial Tribunal. In other words, if the relevant Government lacks the power to make any reference, yet, any proceeding in that direction is initiated, the High Court would not be unjustified in entertaining a writ petition and in even interfering with such proceeding if at all a substantial question relating to jurisdiction is raised which is found to have merit. Mr. Cama submitted that it is for the High Court to decide the question since the Industrial Tribunal would not be in a position to examine the issue of validity of the reference.

5. We agree with Mr. Cama. The law in this behalf is well-settled. A statutory authority or tribunal cannot assume jurisdiction over a subject matter for a decision, unless the

relevant statute confers jurisdiction on it to so decide. If the fact on which jurisdiction depends is decided by the court or tribunal erroneously, the exercise of jurisdiction would stand vitiated; as a consequence whereof, the error of jurisdictional fact would render the order *ultra vires* and bad. The existence of the jurisdictional fact upon which a reference could be made under the MIR Act being a *sine qua non* for the Industrial Tribunal to assume jurisdiction once such reference is made and to begin the process of adjudication, a jurisdictional issue which goes to the root of the Tribunal's jurisdiction to adjudicate, if raised before the High Court, ought to be addressed without requiring the parties to traverse the entire course of lengthy proceedings before the Tribunal. However, it would stand to reason that in its exercise of discretion, neither the High Courts ought to entertain writ petitions at the instance of employers on the mere asking nor should it pass interim orders stalling the proceedings before the Tribunal for no better reason than that a *prima facie* case has been set up without being concerned about the balance of convenience, the public interest and a host of other considerations. Each case reaching the High Courts for deciding the point of jurisdiction would require the Courts to separate the grain from the chaff.

6. Since we are of the view that the point of jurisdiction raised by Mr. Cama deserves to be considered in some depth and a decision thereon could put a quietus to the larger issue of applicability of the MIR Act that is involved, we have decided not to dismiss the writ petition on the ground of delay, as urged by Mr. Bukhari, but to proceed to decide the

point of jurisdiction based on the materials that have been placed on record.

7. Before we notice the rival submissions based on several notifications that had been issued under the MIR Act, it may not be inapt to preface our decision by giving a narration of the facts as pleaded in the writ petition which preceded its institution.

8. The petitioning company is incorporated under the Companies Act and is engaged in the business of power generation, transmission and distribution/supply of electric energy in Mumbai and Mira-Bhayandar. It has a coal-fired thermal power plant at Dahanu in the district of Palghar. Prior to 29th August 2018, the plant and business were owned by and carried out by Bombay Suburban Electric Supply Limited (hereafter "BSES Ltd.", for short). The name of the said company underwent changes. Initially the name was changed to M/s. Reliance Energy Limited and subsequently to M/s. Reliance Infrastructure Limited. On 29th August 2018, generation, transmission and distribution were transferred to the petitioning company including transmission and distribution licenses assigned in its name by the Maharashtra Electricity Regulatory Commission. On and from that date, the petitioning company has been carrying out the said business in its own name and style. Prior to 1994, BSES Ltd. was engaged only in distribution/supply of electricity but thereafter had been engaged in both generation and distribution/supply of electricity in Mumbai. Although the petitioning company has been maintaining the stand that the

provisions of the MIR Act do not apply to it, the Union sent demand letter dated 29th June 2018 seeking a discussion on the charter of demands under the MIR Act. The demand not having been accepted, the Union approached the respondent no. 1 under section 54(1) of the MIR Act and rule 62 of the Maharashtra Industrial Relations Rules (**hereafter "MIR Rules", for short**) for consideration. The respondent no. 1 had initiated conciliation proceedings which culminated in a failure. Accordingly, a notice under section 73A of the MIR Act was issued on 28th August 2019 giving rise to a certificate being issued that the dispute between the petitioning company and the Union was not capable of being settled in course of conciliation. On 21st September 2019, the reference was registered by the Industrial Court being Reference (MIR-1C) Nos. 6 of 2019 and 7 of 2019. Despite the MIR Act not being applicable to the petitioning company and despite being fully aware of the same, the Union filed its statement of claim before the Industrial Court whereupon the petitioning company responded by filing its written statement. Soon thereafter, the petitioning company sought for and was granted leave to amend its written statement. The Union had also filed an application for interim relief seeking an order of restraint on the petitioning company from negotiating and signing settlement with any other union. Without being extended an opportunity to file reply to the interim application, the petitioning company was compelled to undertake not to carry on discussion or negotiation with any other union till the next date. However, reply was subsequently filed to the application for interim relief.

Ultimately, the Industrial Tribunal passed an interim order restraining the petitioning company from negotiating, discussing or settling the demands involved in the reference with any union other than the Union. It is in this factual background that the petitioning company has approached this Court invoking its writ jurisdiction to have the proceedings before the Industrial Court quashed.

9. Since we are not really concerned with the demands raised by the Union in its charter of demands and the dispute is pending before the Industrial Court, we refrain from making any reference to such charter in this judgment.

10. As has been noted above, the petitioning company considers itself to be outside the coverage of the MIR Act. According to Mr. Cama, the MIR Act does not cover industries which are involved in both generation and supply of electricity in Mumbai whereas Mr. Bukhari has contended that the MIR Act covers the petitioning company. Let us first venture to ascertain what the MIR Act and the notifications issued in exercise of power conferred thereby on the Government exactly provide.

11. The MIR Act is an Act to regulate relations of employers and employees, to make provision for settlement of industrial disputes and to provide for certain other purposes. The MIR Act succeeded the Maharashtra Industrial Disputes Act, 1938. Sub-section (2) of section 2 ordains that the provisions of the MIR Act shall come into force on such date as the State Government may, by notification in the official gazette, specify. Sub-section (4) of section 2 further ordains that the

State Government may, by notification in the official gazette, apply all or any of the provisions of the MIR Act "to all or any other industries, whether generally or any local area as may be specified in such notification". Sub-section (5) of section 2 empowers the State Government to direct, by notification in the official gazette, that the provisions of the MIR Act shall cease to apply to such industry in such area and from such date as may be specified in the notification; and thereupon on that date, the provisions of the MIR Act shall cease to apply to that industry in such area, and thereupon, the provisions of section 7 of the Maharashtra General Clauses Act, 1904 (hereafter "the GC Act", for short) "shall apply to such cessor as if this Act had then been repealed in relation to the said industry in such area by a Maharashtra Act".

12. Several notifications have been issued in terms of the provisions of section 2 of the MIR Act by the State Government. Of them, six notifications have been placed before us by the learned senior advocates for the parties. Since all the notifications have to be read in between the lines to ascertain whether any one or more of such notifications lead to the conclusion that the MIR Act applies to the petitioning company, we reproduce the same in its entirety one after the other hereunder:

(Notifications dated 4th December 1946, 7th April 1954, 16th April 1958, 14th September 1959, 26th April 1984, and 26th July 2019)

INDUSTRY ENGAGED IN THE CONDUCT AND MAINTENANCE
OF PUBLIC PASSENGER TRANSPORT SERVICES BY OMNIBUS

OR TRAM AND SUPPLY OF ELECTRICAL ENERGY
POLITICAL AND SERVICES DEPARTMENT
Mumbai Castle, 4th December 1946

MAHARASHTRA INDUSTRIAL DISPUTES ACT, 1938.

No. 367/46- In exercise of the powers conferred by sub-section (3) of section 2 of the [Maharashtra] Industrial Disputes Act, 1938 (Mah. XXV of 1938), the Government of [Maharashtra] is pleased to direct that with effect from the date of this notification all the provisions of the said Act shall apply to the following industries, namely: -

- (1) The conduct and maintenance of public passenger transport services by omnibus or tram within the Mumbai Municipal limits.
- (2) The supply of electrical energy within the Mumbai Municipal limits by concerns or undertakings situated within the said limits.

Explanation: - For the purposes of this notification, all business, trade, manufacture, service and employment connected with the conduct of either of the above industries shall be deemed to be part of the industry concerned when engaged in by an employer engaged in such industry. Nothing in this notification shall apply to an industry engaged both in the generation and supply of electrical energy.

By order of the Governor of [Maharashtra]
M. G. MONANI,
Deputy Secretary to Government.

Exhibit "A" – page 293 of A/R

DEVELOPMENT DEPARTMENT
Secretariat (Annexe), Fort, Mumbai, 7th April 1954

[MAHARASHTRA] INDUSTRIAL RELATIONS ACT, 1946.

No.298/48-1.- In exercise of the powers conferred by sub-section (4) of section 2 of the [Maharashtra] Industrial Relations Act, 1946 (Mah. XI of 1947), the Government of

[Maharashtra] is pleased to direct that with effect from 15th April 1954, all the provisions of the said Act shall apply to the following industries in all the areas in Greater Mumbai in addition to the areas specified in Government Notification, Political and Services Department, No.367/46, dated the 4th December 1946, namely: -

- (1) the conduct and maintenance of public passenger transport services by omnibus or tram.
- (2) the supply of electrical energy by concerns or undertakings situated in the said areas.

Explanation.- For the purpose of this notification: -

- (i) all business, trade, manufacture, service and employment connected with the conduct of either of the above industries shall be deemed to be a part of the industry concerned when engaged in by an employer engaged in such industry;
- (ii) "Greater Mumbai" shall have the same meaning assigned to it by clause (21) of section 3 of the [Maharashtra] General Clauses Act, 1904 (Mah.I of 1904).

[2. Nothing in this notification shall apply to industry engaged both in the generation and supply of electrical energy.]” (Added by G.N. No. MIR 1955/1(a), dated 14.9.1959

THE MAHARASHTRA INDUSTRIAL RELATIONS ACT, 1946

By order and in the name of the Governor of [Maharashtra],
B. B. BRAHMBHATT,
Assistant Secretary to Government,

Exhibit "B" - page 294 of A/R

LABOUR AND SOCIAL WELFARE DEPARTMENT
Old Secretariat Building, Mumbai-1, 16th April 1958

[MAHARASHTRA] INDUSTRIAL RELATIONS ACT, 1946.

No. MIR. 1158-I. – In exercise of the powers conferred by sub-section (4) of section 2 of the [Maharashtra] Industrial Relations Act, 1946 (Mah. XI of 1947), the Government of

[Maharashtra] hereby direct that with effect from 1st May 1958 all the provisions of the said Act shall apply to the following industries in all the remaining areas of Greater Mumbai in addition to the areas thereof specified in Government Notification, Political and Services Department, No. 367/46, dated the 4th December 1946 and in Government Notification, Development Department, No.298/48-I, dated the 7th April 1954, namely: -

- (1) The conduct and maintenance of public passenger transport services by omnibus or tram;
- (2) The supply of electrical energy by concerns or undertakings situated in the said areas.

Explanation. - For the purposes of this notification: -

- (R) all business, trade, manufacture, service and employment connected with the conduct of either of the above industries shall be deemed to be a part of the industry concerned when engaged in by an employer engaged in such industry.
- (R) "Greater Mumbai" shall have the same meaning as assigned to it in clause (a-i) of section 3 of the [Maharashtra] Municipal Corporation Act (Mah.III of 1888).

2. Nothing in this notification shall apply to an industry engaged both in the generation and supply of electrical energy."

R. G. SHAH,
Special Officer,
Labour and Social Welfare Department.

Exhibit "C" - page 295 of A/R

Old Secretariat Building, Mumbai the 14th September 1959/Bhadra
23, 1881

[MAHARASHTRA] INDUSTRIAL RELATIONS ACT, 1946

No. MIR 1958-I,- In exercise of the powers conferred by sub-

section (4) of section 2 of the [Maharashtra] Industrial Relations Act, 1946 (Mah.XI 1947), the Government of [Maharashtra] hereby directs that on and from the 15th October 1959, all the provisions of the said Act shall apply to the Industry engaged in the generation and supply of electrical energy in the local area of Greater Mumbai.

Explanation - For the purpose of this notification all business, trade, manufacture, service and employment connected with the conduct of the above industry shall be deemed to be a part of the industry when engaged in by an employer engaged in such industry.

By order and in the name of the Governor of [Maharashtra]
M. D. SHANBHAG
Under Secretary to Government

Exhibit "D" - page 296 of A/R

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Mantralaya, Mumbai – 400 032, dated the 26th April 1984

[MAHARASHTRA] INDUSTRIAL RELATIONS ACT, 1946.

No.MIR 1184/7183/Lab-9.- In exercise of powers conferred by sub-section (4) of section 2 of the [Maharashtra] Industrial Relations Act, 1946 (Mah. XI of 1947), and in supersession of Government Notification, Political and Services Department, No. 367/46, dated the 4th December 1946 and Government Notification, Development Department No. 298/48-I dated the 7th April 1954, the Government of Maharashtra hereby directs that, with effect from 26th April, 1984, all the provisions of the said Act shall apply to the industries specified in column 2 of the Schedule hereto in the local area specified in column 3 thereof.

Serial No.	Industries (1)	Local Areas (2)
1	Industries undertaken by the Bombay Electric Supply and Transport Undertaking, [Maharashtra] engaged in the conduct and maintenance of public passenger transport service by omnibus.	(1) Areas within the limits of Mumbai Municipal Corporation. (2) Areas of 'New [Maharashtra]' as designated by

		Government Notification Urban Development and Public Health Department No RPB 1171-18124 -I.W., dated the 29 th March 1971 as subsequently amended by Government Notification Urban Development and Public Health Department, No. RPB 1171-I-RPC, dated the 16 th August 1973, as shown in the Annexure hereto.
2	Supply of Electrical Energy by Concerns or Undertakings situated within the limits of Mumbai Municipal Corporation	Areas within the limits of Mumbai Municipal Corporation.

Explanation: - For the purposes of this notification, all business, trade, manufacture, service and employment connected with the conduct of any of the above industries shall be deemed to be part of the industries concerned and engaged in by an employer engaged in such industries.

2. Nothing in this notification shall apply to an industry engaged both in the generation and supply of electric energy.

ANNEXURE

	Name of village (1)	Taluka (2)	District (3)
1.	Airoli	Thane	Thane
2.	Dive	Do.	Do.
3.	Chinchavali	Do.	Do.
4.	Rabale	Do.	Do.
5.	Gohitvali	Do.	Do.
6.	Talvali	Do.	Do.
7.	Ghansoli	Do.	Do.
8.	Savali	Do.	Do.
9.	Khairane	Do.	Do.
10.	Pavane	Do.	Do.
11.	Sonkhar	Do.	Do.
12.	Bonsari	Do.	Do.
13.	Koparkhairane	Do.	Do.
14.	Ju	Do.	Do.

15.	Sanpada	Do.	Do.
16.	Vashi	Do.	Do.
17.	Turbhe	Do.	Do.
18.	Shahabaj	Do.	Do.
19.	Darave	Do.	Do.
20.	Nerul	Do.	Do.
21.	Shiravane	Do.	Do.
22.	Kukshet	Do.	Do.
23.	Sarsole	Do.	Do.
24.	Karave	Do.	Do.
25.	Dighe	Do.	Do.
26.	Ilthan	Do.	Do.
27.	Telavali	Do.	Do.
28.	Mahpe	Do.	Do.
29.	Borivli	Do.	Do.

*Vide Notification, UD & PHD NO. RPB - 1173-I-RPC, dated the 16th August 1973.

1.	Panvel Village (excluding the Panvel Municipal area as it stood prior to its extension by Government Notification Urban Development Public Health and Housing Department No.DTM-1260/17991-A, dated the 25 th May 1964)	Panvel	Kolaba
2.	Asudgaon	Do.	Do.
3.	Raodpali (including Ambetar Khar Kholhekar)	Do.	Do.
4.	Valavali	Do.	Do.
5.	Tembhode	Do.	Do.

Exhibit "E" - page 297 of A/R

In pursuance of clause (3) of Article 348 of the Constitution of India, following translation in English of the Government Notification, Industries, Energy and Labour Department, BIR-1207/C.R.8/Labour-2, dated 26th July, 2019 Extra Ordinary, is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra.

Sd/-
(S. M. Sathe)
Deputy Secretary to Government

NOTIFICATION

Industries, Energy and Labour
Department, Madam Cama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032.
Dated: - 26th July, 2019.

<u>Bombay Industrial Relations Act, 1946.</u>	No. BIR-1207/C.R.8/Labour-2:- Whereas, the Government of Maharashtra has vide the Government Notification, Industries, Energy and Labour Department, No. MIR 1184/7183/Lab-9, dated the 26th April, 1984, issued in exercise of the powers conferred by sub-section (4) of section 2 of the Maharashtra Industrial Relations Act (XI of 1947) (hereinafter referred , to as "the said Act") directed that from 26th April, 1984, all the provisions of the said Act shall apply to the industries specifying in column (2) of the Schedule appended thereto in the local areas specified in column (3) thereof: And whereas, the Government of Maharashtra has considered it expedient to cease to apply the provisions of the said Act to such industries specified in the said notification: Now, therefore, in exercise of the powers conferred by sub-section (5) of section 2 of the said Act the Government of Maharashtra hereby directs that, the provisions of the said Act, shall, with effect from 26th July, 2019, cease to apply to the industries specifying in column (2) of the Schedule hereto in the local area specified in column (3) thereof.
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Schedule

Serial No.	Industries	Local Areas
1.	Industries undertaken by the Bombay Electric Supply and Transport Undertaking (Maharashtra) engaged in the conduct and maintenance of public passenger transport service by omnibus.	(1) Areas within the limits of Mumbai Municipal Corporation. (2) Areas of 'New (Maharashtra)' as designed by Government Notification Urban Development and Public Health Department No. RPB 1171-18124-I-W., dated the 29th March, 1971 as subsequently amended by Government Notification Urban Development and Public Health Department, NO. RPB 1173-I-RPC, dated the

		16 th August, 1973 as shown in the Annexure attached with the notification No. MIR 1184/7183/Lab-9, dated 26 th April 1984 issued by Industries, Energy and Labour Department.
2.	Supply of Electrical Energy by Concerns or Undertakings situated within the limits of Mumbai Municipal Corporation.	Areas within the limits of Mumbai Municipal Corporation.

By order and in the name of the Governor of Maharashtra

Sd/-
(S. M. Sathe)
Deputy Secretary to Government"

Exhibit "C" - page 27/28 of W.P.

13. While ascertaining the intent, scope and ambit of the aforesaid notifications, it would be profitable to bear in mind the periods covered by each of the aforesaid notifications in relation to the nature of activity of the petitioning company as well as its predecessors which is indicated in a tabular form as below:

Sr. No.	Name of Industry	Nature of Activity	Period covered by notification
1.	BSES Ltd.	Supply of Electric Energy	4/12/1946 to end of 1995
2.	BSES Ltd.	Generation & supply of electric energy	From 1996 till 2002
3.	M/s. Reliance Energy/M/s.	Generation & supply	From 2002 till

	Reliance Infrastructure	of electric energy	28/8/2018
4.	Adani Electricity Mumbai Ltd. (Petitioning Company)	Generation & supply of electric energy	From 29/8/2018 till date

14. According to Mr. Cama, bare reading of the notifications dated 26th April 1984 and 26th July 2019 would provide sufficient guidance for the Court that the petitioning company is not covered by the MIR Act. While the notification dated 26th April 1984 applies to industries engaged in supply of electrical energy in areas within limits of Mumbai Municipal Corporation and that such notification expressly excludes an industry engaged both in generation and supply of electrical energy, it stands to reason that the petitioning company is not covered thereby. Referring to the subsequent notification dated 26th July 2019, Mr. Cama contended that the Government invoked sub-section (5) of section 2 and directed that the provisions of the MIR Act, with effect from 26th July 2019, shall cease to apply to the industries specified in column-2 of the schedule thereto and in the local area specified in column-3 thereof. Having regard to the schedule, it was also contended that supply of electrical energy by concerns or undertakings situated within the limits of Mumbai Municipal Corporation and areas within the limits of such Corporation stands ceased and, therefore, the MIR Act is not applicable.

15. Such contention of Mr. Cama has been opposed by Mr. Bukhari with vehemence. He has drawn our attention to the

notification dated 14th September 1959. According to him, the said notification was issued to secure applicability of the provisions of the MIR Act to an industry engaged in the generation and supply of electrical energy in the local area of Greater Bombay. Drawing our attention to the explanation, it was contended that the generation plant at Dahanu is part and parcel of the industry of the petitioning company, which has its office at Borivali (West), Mumbai (cause-title of the writ petition at page 2 was referred). It was Mr. Bukhari's specific contention that the notification dated 26th April 1984, which followed the notification dated 14th September 1959, did not supersede the latter although the former did supersede the earlier notifications dated 4th December 1948 and 7th April 1954. It was also his contention that even the 26th July 2019 notification does not in any manner dilute the rigours of the notification dated 14th September 1959. The position, according to him, is therefore clear that the notification dated 14th September 1959 is still valid and operative and would, by its very terms, take the petitioning company within the coverage of the MIR Act. Referring to the notification dated 26th April 1984, Mr. Bukhari contended that the same would have the effect of excluding industries which are engaged in the supply of electrical energy but clause (2) of the notification dated 26th April 1984 has to be read in a manner so that the same reconciles with the notification dated 14th September 1959 and makes provisions of the MIR Act applicable to any industry that is engaged in the generation and supply of electrical energy in the local area of Greater Bombay.

16. We ought also to place on record that Mr. Bukhari has invited our attention to paragraph 1(b) of the written statement filed by the petitioning company before the Industrial Tribunal wherein it is pleaded that the petitioning company 'amongst other business, is in the business of power generation, transmission and distribution business in Mumbai region'.

17. Rebutting the contention of Mr. Bukhari, Mr. Cama contended that the notification dated 14th September 1959, by reason of the subsequent notifications dated 26th April 1984 and 26th July 2019 stand impliedly repealed. Reliance in support of this contention was placed on the decision of the Supreme Court reported in (2003) 7 SCC 389 (**State of M. P. v. Kedia Leather & Liquor Ltd. & Ors.**). Our attention was also drawn to section 7 of the GC Act by Mr. Cama in this regard, which lays down the effect of repeal by the GC Act or any Bombay Act or Maharashtra Act made after the commencement of the GC Act.

18. Having heard Mr. Cama and Mr. Bukhari and on consideration of the various notifications to which our attention has been invited, we have no hesitation to hold that the reference made under the MIR Act is certainly maintainable and that the provisions of the MIR Act do apply to the petitioning company, neither because of participation of its predecessors in previous proceedings initiated under the MIR Act without demur nor because of any admission made by the petitioning company in its written statement, but by reason of the terms of the notifications issued under the MIR

Act. Our observations on the several notifications have had a significant role in reaching the conclusion as above and, therefore, we propose to delineate the same hereunder:

Notification dated 4th December 1946 – This notification made the MIR Act applicable *inter alia* to any industry engaged in supply of electrical energy within the Mumbai Municipal limits by concerns or undertakings situated within the said limits.

This notification did not seek to bring any industry engaged in generation of electrical energy within the coverage of the MIR Act. However, this notification was issued under the Bombay Industrial Disputes Act, 1938, prior to the MIR Act coming into force with effect from 15th April 1947.

Notification dated 7th April 1954 – This notification, issued in pursuance of section 2(4) of the MIR Act to take effect from 15th April 1954, made provisions of the MIR Act applicable *inter alia* to concerns or undertakings engaged in the supply of electrical energy situated in all the areas in Greater Bombay in addition to the areas specified in Government Notification dated 4th December 1946 issued by the Political and Services Department. It was explained that Greater Bombay would have the same meaning assigned to it by sub-section 3(21) of the GC Act. The said notification also ordained that nothing contained in it would apply to an industry engaged both in the generation and supply of electrical energy.

Notification dated 16th April 1958 – This notification, issued in exercise of powers conferred by section 2(4) of the MIR Act,

directed that with effect from 1st May 1958, all the provisions of the MIR Act shall apply, *inter alia*, to an industry engaged in the supply of electrical energy situated in all the remaining areas of Greater Bombay in addition to the areas thereof specified in the aforesaid notifications dated 4th December 1946 and 7th April 1954. However, it was explained that Greater Bombay shall have the same meaning as assigned to it in section 3(a1) of section 3 of the Bombay Municipal Corporation Act, 1888.

Notification dated 14th September 1959 – This is the notification having the fewest number of words as contents but is of vital importance for a decision on this writ petition. The same purported to embrace all industries engaged in the generation and supply of electrical energy in the local area of Greater Bombay. For the first time, the words ‘generation and supply’ were included in the scheme of coverage under the MIR Act as distinguished from ‘supply’ only which was part of the earlier notifications.

What follows from the notification dated 14th September 1959 is that any industry which is engaged both in the generation and supply of electrical energy would stand covered by the provisions of the MIR Act but has a suffix, namely, ‘in the local area of Greater Bombay’, which we are required to interpret and explain.

This notification when read in juxtaposition with the notifications dated 4th December 1946 and 7th April 1954 would reveal a significant departure in the intention of the Government. In terms of the earlier two notifications, the

concerns or undertakings engaged in the supply of electrical energy were required to be situated in the area specified in such notifications. This is evident from the commonly worded clauses thereof. However, the words 'situated in the said areas' are conspicuous by its absence in the notification dated 14th September 1959.

In our considered opinion, the terms of the notification dated 14th September 1959 could be read in a manner to suggest that both generation and supply of electrical energy must occur or happen in the local area of Greater Bombay. However, at the same time, the notification dated 14th September 1959 can also be read to mean that it seeks to cover an industry which, though engaged in the generation and supply of electrical energy, but the supply of such energy is to the local area of Greater Bombay. It is not the requirement of the notification dated 14th September 1959 that the electrical energy must also be generated in the local area of Greater Bombay.

Since the notification dated 14th September 1959 on its own terms is amenable to two meanings, we would have to elect that meaning out of the two which advances the cause of the members of the Union and not the cause of the petitioning company. In our view, for the reasons to follow, the said notification holds the field till date despite the subsequent notifications dated 26th April 1984 and 26th July 2019 and, therefore, the petitioning company cannot validly claim an escape route from being covered by the provisions of the MIR Act.

Notification dated 26th April 1984 – This notification although superseded notifications dated 4th December 1946 and 7th April 1954, did not proceed that far so as to supersede in express terms the notification dated 14th September 1959. If indeed the Government had any intention to supersede the notification dated 14th September 1959, nothing prevented it from so superseding. It was, thus, a conscious decision of the Government not to supersede the notification dated 14th September 1959. The point of implied repeal urged by Mr. Cama could have weighed in our mind had there been no express reference to supersession of the earlier notifications by this notification. Once the notification dated 26th April 1984 is found to supersede the two previous notifications but not the immediately preceding notification dated 14th September 1959, it would not be proper to hold that there has been an implied repeal of the said notification dated 14th September 1959.

The decision in **Kedia Leather & Liquor Ltd.** (supra) relied on by Mr. Cama does more harm to the cause of the petitioning company than good. Paragraph 13 of the decision dwells on the presumption against a repeal by implication. Drawing guidance from paragraph 13, we would hold that the Government on 26th April 1984 was well aware of the notification dated 14th September 1959 being in the field, yet, the notification dated 26th April 1984 not only did not refer to the notification dated 14th September 1959 but proceeded to supersede the earlier notifications dated 4th December 1946 and 7th April 1954 which manifests its clear intent not to supersede the notification dated 14th September 1959.

Notification dated 26th July 2019 – This notification simply ordains that the provisions of the MIR Act shall cease to apply to the industries specified in the schedule to the extent relevant to the concerns or undertakings involved in supply of electrical energy situated within the limits of Mumbai Municipal Corporation. These industries are only excluded from the coverage of the MIR Act. The cessor applies to 'supply' and not to 'generation and supply'. Thus, the petitioning company cannot seek to wriggle out of the provisions of the MIR Act based on this notification only.

19. It is not in dispute that electrical energy generated by the petitioning company is supplied to the local area of Greater Bombay, now Brihanmumbai. In such view of the matter, the notification dated 14th September 1959 is applicable to the petitioning company and, therefore, it is covered by the MIR Act.

20. We have not found any reference to the notification dated 14th September 1959 in the writ petition. There is no allegation of suppression of the said notification against the petitioning company made by the Union. It would not be wrong on our part to assume that the petitioning company was not aware of such notification; hence, it was not even referred to in the writ petition despite being the clinching notification. Be that as it may.

21. Since we have returned findings based on our own understanding of the relevant provisions of the notifications issued under section 2 of the MIR Act to hold that the petitioning company is covered thereunder and also find that

inconsistent view has not been taken in the other decisions cited by Mr. Cama, we do not consider it necessary to discuss all such decisions separately.

22. For the foregoing reasons, we are of the firm view that the provisions of the notifications issued under the MIR Act were so unambiguously clear that at no time in the past either BSES Ltd. or M/s. Reliance Energy Limited or M/s. Reliance Infrastructure Limited ever chose to raise a point in course of proceedings initiated under the MIR Act that the provisions thereof did not apply to it and that the present effort on the part of the petitioning company, as has rightly been contended by Mr. Bukhari, is an effort to tire out the members of the Union in their battle with the petitioning company. We also hold that the Industrial Tribunal does have the jurisdiction to decide the reference. We, therefore, encourage the Industrial Court to decide the reference in accordance with law as well as all connected applications at the earliest without acceding to any unnecessary prayer for adjournment made by either party before it.

23. The writ petition being devoid of merit, stands dismissed. The petitioning company shall bear costs of this proceeding assessed at Rs. 2 lakh to be paid to the Union within three (3) months from date.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

Mr. Vaibhav Jagdale, learned advocate for the petitioner prays for stay of operation of the order. Having considered the prayer, we refuse the same.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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