

IN THE INDUSTRIAL TRIBUNAL, AT MUMBAI.

Reference (IT)No.14 of 2017.
(CNR No. MH1C01-000318-2017)

BETWEEN

The Brihanmumbai Mahanagarpalika,
Mahapalika Marg,
Mumbai-400 001. ... First Party.

AND

The Workmen employed under it,
Represented by-Mahapalika Arogya
Seva Karmachari Sanghatana,
52/2455, Bandra Sai Darshan,Gandhinagar,
Opp.MIG Club,Bandra (E),
Mumbai-400 051. ... Second Party.

Coram:- Shri M.R. Kumbhar, Presiding Officer.

Appearances:

Shri. B.D. Birajdar,Advocate for the First Party.
Shri.Prakash Devdas,Advocate for the Second Party.

O R D E R (Below Exhibit U-18)
(04.01.2023)

01. Read the Application filed by the Second Party Union. Perused the Say of the First Party. Heard both the Ld. Advocates for the parties.

02. By this Application, the Second Party Union prayed to add other Unions as party to the present Reference, as they are necessary parties.

03. Shri. Prakash Devdas, Ld. Advocate for the Second Party Union vehemently submitted that some of the concerned workmen in the present Reference are represented by the other Unions, operating in BMC. He further submitted that while the conciliation officer issued notices to First Party to exhibit the same at prominent places of the concerned work premises such as entrance through which the majority of the workmen affected by the dispute enter the place of work, but it seems that this has not been done and therefore other Unions have not joined the Reference by filing the Statement of Claim.

04. He lastly submitted that non-joining of the Unions who are also representing some of the workmen concerned, will make the implementation of the Award difficult. As per Section 18 of the Industrial Disputes Act, 1947, the provision of binding the Award would be an issue and therefore, in order to have peaceful and smooth industrial relations, it is necessary that all Unions having membership of the concerned workmen be added as parties.

Accordingly, he prayed that the Unions viz. Municipal Nursing & Paramedical Staff Union and Municipal Kamgar Karmachari Sena be added as parties in the present

Reference proceeding.

05. In support of his submissions, Ld. Advocate for the Second party relied on the observations of Hon'ble Supreme Court in the matter between *Hochtief Gammon v/s. Industrial Tribunal, Bhubaneshwar, Orissa & ors.- MANU/SC/0204/1964*; and *Roca Ranipet Labour Union v/s. Ranipet Labour Union-Writ Petition No.4505 of 2019, decided by Hon'ble Madras High Court on 08.03.2019*. He further relied on the observations of Hon'ble Madras High Court in the matter between *Palanisamy R. & 6 ors. V/s. Presiding Officer, Labour Court, Salem & ors-2001 II LLJ page 1693*, and prayed that the observations are helpful to his case and hence the Application be allowed.

06. On the contrary, Shri. B.D. Birajdar, Ld. Advocate for the First Party strongly submitted that the Application is totally vague, misleading and it does not disclose any reason for adding the proposed parties. He further submitted that adding the parties at this stage, when the evidence of Second Party is in progress, will create hurdle to the parties to proceed with the matter. By inviting my attention towards the Statement of Claim filed by the Second Party, he submitted that no such

claim is mentioned in the said Statement of Claim.

07. He lastly submitted that this Tribunal has no power to add the parties in the Reference Order, which has been made by the appropriate Government and therefore the Application is liable to be rejected. He tried to distinguish the observations relied by the Second Party Union and submitted that the observations relied by the Second Party wherein the Hon'ble Supreme Court rejected the prayer of adding the party in the Reference and therefore the Application is not maintainable. He prayed to reject the same.

08. Having heard the oral submissions of both the Ld. Advocates, I have deeply considered the same. I have perused the Reference Order at Exhibit O-1 dated 05.05.2017 forwarded by the Additional Labour Commissioner, Mumbai alongwith the Schedule annexed therewith. In the Schedule itself, the Demand Nos.2 to 5 are in respect of fixation of the staff nurses in the 5th Pay Commission from 01.01.1996 and to give pay band and grade pay, holidays, special pay and allowances.

09. It is pertinent to note that while minutely perusing the Statement of Claim, the Second Party itself mentioned that

the concerned workmen who are employed as Staff Nurses in the various Hospitals run by the First Party Corporation are its members. It is further needless to mention here that the Reference is forwarded in the year 2017 and after filing the Written Statement of First Party, Issues were framed at Exhibit O-5 and thereafter the Second Party has filed affidavit-in-lieu of examination-in-chief at Exhibit U-9. The witness of the Second Party is partly cross-examined on 28.07.2022 and matter was deferred for further cross-examination. It appears that the Second Party in order to avoid facing the cross-examination, has filed such type of Application only with a view to delay the matter.

10. It is worth-while to mention here that the observations relied by the Second Party of *Hochtief Gammon (supra)*, wherein the Hon'ble Supreme Court observed that- "*The power to summon parties implied in Section 18(3)(b) cannot be exercised by the Tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the Tribunal is derived solely from the order of reference passed by the appropriate Government under Section 10(1).*" The Hon'ble Supreme Court further observed that- "*Though Section 18(3)(b)*

postulates the existence of an implied power in the Tribunal to add parties and summon them, in the instant case that power cannot be exercised because having regard to the limited nature of the implied power, the party meant to be joined as a party to the reference cannot be treated as a necessary party under the provisions of Section 18(3)(b).”

11. In the present Reference in hand, already the trial is commenced. One witness of the Second Party is under cross-examination and after lapse of 5 years, the prayer is made by the Second Party to add the two Unions as party. This itself show the lack of bonafides on the part of the Second Party Union. Further more though the prayer is made to add the two unions as party, the Second Party has not clarified as to whether the said two Unions are to be added as Second Party or First Party. The Application is vague on this aspect. I don't find any substance in the submissions made on behalf of the Second Party for adding the parties in the present Reference and further if this Application is rejected, what prejudice will be caused to the Second Party, is not at all pointed out during the course of arguments.

12. Mere filing the Application and making various prayers, do not show any bonafides. Under such circumstances, I don't find any substance in the Application as the prayer is outside the purview of this Tribunal. Hence, the same is liable to be rejected. With this, I proceed to pass the following Order:-

ORDER

- I) Application at Exhibit U-18 stands rejected.*
- ii) No order as to cost.*
- Iii) Case to proceed further.*

Date:- 04.01.2023.

*(M.R. KUMBHAR)
Presiding Officer,
Industrial Tribunal, Mumbai.*

Skn/-