



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 691 OF 2020
WITH
CIVIL APPLICATION NO. 10203 OF 2025

M/s. Sumit Services
101, Saman Kunj, Plot No.38,
Sector 20, C.B.D. Belapur,
New Mumbai-411 614
Through its Partner
Shri. Kiran Narayanrao Patil

...PETITIONER

VERSUS

- 1] Balasaheb Bajirao Raut
R/o. Plot No.287, Sai Building
At Post Sukewadi, Tq. Sangamner,
Dist. Ahmednagar.
- 2] ATC Telecom Tower Company Pvt. Ltd.
403, 4th Floor, Skyline Icon,
Andheri Kurla Road, Andheri (East),
Mumbai.

...RESPONDENTS

WITH
WRIT PETITION NO. 1824 OF 2020
WITH
CIVIL APPLICATION NO. 10204 OF 2025

Om Telecom Services
Om Sai Avenue, Plot No.3,
Thakare Nagar, N-2, Cidco,
Aurangabad Through,
Smt. Ashatai w/o. Bapurao Kagne

...PETITIONER

VERSUS

- 1] Balasaheb Bajirao Raut
R/o. Plot No.287, Sai Building
At Post Sukewadi, Tq. Sangamner,
Dist. Ahmednagar.
- 2] ATC Telecom Tower Company Pvt. Ltd.
403, 4th Floor, Skyline Icon,
Andheri Kurla Road, Andheri (East),
Mumbai.

...RESPONDENTS

Mr. V. P. Golewar h/f Mr. Arvind R. Joshi, Advocate for Petitioners.

Mr. Shahaji K. Shinde, Advocate for Respondent No.1.

Mr. Majit Shaikh h/f Mr. P. S. Chavan, Advocate for Respondent No.2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 4th NOVEMBER 2025.
PRONOUNCED ON: 17th DECEMBER 2025.

ORDER :-

1. Heard Mr. Golewar, the learned Advocate for the Petitioner, Mr. Shinde, the learned Advocate for the Respondent No.1 and Mr. Shaikh, the learned Advocate for the Respondent No.2.
2. Petitioners, in both these Writ Petitions, have challenged the Judgment and Award dated 7th November 2019, passed by learned

Judge, Labour Court, Ahemednagar, in Application (IDA) Nos. 96 of 2016 and 97 of 2016, respectively. As the respondents and the subject matter in both writ petitions are the same, the petitions are taken up together by consent of the parties for final disposal.

3. The respondent No.1 in both these writ petitions is the original applicant, whereas the present petitioners and Respondent No.2 are the respondent Nos.2 and 1, respectively. The respondent No.1 in both writ petitions is hereinafter referred to as “Workman”. Respondent No.2 is called as “Company” and the petitioners are called as “Service Provider”. Both applications in the Labour Court were filed under Section 33-C(2) of the Industrial Disputes Act, 1947. The facts are also similar in both the petitions.

4. The facts in short are that the Respondent No.2 (the Company) provides services of erection of mobile towers in various States and leases those towers to the companies providing cell phone services. The service provider is appointed to provide services for technical assistance,

security guard, care-takers etc. There is an agreement between the service provider and the petitioner for providing such services. The Company has erected mobile towers on the tower sites maintained by the petitioners-Company. It is the case that the applicant-workman was working as a security/caretaker at the Sukewadi site, Tal Sangamner Dist. Ahmednagar. He worked from July 2007 to November 2012 through Om Telecom Services (petitioner in WP/1824/2020), and thereafter, from November 2012 till the date through M/s. Sumit Services, (petitioner in WP/691/2020).

5. It is further alleged that the contractor paid the worker wages of Rs.2700/- per month. He was required to be at site from 7 a.m. to 8 p.m. for safety of the machinery generator, battery etc. The applicant was required to stay at tower premises even at night. No holidays were given to him. In October 2015, the applicant demanded payment of wages. Since the wages were not paid, he issued a notice on 5th August 2016 to the company. Though the notices were replied by the company, the contractor did not take any cognizance. The workman therefore filed

applications under Section 33-C(2) of the Industrial Disputes Act, claiming an amount of Rs.2,20,121/- from Om Telecom Services and Rs.1,92,208/- from Sumit Services, alongwith interest @ 18% p.a.. Both the applications were registered by the Labour Court.

6. It is, therefore, a case that there is no employer-employee relationship between the company and the workman. It is the contractor who is responsible for payment of salary. It is the case of the contractor that the workman never worked with them, and thus, there is no employer – employee relationship. They are duly registered as a contractor with him under Contract Labour Regulation and Abolition Act, 1970. They also refused the employee – employer relationship and denied that they are liable to pay the amount. The workman, in his deposition, deposed that he was receiving salary of Rs.2,700/- per month from the contractor. The learned Judge, 2nd Labour Court, Ahmednagar partly allowed the applications. The applications were dismissed against company. It was held that the workman is entitled to receive the amount of Rs.2,20,121/- in Application (IDA) No.97/2016

and Rs.1,92,208/- in Application (IDA) No.96/2016 from the contractor. It is directed to pay the amount with interest @ 7% p.a. till realization.

7. Being aggrieved and dissatisfied with the order passed by learned Judge, Labour Court, Ahmednagar, the petitioners are thus before this Court.

8. Learned Advocate for the petitioner submits that the petitioner is only a contractor engaged in mobile tower maintenance. There was a contract between workman and the company on leave and license agreement. There is no privity of contract between contractor and the workman. There is no appointment order ever issued in favour of workman. The written statement was filed praying for framing of preliminary issue. However, no preliminary issue was framed. The applicant only filed affidavit of evidence. The evidence is clearly deficient to show employer -employee relationship. Only I-card issued by the company is accepted as a proof of employment. The said I-card is prepared by the applicant himself. The learned Labour Judge has

wrongly concluded that the workman is entitled to the claimed amount. There is no existing right in the workman to claim any amount. He submits that the trial Court erred in allowing the application and prays that the petitions be allowed by quashing and setting aside the impugned order passed by learned Labour Judge, Ahmednagar.

9. Mr. Shinde, the learned Advocate for the Respondent-original Applicant vehemently opposed the petitions. He submits that the trial Court has rightly concluded that there is a relationship of employer and employee. The learned trial Court has rightly held that the contractor failed to show that the applicant was never appointed by them. The trial Court believed that the visit register maintained by the applicant showed that he worked for the contractor. A notice sent by the applicant was never replied by the contractor. Since there was no calculation given by the contractor, the Court rightly believed the calculation given by the applicant. He thus submits that both the writ petitions deserve to be dismissed.

10. This Court has gone through the Judgment and Award. The facts appearing on record are that the towers were installed in the premises of the applicant and there is a leave and license agreement executed between company and the applicant to that effect. In the leave and license agreement, it is clearly seen that the premises of the workman was given to the company to erect the tower. In the evidence, the applicant stated that he was engaged to do the work of tower maintenance, machinery, generator etc. He was given the work of security guard, and thus he happens to be the workman. In the evidence it emerges that there was no any appointment order. No pay slip is produced to show salary was ever paid. Even the signature taken on the said register is not produced by him, stating that it is in the possession of contractor. In the cross-examination of the workman, it is seen that the tower was erected on the slab of his house. There was a leave and license agreement executed between company and the applicant. The relationship was thus of landlord and tenant. He also accepted that he received rent towards the tower. I-card was also issued by the contractor.

11. In the cross-examination by the contractor, the applicant accepted that the I-card was not issued by the contractor or the company. No proof is placed on record by him to show that he was employed by the contractor or the company. There was leave and license agreement of 15 years. He used to charge the rent for the tower. He did not produce any document. He was never appointed, nor did he show any document to prove the termination of his services.

12. In the case of *Bombay Chemical Industries Vs. Deputy Labour Commissioner and Anr.*¹, the Hon'ble Apex Court considered the jurisdiction of labour Court in the cases of recovery of money under Section 33-C(2) of the Industrial Disputes Act. It was held that without prior adjudication or recognition of disputed claim of workmen, proceedings for computation of arrears of wages and/or difference of wages claimed by workmen is not maintainable. It is held that benefits sought to be enforced must be effective pre-existing benefits or one flowing from pre-existing right. In the said case, there was no prior

¹ (2022) 5 SCC 629

adjudication on entitlement to receive money. The claim of the workman therein that he was employed as a salesman by appellant was seriously disputed. In that case, the labour Court had allowed the application. It was held that the Labour Court ought to have relegated the parties to initiate appropriate proceedings and get the right crystalized. The impugned judgment and order passed by the trial Court under Section 33-C(2) of the Industrial Disputes Act was quashed and set aside.

13. In the present case, it is clearly a matter of record that the mobile tower was erected on the house of the applicant. There was a leave and license agreement between the company and the applicant. So far as the relationship between contractor and the workman is concerned, there is no clear document on record. The learned trial Court has only relied upon I-Card. Except that, there is no any other document to show that the workman was employed by the contractor. There is no document to show that the salary or remuneration was paid to the workman. There is no prior adjudication of the receivable amount.

14. Considering all above, this Court finds that in view of judgment passed by Hon'ble Apex Court in the case of ***Bombay Chemical Industries Vs. Deputy Labour Commissioner and Anr.*** (supra), it was necessary to at least fulfill the requirement of proving the employee – employer relationship and further to prove the entitlement. In absence of evidence to prove both these things, it was not proper for the Labour Court to allow the applications and to direct the Contractor to pay the amount. This Court certainly finds that the Labour Court has committed an error in allowing the application.

15. In the result, present writ petitions deserve to be allowed. Hence, the following order:

ORDER

- (i) Both writ petitions stand allowed.
- (ii) The impugned judgment and order dated 7th November 2019 passed by the learned Judge, 2nd Labour Court, Ahmednagar, in Application (IDA) Nos. 96/2016 and 97/2016 are quashed and set aside.

(iii) No order as to costs.

(iv) In view of disposal of Writ Petitions, pending Civil Applications do not survive and same also stand disposed off accordingly.

[KISHORE C. SANT, J.]

D.A.Ethape