

(2002) 08 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 2112 of 2002, C.A. No. 1427 of 2002 in Writ Petition No"s. 2112 and 2113 of 2002, C.A. No. 950 of 2002 in Writ Petition No"s. 2113 and 2114 of 2002, C.A. No. 953 of 2002 in Writ Petition No"s. 2114 and 2115 of 2002, C.A. No. 956 of 20

Bharat Sanchar Nigam Ltd. and Others

APPELLANT

Vs

A.R. Patil and Others

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(2), 19

Citation : (2002) 4 ALLMR 670 : (2002) 5 BomCR 425

Hon'ble Judges : V.G. Palshikar, J;S.K. Shah, J

Bench : Division Bench

Advocate : N.V. Masurkar, for V.S. Masurkar, for the Appellant; D.V. Gangal and Sandeep Marne, for the Respondent

Judgement

V.G. Palshikar, J.—By this bunch of petitions the Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL for short) has challenged the orders passed by the Central Administrative Tribunal allowing the Original Applications filed by about 21 employees of the company quashing the orders of their transfer basically on the ground of total lack of jurisdiction in the Tribunal in view of the provisions of section 14 of the Act.

2. Facts giving rise to these petitions briefly stated are that :

The Government of India took a policy decision of converting its department of Telecommunications into a limited Company and therefore established BSNL and transferred its employees hitherto before working in the department of Telecommunications to said BSNL with effect from 1-10-2000. From that day onwards the employees of the department of Telecommunications became employees of BSNL.

3. On 26-11-2001 an order was passed by the Chief General Manager, Telecom, Maharashtra Circle, Mumbai transferring 21 employees from different districts to

Goa Telecom Division. Some of the employees therefore filed application u/s 19 of the Central Administrative Tribunal Act, 1985 before the Bombay Bench of the Central Administrative Tribunal challenging the order of transfer on the ground that it has been passed by BSNL and they not being employees of BSNL could not have been transferred by the company. The order was pleaded to be without jurisdiction and therefore non est. Atleast three of the employees have clearly stated in their original applications that they are on deputation to BSNL and have pleaded that they are within jurisdiction of the Tribunal and that though they are on deputation they have not been absorbed in BSNL and therefore continue to be civil servants. It is then pleaded that BSNL is a Corporation of which 100% investment is made by the Government and as such BSNL is nothing but a Government department and can be treated as fully controlled by the Government and its employees are Government servants. Most of the petitioners have challenged the order being mala fide and against the rules and regulations of the P & T Department.

4. It is almost a common ground of challenge in all original applications that the applicants have either been charge-sheeted and are facing disciplinary proceedings or are facing criminal prosecution and in these circumstances they could not have been transferred in manner in which they are transferred.

5. By written statement the Union of India has categorically raised the question of lack of jurisdiction in the Tribunal. The pleading reads thus :

"7. With reference to paras 2 and 3 of the O.A., the respondents state that this Hon"ble Tribunal has no jurisdiction to try and entertain the present application as the order impugned in the matter is passed by Bharat Sanchar Nigam Limited and this Hon"ble Tribunal has already decided in various cases that it has no jurisdiction to entertain the cases of BSNL."

The challenge to the transfer on other ground was also disputed and the matter was heard by the Tribunal. The Tribunal discussed the question of its jurisdiction at length and came to the conclusion that it has jurisdiction and then proceeded to decide the applications on merit and quashed the orders of transfer. It is this common order passed by the Tribunal which is the subject matter of writ petitions taken up for adjudication in this bunch.

6. Both the parties before the Tribunal understood the controversy to mean the question of jurisdiction on the ground of their being or not being employees of BSNL. The arguments were advanced on the hypothesis that they are not the employees of BSNL and continue to be employees of the Government on behalf of the employees whereas they were treated as BSNL employees by the Government. Scrutiny of the order of the Tribunal will show that both the parties addressed the Tribunal on the hypothesis that the employees are employees of BSNL. Respondents in Writ Petition Nos. 2114, 2117 and 2119 in their original applications before the Tribunal have clearly averred that they are employees of BSNL. Apart from this the argument before this Court also proceeded on the

basis that they are employees of BSNL. The only question that falls for our decision therefore is that whether the Tribunal has jurisdiction u/s 14 of the Act to try these applications by employees of BSNL when BSNL admittedly is a limited company and the Government of India undertaking.

7. It will be pertinent to note that the Central Administrative Tribunal, Calcutta Bench has taken a view that in case of BSNL there being no notification u/s 14(2) of the Act the Tribunal has no jurisdiction to consider such application and the Calcutta Bench has observed thus :

"3. We have carefully considered the submissions made by the Id. Counsel for the applicant. Since the department of Telecommunication has become Bharat Sanchar Nigam Limited w.e.f. 1st October, 2000, we are in difficulty to pass any order in such matters. Definitely the Department of Telecommunication which is now Bharat Sanchar Nigam Limited is a corporate body under Article 12 of the Constitution of India. But unless it is notified, we are not in a position to entertain this petition, even assuming that the applicant is a Government employee and he is under deputation without any deputation allowance. We cannot direct the department of Telecom i.e. the Bharat Sanchar Nigam Limited to comply our order."

It will be seen therefore that the Calcutta Bench of the Tribunal has candidly observed that the Tribunal has no jurisdiction as BSNL is corporate body and there is no notification u/s 14 of the Act. It has also considered the aspect of deputation and observed that "we are not in a position to entertain this petition, even assuming that the application is a Government employee and he is under deputation without any deputation allowance. We cannot direct the department of Telecom i.e. the BSNL to comply with our order" and therefore the original applications were returned.

8. In another judgment Central Administrative Tribunal, Mumbai Bench, Mumbai presided over by the Hon''ble Shri Justice B. Dikshit, Vice Chairman and Hon''ble Shri M.P. Singh, Member held by its order on 23-7-2001 in the case of Action Committee Qualified Telecom Technical Assistance etc. and two others v. Union of India, Chairman BSNL and Chief General Manager, BSNL three more applications were dealt with by the Tribunal. In that case also the question regarding the jurisdiction of the Tribunal was raised by Government of India. It was contended that the order impugned before the Tribunal being passed by BSNL which is body corporation registered under the Companies Act, 1956 it not being notified u/s 14(2) of the Act the Tribunal had no jurisdiction to entertain the application. The Tribunal after considering rival contentions regarding jurisdiction and after quoting portion of Calcutta Bench Judgment of the Tribunal observed that it is following the judgment of the Calcutta Bench in respect that this Tribunal has no jurisdiction in the matter of BSNL. It then went to observe that :

"10. We examined the case of Sushil Kumar Tewari and ors. v. Union of India and ors. (supra) in respect of notification dt. 23-11-1997 issued u/s 3 of the Prasar

Bharati (Broadcasting Corporation of India) Act, 1990. While the petitioner of that case was in the service of Union of India, the Prasar Bharati was constituted on 23-11-1997. The proceedings were pending on the date when new body viz. Prasar Bharati came into existence. Even if we accept that rights could be adjudicated upon when the proceedings were pending, in case in hand the proceedings were initiated when the BSNL has already come into existence and it started functioning also. The applicants get no help from case cited in support of their argument.

11. The Counsel for petitioners of OA 278/2001 Shri Baburajan also contended that the Department has administrative control over the BSNL and therefore, it is part and parcel of Government Department and as such BSNL is amenable to jurisdiction of this Tribunal. We do not agree with it. Merely because Government has some administrative control over BSNL does not mean that the BSNL has no independent entity. We find from different notifications issued u/s 22 of Administrative Tribunals that they had been issued in respect of Corporation and Companies which are under the administrative control of the Central Government. Yet, the notifications have been issued in compliance of conditions for notifications u/s 14(2). The Central Government had issued notification in respect of those corporation owned or controlled by Government which it considered to be brought under this Tribunal for adjudication of rights of their employees. It has not done so in respect of BSNL, so that this Tribunal may have jurisdiction in matters of BSNL. As observed earlier, BSNL has its own legal identity and as such it has to be dealt with as an independent juristic person."

From the above it will be seen that the Tribunal has also considered the submission that BSNL being completely Government owned company, its employees are Government employees and hence the Tribunal has the jurisdiction and it has observed discarding this argument that though it is fully owned company BSNL has its own independent identity. It is liable to be recognized as independent entity and therefore the Tribunal has no jurisdiction.

9. The legal position in this respect is very clear. The Benches or co-ordinate jurisdiction are required as a matter of judicial discipline to follow the precedent of Benches of co-ordinate jurisdiction. The Tribunal while considering its own earlier decision has observed that it was an admitted case before it that the employees of group "C" stood absorbed by BSNL and BSNL was employer and it was not notified u/s 14(2) of the Act and therefore the Tribunal had no jurisdiction. In the case before the Tribunal such not being the case that judgment is not binding upon the Tribunal. Here according to the Tribunal question as to whether employees of BSNL are employees of Government of India is in dispute. There is nothing on record that they are so. In our opinion these observations of the Tribunal are incorrect and not in accordance with law. Whether an admitted position or otherwise having held that BSNL is not amenable to its jurisdiction in relation to Group "C" employees it could not have held that in relation to Group "B" employees jurisdiction will lie with the Tribunal.

This basic illegality as committed by the Tribunal vitiates the order. Apart from the fact that it was bound to follow its own order as also Calcutta Bench it should have also taken judicial notice of certain facts. It should have seen from the title of three original applications atleast that the applicants employees themselves described them as employees on deputation of BSNL and the Calcutta Bench of the Tribunal has held that even if they are considered as deputationists the Tribunal will have no jurisdiction. The judgment of the Calcutta Bench in any event was therefore binding and ought to have been observed as a precedent. The failure has resulted in miscarriage of justice and it renders the order of the Tribunal without jurisdiction.

10. It will be seen that admittedly the impugned order of transfer was passed by the BSNL. It was questioned before the Tribunal. Even if the employees assume that the Tribunal had jurisdiction as their head of the department atleast BSNL was liable to be made necessary party before the Tribunal. They have deliberately failed to join BSNL as party and have come up with the plea that because BSNL is not party before the Tribunal it cannot challenge the order of Tribunal in this Court. Such dishonest plea is only to be noted for rejection. This deliberate action of not making BSNL party before the Tribunal smacks of mala fide and may be part of design to obtain orders against BSNL without making it party. It should be seen that if BSNL is not employer, BSNL is not person who has issued transfer orders and as BSNL has no authority over these employees the order impugned before the Tribunal was non est according to them. There was therefore no necessity to have challenged it. They have challenged it as an order passed by officer of the Government of India. There was nothing on record for the Tribunal to hold that the order as impugned before it was passed by employee of Government of India as the order says that it was passed by BSNL and there is no challenge whatsoever to this aspect by any of the employees. We are therefore unable to accept the plea that they are not employees of BSNL and they have deliberately suppressed this aspect and have failed to join BSNL as necessary party. Since the Tribunal has set aside the order passed by BSNL without BSNL being party before it BSNL has every right to come in writ jurisdiction before this Court for correction of this jurisdictional error. There is therefore no substance in the argument that the petitions are not maintainable.

11. At page 140 of the writ petition a communication dated 30-9-2000 has been filed in which it is very clearly stated as under :

"(ii) Technical and developments Circle, Quality Assurance Circle (except TEC) training institutions, other units like telecom factories, stores and organized services and cadres given in Annexure A to this letter) and posted in these Circle/ Offices/Units will stand transferred to Bharat Sanchar Nigam Limited along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation, without deputation allowance, with effect from 1st October, 2000, i.e. the date of taking over of telecom operations by the Company from DTS and DTO. Bharat Sanchar Nigam Limited will exercise control and supervision of staff

working against these posts.

(vi) Officers and staff shall continue to be subject to all rules and regulations as are applicable to Government servants including the CCS (CCA) Rules till such time as they are absorbed finally by the Company after they exercise their options. Their pay scales, salaries and allowance will continue to be governed by the existing rules, regulations and orders."

From the above it will be abundantly clear that the respondents are employees of BSNL and they being officers shall continue to be subject to all rules and regulations as are applicable to Government servants. These clauses clearly mean that they will be employees of BSNL and BSNL will have the right to transfer them as employees but that transfer will be subject to the rules and regulations that are applicable to the Government of India. Even the employees have contended in the transfer applications that their transfers are against P and T Manual. In para 7 of the memorandum it is very clearly observed :

"(vii) The management of Bharat Sanchar Nigam Limited shall have full powers and authority to effect transfers of all the staff at all levels working under it."

In the face of this the Tribunal could not have held that it has jurisdiction.

12. There is yet another aspect which has to be looked into and that is taking judicial notice of Government decisions known to have been taken and acknowledged by authorities judicial and quasi judicial decisions to convert the department of Telecommunication into BSNL was made publicly. It was known to one and all. Existence of BSNL is a fact of which judicial notice can be taken by the Central Administrative Tribunal in its Calcutta Bench as also its Bombay Bench while dealing with two different cases. Once its therefore recognized and acknowledge by the Tribunal itself that BSNL is a legal entity it has become into existence. The Tribunal should have resisted exercise of jurisdiction. It should have avoided unwarranted exercise of jurisdiction in transfer matters.

13. The Tribunal has ignored to take judicial notice of certain facts viz. applicants atleast in three original applications that the employees are on deputation of BSNL it has failed to take into consideration its own order by which existence of BSNL was recognized by it and once existence of BSNL is recognized employee thereof are deemed to be employees of BSNL. The Tribunal could not by laying overemphasis of the lack of certain statements by the Counsel for the Union of India or BSNL assume jurisdiction to itself. In the result therefore on this ground the petitions succeed and are allowed. Impugned order of the Tribunal dated 19-2-2002 is set aside in each of the original application. Each of the original application is dismissed as not maintainable. Each of original application is liable to be returned to the application for appropriate action in view of the fact that the Tribunal has no jurisdiction to entertain the application.

14. We are constrained to observe that the plea taken by the employees is unjust, dishonest and solely taken to avoid transfers. It cannot lie in the mouth

of these employees that they were not employees of BSNL and even if they do seriously want to content it the Forum is not the Administrative Tribunal. The original petitioners have successfully stopped their transfer by obtaining orders of interim relief from the Tribunal. We therefore direct that the employees shall assume charge of their posts wherever they are posted on transfer within one week of this order. We expect the BSNL to take strict action in the matter if they fail to report themselves on duty at the transferred place.

15. A request was made by Shri Gangal, learned Advocate for the employees that in the event of this Court taking view that the Tribunal has no jurisdiction adequate time be granted to them to move the appropriate forum including Supreme Court of India against this order and status quo in relation to the placement of employees be maintained. As we are firmly of the opinion that entire litigation has been commenced by the employees dishonestly their contention that BSNL is not their employer is motivated and mala fide. In our opinion therefore such employees do not deserve any sympathy from this Court. Request for postponing the implementation of this judgment is rejected. The direction that it be implemented immediately is reiterated. Rule is made absolute in terms above. Parties to act on copy of this order duly authenticated.