

महाराष्ट्र शासन

अपर कामगार आयुक्त यांचे कार्यालय,

कोकण विभाग, मुंबई

कामगार भवन, ई ब्लॉक, सी-२०,

बांद्रा-कुर्ला संकुल, बांद्रा (पुर्व), मुंबई-४०० ०५१.

दूरध्वनी क्र. : २६५७ ३८४४

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"बाल कामगार
कामावर ठेवणे
गुन्हा आहे"

क्रमांक : अकाआ/औविअ/(आय.टी.) प्र.क्र.४३/२०२०/कार्या-१९,

दिनांक : 7 DEC 2020

१ मे. महाराष्ट्र राज्य विद्युत वितरण कं., लि. २ महाराष्ट्र वीज कंत्राटी कामगार संघ,
प्रकाशगड, बांद्रा (पूर्व), मुंबई-४०० ०५१ विश्वकर्मा भवन, १८५, शनिवार पेठ
(व्यवस्थापन) पुणे-४११ ०३०

विषय : निवाडा तक्रार (आय.टी) क्रं ३३/२०१९ औद्योगिक विवाद अधिनियमांतर्गत.

व्यवस्थापक, मे. महाराष्ट्र राज्य विद्युत वितरण कं., लि. प्रकाशगड, बांद्रा (पूर्व), मुंबई-
४०० ०५१ आणि महाराष्ट्र वीज कंत्राटी कामगार संघ, विश्वकर्मा भवन, १८५, शनिवार
पेठ पुणे-४११ ०३०

महोदय,

औद्योगिक न्यायालय, मुंबई यांच्या उपरोक्त निवाडयाची प्रत आपल्या माहितीकरिता या पत्रासोबत पाठवित आहे. सदर निवाडा या कार्यालयाच्या अधिसूचना क्र.अकाआ /औविअ/ प्रसिध्दी (आय.टी.) प्र.क्र.४३/२०२०/निवाडा /को.वि./कार्या-१९ दि.०७/१२/२०२० अंतर्गत कार्यालयाच्या सूचना फलकावर लावून प्रसिध्द करण्यात येईल.

सदरहू निवाडयाच्या प्रसिध्दीचा दिनांक आपणास परस्पर कळविण्यात यावा, अशी विनंती प्रबंधक, औद्योगिक न्यायालय, मुंबई यांना करण्यात आली आहे.

आपला विश्वासू,

अपर कामगार आयुक्त,
मुंबई.

अधिसूचना व निवाडयाच्या प्रतिसह :

प्रबंधक, औद्योगिक न्यायाधिकरण, मुंबई यांना कळविण्यात येत की, संबंधित अधिसूचना आणि निवाडयाच्या प्रतिसूचना फलकावर लावून प्रसिध्द करण्यात याव्यात व त्यासंबंधित पक्षकारांना परस्पर कार्यालयाला कळविण्यात यावे.



महाराष्ट्र शासन

अपर कामगार आयुक्त यांचे कार्यालय, कोकण विभाग, मुंबई

कामगार भवन, ई ब्लॉक, सी-२०,
बांद्रा-कुर्ला संकुल, बांद्रा (पूर्व), मुंबई-४०० ०५१.
दूरध्वनी क्र. : २६५७ ३८४४
e-mail id : kokandivision@gmail.com

"बाल कामगार
कामावर ठेवणे
गुन्हा आहे"

क्रमांक : अकाआ/औविअ/(आय.टी.)प्र.क्र.४३/२०२०/कार्या-१९,

दिनांक : 7 DEC 2020

अ धि सू च ना

क्र.अकाआ/औविअ/प्रसिध्दी/निवाडा/प्र.क्र.४३/२०२०/कोवि/कार्यासन-१९.

ज्याअर्थी, औद्योगिक विवाद अधिनियम, १९४७ च्या कलम ३९ (ब) चे अंतर्गत प्रदान करण्यात

आलेल्या शक्तीचा वापर करुन महाराष्ट्र शासनाने आपल्या अधिसूचना क्र.औविअ/ २००२/५६८६/
(२८८२)/ कामगार-३, दिनांक १९.८.२००३ द्वारे असा निर्देश दिला आहे की, उक्त अधिनियमाच्या कलम
१७(१) खालील शासनास वापरता येण्याजोगे अधिकार अपर कामगार आयुक्त, कोकण विभाग, मुंबई
यांनाही वापरता येतात.

त्याअर्थी, आता वर नमुद केल्याप्रमाणे औद्योगिक विवाद अधिनियम, १९४७ च्या कलम १७(१) च्या
खालील शक्तीचा वापर करुन अपर कामगार आयुक्त, मुंबई हे मे. महाराष्ट्र राज्य विद्युत वितरण कं.,
लि. प्रकाशगड, बांद्रा (पूर्व), मुंबई-४०० ०५१ (व्यवस्थापन) आणि या आस्थापनेत काम करणारे
कामगार यांचे मधील औद्योगिक विवादाबाबत शासन आदेश No. औसं / समेट / १६(०२) / २०१८ /
२०१९ / कार्या-७ / १४६२७ दिनांक ०६.१२.२०१९ संदर्भात औद्योगिक न्यायाधिकरण, मुंबई यांनी
दिलेला निवाडा प्र.क्र. (आय.टी.) ३३/२०१९ प्रसिध्द करीत आहे.

अपर कामगार आयुक्त,

मुंबई.

IN THE INDUSTRIAL COURT/TRIBUNAL AT : MUMBAI
BEFORE SHRI. R.N. AMBATKAR, PRESIDING OFFICER
INDUSTRIAL COURT/TRIBUNAL, MUMBAI

REFERENCE (IT) NO. 33 OF 2019

M/s. Maharashtra State Electricity
Distribution Co. Ltd., Prakashgad,
Bandra (East), Mumbai : 400 051. ... FIRST PARTY

Exh-0-3

VERSUS

Maharashtra Veej Kantrati Kamgar Sangh,
Vishwakarma Bhavan, 185, Shaniwar Peth,
Pune : 411 030. ... SECOND PARTY

CORAM :- R. N. Ambatkar, Presiding Officer,
Industrial Tribunal, Mumbai.

Appearances :- Shri. L. R. Mohite, Advocate for First Party.
Shri. V. P. Vaidya, Advocate for Second Party.

(PART - I AWARD)

:- ORDER ON INTERIM RELIEF APPLICATION AT EXH.U-5 :-

(Dated : 16/09/2020)

01) The Labour Commissioner, State of Maharashtra, Mumbai by his letter dated 15/10/2019, has referred the present Reference for adjudication under Section 12 (5) of the Industrial Disputes Act, 1947. This Reference is pertaining to the contract labourers of First Party Company and it appears that, almost 3,231 contract labourers who claims to be the members of the Second Party are aggrieved by the recruitment advertisement notice Nos. 4 & 5 of 2019 issued by the First Party Company.



02) The Second Party, "Maharashtra Veez Kantrati Kamgar Sangh" has filed the statement of claim and have sought relief to hold and declare that, the contractor through whom, the contract employees were employed, is sham and bogus and that, the said employees be declared as permanent and regular employees in the category of 'junior technicians' of the First Party Company and to issue directions to the First Party Company to pay all arrears of wages and consequential reliefs and benefits of permanent regular employees. The Application at Exh.U-5 filed for Interim Relief wherein, it has been prayed to direct the First Party Company continue the employment of the contract employees as is being done presently and secondly, it has been prayed to restrain the First Party from filling up the vacancies pursuant to the advertisement Nos. 4 & 5 of 2019.

03) The contention of the Second Party in the statement of claim in short may be summarized as follows :-

That, before the tripartition of the MSEB in 2005, there was general ban on the recruitment in the Government and the Government bodies as a measure of austerity. The vacant posts in the First Party Company could not be filled up due to the ban on the recruitment, but the work was being performed through the employees. There was vast expansion of electricity distribution in the various fields in the State of Maharashtra and the work of 'junior technician' which falls within Clause-IV in the



classification of employees was allotted to these contract employees who were holding required qualifications.

04) The Management of the First Party Company authorized the Superintendent Engineer by the circle level to appoint duly qualified persons to do the work of '*junior technicians*' in their respective circles. Accordingly, the contract employees came to be engaged through the contractors. The work performed by the said employees was also the same work that was earlier performed by the permanent and regular employees of the First Party Company. The qualification and other conditions expected of said contract employees was as per the standard laid down in the Recruitment Rules of the First Party. The contractors were only for namesake and the contract employees, all the time, were being supervised and controlled by the officers of the First Party Company. The contract employees were being paid minimum wages and were not entitled for any other benefits as was available to similar situated regular permanent employees of the First Party.

05) It has been contended that, sometimes in 2012, due to lifting of ban on recruitment, the First Party came up with noble idea of appointing Class-IV persons directly on their pay roll; but as Assistants on the fixed term basis and consolidated salary. Accordingly, as many as 1500 vacancies were sought to be filled in giving the complete go by to the Recruitment Rules. That, being aggrieved by such an illegal and unwarranted appointment



on fixed term basis and that too, by by passing the legitimate right of the contract employees, formed and joined Second Party Union. The Second Party approached the Management and sought some reliefs for the contract employees. It found that, the approach of the First Party is adamant. The Second Party filed Writ Petition challenging the recruitment of persons on fixed term basis on a consolidated salary. The Hon'ble High Court in Writ Petition No. 5656 of 2012 pleased to dispose of the said Petition in terms of merits of order submitted by the First Party Nos.1 & 2. As per the order of the Hon'ble High Court in the aforesaid Writ Petition, dispute was referred to the Commission of Labour. The Reference (IT) No. 48 of 2012 pending before the Hon'ble Industrial at Thane is the outcome of the aforesaid Reference of the dispute. The Second Party moved an application for Interim Relief which came to be rejected by the Industrial Tribunal, Thane and the said order has been stayed and the stay is continued till the filing of this Reference. It is contended that, on this background, the Second Party surprised to see another two advertisements being Nos. 4 & 5 of 2019 of recruitment of five thousand 'vidhyut sahayak' on consolidated salary for a period of three years.

06) It is further contended that, the contract employees, concerned in the Reference are working on the aforesaid posts which are to be occupied by seven thousand employees to be recruited by the First Party Company. The contract employees are



working in the respective posts for years together and are fully qualified and meet the educational and other requirements i.e. envisaged in the advertisement Nos. 4 & 5 of 2019. That, most of the contract employees have crossed the age prescribed in the advertisements and thus, are ineligible to apply for the said posts. Even otherwise, having work for years together through sham and bogus contractors, these contract employees are entitled to be absorbed in the employment of First Party Company as permanent and regular employees with other consequential benefits. These contract employees, have not been appointed through back door entry.

07) It is further contended that, during pendency of this Reference, any change in service conditions of the contract employees can only be made after following the procedure prescribed under Section 33 of the Industrial Disputes Act, 1947. Considering the order passed by the Hon'ble Bombay High Court in Writ Petition No.5656 of 2012, this Tribunal is required to pass appropriate order protecting the contract employees, the members of Second Party. Accordingly, it has been prayed to direct the First Party Company to continue the employment of aggrieved employees and to restrain the First Party Company from filling up the vacancies pursuant to the advertisement Nos. 4 & 5 of 2019.

08) The First Party has filed the affidavit in reply to the Interim Relief Application (*Exh.C-2*) and it has strongly opposed



the Application of the Second Party. The First Party has challenged the territorial jurisdiction of this Tribunal and it has been contended that, this Tribunal has no territorial jurisdiction to decide the Reference. It is contended that, the Second Party is not entitled for any relief as the concerned contract employees are not in the employment of First Party Company and the First Party has got no control over the service conditions of the said employees as their service conditions are governed by the terms and conditions of the contract entered into between the First Party and the contractors. It is contended that, in the past also, the Second Party Union had filed Writ Petition before the Hon'ble Bombay High Court challenging their recruitment and this Writ Petition has been rejected and the Hon'ble Court has refused to grant any relief or relaxation of which as prayed for. It is contended that, not a single employee involved in Reference has gone through such process of recruitment and the First Party has not issued any appointment letter to them. For this reason, these contract employees cannot be absorbed in regular employment. The Hon'ble High Court has disposed of Writ Petition Nos. 5656 of 2012, 5438 of 2012, 5489 of 2012 and 6111 of 2012 by the order dated 27/08/2012. Thereafter, Reference (IT) No. 48 of 2012 was preferred to the Industrial Tribunal, Thane for adjudication. The said Industrial Tribunal has rejected the Interim Application of the Second Party by order dated 07/02/2013 and this order again came to be by the Second Party Union before the Hon'ble Bombay High Court by filing Writ Petition Nos.2116 of



2013, 2147 of 2013 and 2325 of 2012 and by the order dated 02/08/2018, the Hon'ble Bombay High Court directed the Industrial Tribunal, Thane to expeditiously dispose of the Reference (IT) No. 48 of 2012. It is contended that, the Second Party Union has no legal right to make any allegations that the contract is sham and bogus and the contract labourers are the employees of the First Party.

09) It is further contended by the First Party that, initially there was ban on fresh recruitment since the year 1982 and hence, no recruitment has been made by the First Party till the year 2011. During this period, due to heavy workload and to fulfill the requirements of the consumers, the First Party chosen for outsourcing the work as per the directions issued by the Government of Maharashtra from time to time. To strengthen the financial position of Seva Sahakri Sanstha of unemployed people and Lokseva Centres, the Government of Maharashtra pleased to issue the Government Resolution dated 31/07/2003 and issued directions and guidelines about assigning the work to said institutions. It was just and necessary to outsource the work of First Party by following the directions of the Government of Maharashtra and accordingly, there was no malafide intention behind outsourcing the work. After accepting the eligible tenders, the work order was issued to the contractors. The contract between the First Party and the concerned contractors is governed by the terms and the conditions of the said work order. The



contract was assigned to the contractors for a specific period and after completion of the said period, the First Party was supposed to invite fresh tenders. While engaging new contractor, it was neither binding on the new contractor to engage the workmen of previous contractor nor the First Party is in any way concerned with the said workmen of the first contractor. The wages were being paid by the contractors. The contract between the First Party and the contractor is genuine, bonafide and as per the guidelines issued by the State of Maharashtra. At present, there is no ban on recruitment and hence, the corporate Office of the First Party has taken a decision to recruit persons in technical cadre in the posts of '*vidhyut sahayak*' (*electrical assistant*) and hence, started the process of recruitment by giving advertisement No.1 of 2012 as per the provisions of classification of Recruitment Rules, 2005. The Hon'ble Bombay High Court has already granted liberty to the First Party to proceed with the recruitment process and to make the appointment of selected candidates. The contract labourers are also at liberty to apply for the said posts and accordingly, many of the contract labourers have already applied and undergone the recruitment process.

10) It is contended that, the present Application filed by the Second Party is totally false, bogus, mischievous and frivolous and the Second Party is not entitled for any of the reliefs. It is contended that, there is no strong prima facie case in favour of the Second Party. It is also the contention of the First Party that,



no relief can be granted by way of Interim Relief or otherwise, as the Hon'ble High Court while passing the order dated 13/09/2019, in Writ Petition No. 9669 of 2019 has already protected the interests of the workmen in above Reference by stating that, the recruitment will be subject to the outcome of the Reference.

11) After going through the rival contentions, following points arise for my discussion and I have recorded my findings for the reasons given below :-

<u>Sr.No</u>	<u>POINTS</u>	<u>FINDINGS</u>
01)	Whether a strong prima facie case has been made out for the grant of interim relief ?	Partly in the Affirmative
02)	Whether the balance of convenience lies in favour of the Second Party ?	Partly in the Affirmative
03)	Whether the Second Party is likely to suffer irreparable loss if the relief is not granted ?	In the Affirmative
04)	What order ?	As per final order

-: REASONS :-

AS TO POINT NOS. 1 to 3 :-

12) Heard the Learned Advocate Shri.V.P.Vaidya for the Second Party and the Learned Advocate Shri.L.R.Mohite for the First Party Company.



13) The Learned Advocate Shri.V.P.Vaidya for the Second Party submits that, the contract labourers narrated in Annexure-B of the statement of claim are working in different areas, the State of Maharashtra and all of them have joined the employment through various contractors. The First Party has changed the contractors time to time and the contract labourers remained the same against vacant posts. Besides this fact, all the contract employees are working directly under the supervision and control of the Officers of the First Party. These employees have been selected considering their qualifications and prescribed eligibility. The wages being paid to the contract employees were decided and prescribed by the First Party. The attendance is also maintained by the First Party. These contract employees have worked for the First Party for several years under the strict supervision of the First Party Officers. The contract between the contractors and the First Party in actual sense is sham and bogus. The contract employees have not been given consequential benefits except the minimum wages which have been paid through the contractors.

14) He submits that, to continue the contract employees on temporary basis for years together, itself is unfair labour practice as envisaged in the Schedule of the Industrial Disputes Act, 1947. The contract employees have been engaged by the First Party as there was ban on the recruitment. For this reason, it cannot be said that, their entry in the contract employment was back door entry. The Learned Advocate submits that, the ban on the recruitment was lifted somewhere in the year 2011. Thereafter, the First Party issued



advertisement Nos. 1 & 2 in the year 2012 and decided to recruit the employees. At this time, the Second Party had put the demand before the Appropriate Officers and Authorities of the First Party and requested to absorb the contract employees in the permanent employment. The request was not accepted and hence, the Second Party approached the Hon'ble Bombay High Court by filing a Writ Petition No.5656 of 2012. At this stage, some other individual employees had also approached the Hon'ble Bombay High Court. Before the Hon'ble Bombay High Court, the First and the Second Party filed '*Minutes of Order*' and in view of it, the Hon'ble Bombay High Court disposed of the Writ Petition. The parties had decided to make a Reference to the Government. It was directed that, during this period, the services of the aggrieved contract employees were protected for certain period.

15) He further submits that, the Labour Commissioner referred the Reference for the adjudication to the Industrial Tribunal at Thane as it was agreed. The said Reference No.48 of 2012 is pending before the Industrial Tribunal at Thane. The Learned Advocate submits that, the Second Party filed Interim Application before the Tribunal requesting to protect the services during the pendency of the Reference and to restrain the First Party from filling up the vacancies through recruitment process. The Interim Relief Application was rejected by the Industrial Tribunal against which, the Writ Petition was filed before the Hon'ble Bombay High Court bearing No. 2116 of 2013. The Learned Advocate further submits that, the Hon'ble Bombay High Court has quashed and set aside the



CNR No.MHIC01-001005-2019 12 Reference(IT)No.33-2019(Part-I Award)

order passed by the Industrial Tribunal and the First Party was directed not to disturb the services of the contract employees enlisted in the said Petition and accordingly, the matter was directed to be disposed of expeditiously. The Learned Advocate submits that, considering the order of the Hon'ble Bombay High Court dated 02/08/2018 in Writ Petition Nos.2116 of 2013, 2147 of 2013 and 2325 of 2013, it is apparently clear that, the present Second Party is having strong prima facie case and balance of convenience. The Learned Advocate submits that, the contract employees enlisted in the Reference are having genuine grievances and hence, it has been prayed for the issuance of directions to the First Party to continue the employment of the concerned employees and to restrain the First Party from filling up the vacant posts pursuant to the advertisement notice Nos. 4 & 5 of 2019.

16) The Learned Advocate Shri.L.R.Mohite for the First Party submits that, the Second Party Union is not having any strong prima facie case. The Learned Advocate submits that, if it is the contention of the Second Party that, the contract between the contractors and the First Party is sham and bogus, then in this situation, the contract labourers who are rendering their duties for the First Party, cannot be continued in view of the alleged sham and bogus contract. The Learned Advocate further submits that, the employment in the First Party is the public employment and after lifting of the ban on the recruitment in the year 2011, the First Party has issued advertisement notice Nos. 1 & 2 in the year 2012. Thereafter, it has issued an advertisement notice Nos. 4 & 5 of 2019.



There cannot be a back door entry in the employment of the First Party. Whenever the First Party wants to recruit these employees, it has to issue an advertisement notice and the vacancies are required to be filled up after following the due procedure. At present, there is heavy workload on the present employees of the First Party and it is very much necessary for the First Party to recruit the employees in Class – IV category. If the First Party is restrained from recruitment of new employees, the whole system may collapse. The supply of electricity to the public at large is essential service and on this background, the First Party has to recruit the employees through advertisement. The Learned Advocate further submits that, the Hon'ble Bombay High Court in various Writ Petitions have never put any stay on the recruitment process of the First Party and for this reason, this Tribunal cannot grant any stay and cannot restrain the Second Party from recruiting fresh employees. The First Party is following due procedure, rules and regulations while recruiting fresh employees.

17) The Learned Advocate further submits that, the employees having grievances in this Reference are from various parts of Maharashtra. They are working through their contractors in various districts and for this reason, the Industrial Tribunal at Mumbai is not having territorial jurisdiction to entertain and decide the Reference. He submits that, no doubt, one similar Reference was made and is pending before the Industrial Tribunal at Thane, but it was as per the agreement in '*Minutes of Order*' submitted before the Hon'ble Bombay High Court in Writ Petition No. 5656 of 2012. In



the present case, there is no such agreement and for this reason, the Tribunal is not having territorial jurisdiction.

18) He submits that, the Second Party Union has no legal right to make any allegations that the contract is sham and bogus and the contract employees are the employees of the First Party. He submits that, the Second Party has totally failed to make out any prima facie case and the reliefs claimed by the Second party Union cannot be granted against the First Party Company when admittedly the contract employees are the employees of the contractors. He submits that, the contract between the First Party and the contractors is a genuine and bonafide and as per the guidelines issued by the Government of Maharashtra from time to time. The employer of the contract labourers, the contractor has the total control over them. The said contractors maintain separate attendance, muster for the contract labourers, makes payment of monthly wages after deducting Provident Fund, ESIC etc., from the wages of the said contract labourers on code numbers of the contract employees as per the agreed terms of the contract. From this, it is apparently clear that, there is no substance in the allegations of the First Party that, the contract with the contractors is sham and bogus. The Learned Advocate submits that, in the present case, the First Party has absolutely failed to make out a strong prima facie case. The balance of convenience lies in favour of the First Party and hence, the Application for Interim Relief deserves to be rejected.



19) It is pertinent to note that, somewhere in the year 1982, the Government of Maharashtra put ban on fresh recruitment in the various cadres and in the various departments of the Government. For this reason, no recruitment has been made out by the First Party till the year 2011. As per the contention of the First Party, during this period, population of the Maharashtra was tremendously increased and as a result, the workload on the First Party in respect of supplying electricity to the citizens were also tremendously increased which workload was impossible to cope up with the available manpower with the First Party and hence, the First Party has chosen for outsourcing the work as per the directions issued by the Government of Maharashtra. The Government of Maharashtra issued circular and accordingly, issued directions and guidelines to the concerned Authorities of the First Party in respect of assigning the work on contract basis by giving preference to various Societies. For the First Party, there was no alternate but to outsource the work for genuine and bonafide reasons. The Maharashtra Electricity Regulatory Commission (MERC) had also prohibited the First Party Company from making any recruitment which was subsequently lifted. Admittedly, the First Party invited tenders / quotations for providing skilled and unskilled contract labourers. After receipt of tenders / quotations, those were evaluated by the Competent Committee and after scrutinizing all the legal documents and requirements, contractors were engaged to supply the manpower for the First Party. Accordingly, work orders were



issued to the contractors containing all terms and conditions consisting with the requirements of the provisions of various labour laws. The aggrieved members of the Second Party are the contract labourers of the First Party who were assigned the duties of '*Electrical Assistants*'. It is apparently clear that, repeatedly the contracts were renewed and the contract labourers came to be engaged by the First Party. These contract labourers, directly have helped the First Party in executing its functions, especially the distribution and management of electricity. The First Party after lifting of the ban of recruitment, issued advertisement Nos. 1 & 2 in the year 2012 and it gave cause of action to the contract labourers. It was their contention that, they have rendered their duties for the First Party for the continuous period and for several years and for this reason, they are required to be absorbed in the permanent services.

20) It is pertinent to note that, the Second Party approached with the demand to the Appropriate Authority of the First Party and when they received no response, they filed Writ Petition No. 5656 of 2012 before the Hon'ble Bombay High Court. The First Party and the Second Party executed '*Minutes of Order*' which was submitted to the Hon'ble Bombay High Court in the aforesaid Writ Petition and accordingly, by the order dated 27/08/2012, said Writ Petition came to be disposed of. In this order, the Hon'ble Bombay High Court has said that, the parties have tendered '*Minutes of Order*' signed by them. The '*Minutes of*



'Order' are taken on record. The Hon'ble Bombay High Court directed that, the services of the workmen shall be protected for a period of four weeks if the decision on the interim relief in industrial adjudication is against the workmen. The 'Minutes of Order' speaks that, the parties to the dispute agreed to take the dispute to the State Government for Reference under the Industrial Disputes Act, 1947. Thereafter, the parties to the dispute shall refer the same to the Industrial Adjudicator at Thane for adjudication and decide the following points viz., (a) *whether the contracts between the contractors and MSEDCL for engaging the workers are sham, nominal and camouflage ? and ; (b) whether the workers enlisted to the Petition, are employees of MSEDCL ? If yes, whether they are entitled to permanent status and to receive the benefits of regular pay-scale as applicable to their respective posts along with consequential benefit ?* Accordingly, the Reference (IT) No. 48 of 2012 was filed before the Industrial Tribunal at Thane. The said Reference appears to be pending. It is pertinent to note that, the Second Party had filed Interim Relief Application praying the similar reliefs which have been prayed in the present Reference. The Industrial Tribunal at Thane by common order dated 07/02/2013, rejected the Interim Application with the finding that, there is no strong prima facie case in favour of the Second Party. It is further pertinent to note that, being aggrieved by the order passed by the Industrial Tribunal, Thane, the Second Party filed Writ Petition bearing No.2116 of 2013 before the



Hon'ble Bombay High Court. The Hon'ble Bombay High Court disposed of the said Writ Petition by passing following order :

“(I) The impugned order of 7 February 2013 is quashed and set aside. There will be interim relief in terms of clause (4) of the Minutes of Order, which were taken on record by the Division Bench of this court on 27 August 2012 in Writ Petition No.5656/2012 and others, for a period of six months from today. It is made clear that this interim relief implies that the Respondent shall not to disturb the services of the workers enlisted in the petition. It is also made clear that in case the Petitioner union or enlisted workmen have any grievance in relation to their service conditions, the same may be agitated before the Industrial Tribunal”.

Further, the Hon'ble Bombay High Court directed the Industrial Tribunal at Thane to dispose of the Reference expeditiously. From the aforesaid order of the Hon'ble Bombay High Court, it is apparently clear that, the First Party was not supposed to disturb the services of the contract labourers till the final disposal of the Reference pending before the Industrial Tribunal at Thane. The order passed by the Industrial Tribunal, Thane dated 07/02/2013 has been quashed and set aside by the Hon'ble Bombay High Court.

21) Similar situation arisen in this present Reference. Again in the year 2019, the First Party has issued recruitment advertisement Nos. 4 & 5. The Second Party approached the



Office of the Labour Commissioner which has referred this present Reference. The facts in the present Reference and the facts in the Reference (IT) No. 48 of 2012 pending before the Hon'ble Industrial Tribunal Thane are identical.

22) It is an undisputed fact that, the contract labourers have rendered long services for the First Party. These contract labourers through their contractors were engaged in a peculiar circumstances that is due to the ban on regular recruitment in the various cadres of the First Party. It cannot be said that, these contract labourers have joined the services of the First Party, through back door entry. The First Party has followed the procedure. It has invited the tenders / quotations from the contract labourers and after verifying their eligibility, the contractors were given work orders for supplying the manpower. The aggrieved labourers in the present Reference have joined the services through their contractors. It is alleged by the Second Party that, these contracts are sham and bogus as those deprives the rights of the contract labourers. In the present Reference, it is the issue before the Tribunal ; whether the contracts between the contractors and the First Party is sham and bogus and ; whether declaration of permanency and regular employment in the category of junior technicians can be granted to the contract labourers who joined the services of the First Party through contracts.



23) The Hon'ble Industrial Tribunal at Thane has rejected the Interim Application of the Second Party, wherein, it was prayed to direct the First Party Company to continue the employment of the contract labourers and to restrain the First Party from filling up the vacancies pursuant to the advertisement. As said above, the Second Party has approached the Hon'ble Bombay High Court and challenged the order of the Industrial Tribunal, Thane. The Writ Petition No.2116 of 2013 has been disposed of by the Hon'ble Bombay High Court after quashing and setting aside the order of the Industrial Tribunal, Thane. The said Tribunal was directed to dispose of the Reference expeditiously. It was directed by the Hon'ble High Court to the First Party not to disturb the services of the contract labourers during the pendency of the Reference. In my view, this gives a strong prima facie case to the Second Party. The balance of convenience also lies in favour of the Second Party. In view of the order passed by the Hon'ble Bombay High Court in Writ Petition No. 2116 of 2013, the services of the contract employees are required to be protected till the outcome of the present Reference. If the aforesaid relief is not granted, there will not be uniformity of the reliefs in respect of the contract labourers. The services of the contract labourers involved in this Reference are required to be protected subject to the decision of the present Reference. As far as the relief prayed by the Second Party to restrain the First Party from filling up the vacancies pursuant to the advertisement notice Nos.4 and 5 of 2019 is concerned, I am of view that, this relief



cannot be granted. The First Party is at liberty to proceed with its recruitment process. The First Party is a public sector industry and is also a statutory body constituted under the Electricity Act. The employment in the First Party Company is a public employment and as per the mandate of the Constitution, public at large should get equal opportunity of the employment in the First Party Company.

24) In view of the observations, I conclude with the finding that, the contract employees concerned with this Reference are entitled for the protection of their services subject to the outcome of the present Reference. The Second Party is not entitled for the relief claimed in terms of Prayer Clause No. 5(b) of the Interim Application.

25) The First Party in their reply has raised the objection that, this Tribunal has no territorial jurisdiction to entertain the present Reference. It is their contention that, the employees involved in the Reference are from different places of State of Maharashtra. None of the employee is from Mumbai district and for this reason, this Tribunal has no territorial jurisdiction to entertain the Reference. It is contended that, in case of Reference (IT) No. 48 of 2012, the parties to the Reference had agreed to make a Reference before the Industrial Tribunal, Thane and due to the order passed by the Hon'ble High Court in Writ Petition No. 5656 of 2012, pursuant to the '*Minutes of Order*', the First Party



had not raised any objection regarding territorial jurisdiction before the Tribunal at Thane.

26) It is pertinent to note that, the corporate Office of the First Party is situated in Mumbai. The aggrieved contract labourers are from various districts from the State of Maharashtra. If these contract employees file separate References before the various Industrial Tribunals in the Maharashtra, there may not be uniformity in the orders. It appears that, the Second Party has chosen the Industrial Tribunal at Mumbai for filing the present Reference. This Reference has been referred by the Labour Commissioner, Maharashtra at Mumbai. As the corporate Office of the First Party is situated in Mumbai, I am of view that, this Tribunal is having territorial jurisdiction to entertain and decide the present Reference. In my opinion, there is no need to frame preliminary issue regarding the jurisdiction.

27) The Learned Advocate for the First Party has relied on the observations of the Hon'ble Bombay High Court in the case IDBI Bank Ltd., V/s. Bhartiya Kamgar Sena and Others [Writ Petition No.4395 of 2018 ; decided on 15/06/2018]. In this judgment, it has been held that, "no interim relief should be granted in the proceedings where the employer-employee relationship is through a sham and bogus contractor". It is the submission of the Learned Advocate for the Second Party that, the matter pertaining to IDBI Bank and the order relied upon by the First Party Company is not applicable to the present set of facts.



The facts in the present case are distinguishable and different from the facts involved in the matter of *IDBI Bank (supra)*.

I have gone through the judgment of the Hon'ble Bombay High Court in the case of *IDBI Bank* cited supra. In the present case, it is an undisputed that, the employees concerned in the present Reference have been working and doing the work of permanent and perennial nature of the First Party for years together although there has been a change of contractor. The employees have continued to work with the First Party Company. Undisputedly, the employees are fully qualified to hold the posts and they have in fact, been selected by the Officers of the First Party Company. It is not upon for the risk of the First Party Company to terminate the services of these employees and engage another set of contract employees. The Second party is seeking interim relief in terms of their particular class as stated in the Application for Interim Relief. The letter of the First Party written by the Managing Director clearly shows that, the First Party is holding that, more than five thousand contract employees would be required irrespective of filling up the vacancies of regular employees. Further, it is yet to be decided, whether the contract between contractors and First Party regarding engaging contract employees is sham and bogus. It appears to me that, the judgment of the Hon'ble Bombay High Court in the case of *IDBI Bank (supra)* is not perfectly applicable to the set of facts involved in the present case.

28) In view of my above observations, I answer Point Nos. 1 & 2 partly in the Affirmative. If the Interim Relief in terms of Prayer Clause No. 5 (a) of the Interim Relief Application is not granted, there will be diversity in the orders and reliefs granted to the contract labourers and the contract labourers involved in the present Reference would suffer irreparable loss by loosing their services. Hence, I answer Point No.3 in the Affirmative and I pass following Part First Award :-

:- PART – I AWARD :-

- (i) The Interim Relief Application is partly allowed.
- (ii) The First Party Company shall continue the employment of contract employees enlisted in Annexure-B of the statement of claim till final decision of this Reference.
- (iii) The employment of these contract labourers shall be subject to the outcome of the Reference.
- (iv) Copies of this Part-I Award be sent to the Appropriate Government for publication.

Sd/-

Date :- 16/09/2020.

SRS/-

(R.N.AMBATKAR)
Member/Presiding Officer,
Industrial Court/Tribunal Mah.,
Mumbai



True Copy

[Handwritten Signature]
16/09/2020

Assistant Registrar
Industrial Court, Mumbai