

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 5474/2019

Bharti Airtel Limited
a Company incorporated under the
Companies Act, 1956, having its Registered
Office at Bharti Crescent, Nelson Mandela Road,
Vasant Kunj, Phase II, New Delhi – 110 070
and having its Maharashtra & Goa Circle
office at 2nd floor, Vega Centre, A wing
Shankarshet Road, Next to Income Tax
Office, Swargate – Pune 411037.
(through Mrs. Dhanashree w/o Sudhir
Dhawade, Assistant Manager Legal and
Regulatory holding power of attorney
from Bharti Airtel Ltd. for instituting
the instant writ petition)

..... PETITIONER

// VERSUS //

1. State of Maharashtra
Through Principal Secretary,
Energy & Labour Department
having his office at Mantralaya,
Mumbai – 400 032.
2. Additional Labour Commissioner, Nagpur
Administrative Building No. 2,
A wing, 4th floor, Civil Lines, Nagpur.
3. Assistant Labour Commissioner,
Nagpur & Conciliation Officer,
Office of the Additional Labour
Commissioner, Administrative Building No. 2,
A Wing, 4th floor, Civil Lines, Nagpur
4. Member, Industrial Tribunal,
Civil Lines, Nagpur.
5. Bahujan Employees Federation of India
Through Secretary Vidharba Region,
Laghuvetan Colony, Quarter No. 2,
Kamptee Road, Nagpur -14

6. Checkmate Industrial Service Pvt. Ltd.
Parmar Park, Jambhulkar Chowk,
Pune, Maharashtra – 400 023
Through its Managing Director.

.... RESPONDENT(S)

Shri M.M. Agnihotri with Shri Yogesh Dharashivkar, Advocates for the petitioner

Miss. Nivedita P. Mehta, AGP for respondent no. 1 to 4/State

None for respondent no. 5

Shri D.M. Kakani, Advocate for respondent no. 6

CORAM : A.S. CHANDURKAR AND G.A. SANAP J.J.

DATED : 24/02/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The respondent no. 5 has been duly served but there is no appearance on its behalf.

3. The challenge raised in this writ petition is to the Award dated 30.04.2019 passed by the Industrial Court, Nagpur on a Reference made to it by the Government of Maharashtra vide order dated 07.06.2014. This order was passed in exercise of the jurisdiction conferred by Section 10(1)(d) read with Section 12(5) of the Industrial Disputes Act, 1947 (for short the “Act of 1947”). The petitioner seeks a declaration that the order of Reference as made is without jurisdiction for the reason that the appropriate authority as contemplated by the provisions of Section 2(a)(i) of the Act of 1947 is the Central

Government.

4. The petitioner company is in the business of telecommunications and had entered into an agreement with the respondent no 6 for management of various infrastructure sites of the company. Security Guards registered with the respondent no. 5 – Federation are stated to have been engaged by the respondent no. 6 in the matter of providing security to the services as rendered. About twenty six Security Guards raised a dispute with regard to their engagement with the respondent no. 6. Initially, complaints were filed under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 by the respondent no. 5. After withdrawing the complaints an application dated 27.12.2012 seeking conciliation under the Act of 1947 was filed before the Conciliation Officer. On conclusion of these proceedings, a failure report dated 20.05.2014 was submitted to the State Government. In view of that failure report Reference was made by the Assistant Commissioner of Labour for adjudication of the dispute to the Industrial Tribunal. Pursuant thereto the Industrial Tribunal passed its Award on 30.04.2019 holding that the termination of employees as shown in the statement of claim to be illegal and unjustified. The petitioner was directed to reinstate the said employees alongwith payment of back-wages within a

period of three months from the date of publication of the order. Thereafter the members of the Union took further steps to implement the said Award. In these circumstances, the petitioner has challenged the aforesaid Award.

5. The learned Counsel for the petitioner submits that the Assistant Commissioner of Labour had no jurisdiction whatsoever to make the Reference in view of the fact that the appropriate Government insofar as the petitioner was concerned was the Central Government as per Section 2(a)(i) of the Act of 1947. He referred to the Notification dated 04.11.2004 as published in the Gazette indicating the same. Since the petitioner was engaged in telecommunication services that were controlled by the State Government under Section 4 of the Indian Telegraph Act, 1885, the Reference made by the State Government which was not the appropriate Government was beyond jurisdiction. Though this stand was taken before the Conciliation Officer and thereafter before the Industrial Tribunal, it had not been considered in the proper perspective. Thus, it is submitted that for want of jurisdiction, even the Award passed by the Industrial Tribunal was liable to be set aside. The said Award was passed in the absence of Counsel for the petitioner.

6. The learned Assistant Government Pleader for the

respondent nos. 1 to 4 has referred to the affidavit filed on record and has opposed the prayers made therein. It is submitted that the Reference as made was validly made by the Assistant Commissioner of Labour and the same was rightly referred to the Industrial Tribunal. Since the Industrial Tribunal had considered all the relevant aspects there was no reason to interfere with the impugned Award.

7. We have heard the learned Counsel for the parties and we have perused the material on record. The issuance of Notification dated 04.11.2004 and its publication in the Central Gazette by the Ministry of Labour and Employment Department is not in dispute. As per that Notification, the Central Government had specified the controlled industry engaged in the telegraph services which was controlled by the Central Government to be the appropriate authority. In view of the provisions of Section 2(a)(i) of the Act of 1947 it becomes clear that in so far as the petitioner is concerned the appropriate authority would be the Central Government. The reference as made by the Assistant Commissioner of Labour by holding the State Government to be the appropriate Government would therefore not be competent. The Industrial Tribunal however failed to consider this material aspect despite referring to the provisions of Section 2(a)(i) of the Act of 1947. Mere registration under the Bombay Shops and Establishments Act, 1948

would not be material when a specific Notification by the Central Government has been issued in that regard. It is thus found that the appropriate Government in the present case would be the Central Government.

8. Another contention raised on behalf of the petitioner is absence of the representative of the petitioner before the Industrial Tribunal. By filing an affidavit of the Counsel named in the said proceedings, it is urged that the petitioner was not represented before the Industrial Tribunal when the impugned order was passed. Be that as it may, once it is found that Reference as made by treating the State Government to be the appropriate Government is incorrect, further adjudication by the Industrial Tribunal would be the outcome of an exercise without jurisdiction. Hence on this ground the Award dated 30.04.2019 passed by the Industrial Tribunal is liable to be set aside. Consequent to aforesaid, the respondent no. 5 - Union would be required to initiate proceedings afresh if it has any grievance in the matter by approaching the competent Conciliation Officer.

9. In view of the aforesaid, the following order is passed:-

- i. The order of Reference dated 07.06.2014 is set aside as being made without jurisdiction.
- ii. The Award passed in Reference (IT) No. 7 of 2014

dated 30.04.2019 is consequently set aside.

iii. It is made clear that if the members of the respondent no. 5 – Union have any grievance whatsoever they are at liberty to adopt such legal remedies as are permissible in law in the light of the aforesaid adjudication.

10. Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

SANDIP
MAHADEV
GATE

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