

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-19)
(04.01.2023)

01. Read the Application filed by the Second Party Union. Perused the Say of the First Party at Exhibit C-15. Heard both the Ld. Advocates for the parties at length.

02. By this Application, the Second Party prayed to decide the issue regarding resjudicata as preliminary issue.

03. Shri. Prakash Devdas, Ld. Advocate for the Second Party Union vehemently submitted that this Tribunal was pleased to frame the additional issue by Order below Exhibit C-7 on 29.09.2021. The Issue is “Whether the Reference is hit by resjudicata and bar as per Section 59 of the MRTU & PULP Act?”. He further strongly submitted that this Issue is foundation for proceeding in the present Reference and if the findings are in affirmative, this Tribunal will have no jurisdiction on the issues held to be resjudicata. He lastly submitted that hence the Issue regarding resjudicata and bar of proceedings be decided as preliminary issue so that the valuable time of this Tribunal will be saved and accordingly he prayed to allow his Application and decide the issue of resjudicata as preliminary issue.

04. On the contrary, Shri B.D. Birajdar, Ld. Advocate for the First Party strongly objected the Application filed by the Second party. He invited my attention towards Application filed at Exhibit C-7 and Issue framed therein and submitted that the Issue regarding resjudicata under section 11 of the CPC and bar of proceeding under section 59 of the MRTU & PULP Act are interlinked with each other. He further submitted that the

Order dated 29.09.2021 is not challenged by the Second Party in higher Court and therefore the said Issue remains as it is and reached to its finality.

05. He invited my attention towards the oral evidence led by the Second Party by filing affidavit-in-lieu of examination-in-chief below Exhibit U-11 and the Second Party is well aware that the matter will be finally heard and decided by this Tribunal alongwith the Additional Issue framed by this Tribunal. He lastly submitted that the witness of the Second Party Union is partly cross-examined on 28.07.2022 and thereafter number of dates were taken by the Second Party on one pretext or the other and some times the witness of the Second Party chose to remain absent. The Second Party is trying to prolong the matter without any reasonable grounds. Therefore, the Application filed by the Second Party may kindly be rejected with exemplary cost.

06. Having heard the oral submissions of both the Ld. Advocates and after perusing the record, I find that the Second Party for their charter of demands approached to the conciliation officer under the I.D. Act and the conciliation officer has referred the dispute relating to the charter of

demands served by the Second Party Union upon the First Party Corporation to this Tribunal for adjudication, in the year 2017. After framing the issues, the current stage of the matter is cross-examination of the witness of the Second Party. The cross-examination of the witness of the Second Party Union was partly conducted on 28.07.2022 and thereafter as per the request of the Ld. Advocate, cross-examination was deferred. Since last about 6 months, the witness of the Second Party has not presented himself for cross-examination. It is further pertinent to note that the Application filed by the First Party below Exhibit C-7 was heard on merits and thereafter the additional issue is framed. The Order passed below Exhibit C-7 is not challenged by the Second Party in the higher Court till date. Therefore, the additional issue which is framed will be decided alongwith other Issues.

07. It is pertinent to note that, the Second Party has filed affidavit-in-lieu of examination-in-chief of its witness at Exhibit U-11 on merits on all the Issues and now the Second Party is trying to get decided only the additional issue framed by this Tribunal. At the same time, it cannot be ignored that the matter is more than 5 years old and after lapse of 5 years, it

would not be appropriate to take up the additional issue as a preliminary issue and decide the same.

08. It is worth-while to mention here that the Hon'ble Supreme Court in the matter between *D.P. Maheshwari Vs. Delhi Administration & Ors.-(1983) 4 SCC 293*, in para No.2, observed that:-

“It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under [Art. 226](#) of the Constitution and to this Court under [Art.136](#) of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the

time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under [Art. 226](#) of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under [Art. 226](#) of the Constitution nor the jurisdiction of this Court under [Art. 136](#) may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the matter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. [Art. 226](#) and [Art. 136](#) are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals

like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worth while remembering that the nature of the jurisdiction under [Art. 226](#) is supervisory and not appellate while that under [Art. 136](#) is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.”

09. In the light of the aforesaid observations of Hon'ble Supreme Court and the facts and circumstances of the present case in hand, after the lapse of 5 years if the preliminary issue is taken up for decision, then the final outcome of the present Reference which is pertaining to the charter of demands submitted by the Second Party Union would be prolonged and it will take considerable time. Therefore, I am of the opinion that piece-meal decision on the Issues always result in protracting the litigation and hence to avoid that, it is always

advantageous that all the Issues are decided together.

10. It is true that the question of resjudicata and bar of proceedings under section 59 of the MRTU & PULP Act would not be ignored by this Tribunal. Further the pleading in the Statement of Claim itself suggest that on that point, it is not necessary to lead any separate evidence as it is a point of law which can be decided alongwith all Issues. Therefore, I don't find any substance in the Application filed by the Second Party.

11. It is further pertinent to note that the Additional Issue has been framed pursuant to the prayer of the First Party made vide Application at Exhibit C-7. Hence, at the most, the First Party would have pressed hard for treating the same as preliminary issue and deciding it accordingly. However, here the Second Party is agitating to decide the additional issue as a preliminary issue.

12. In view of the above discussion, I don't find any merit in the contentions raised by the Second Party in the Application at Exhibit U-19 and the Application is liable to be rejected. With this, I proceed to pass the following Order:-

ORDER

- I) Application at Exhibit U-19 stands rejected.*
- ii) No order as to cost.*
- Iii) Second Party to keep its witness present for cross-examination on the next date without fail.*
- iv) Case to proceed further according to law.*

Date:- 04.01.2023.

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

Skn/-