

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
% C.S. (OS) No. 1475 of 2007

+ Date of Decision: 28th April, 2008

Hindustan Petroleum Corporation Ltd. ...Plaintiff
! Through: Mr. V.N.Kaura and Mr.
Paramjeet Benipal, Advocates

versus

\$ Hindustan Petroleum Management Staff Association & Ors. ...Defendants

^ Through : None

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not? (No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT (Oral)

P.K.BHASIN, J:

The plaintiff has filed this suit for restraining the defendants who represent the employees employed with the plaintiff Corporation from going on definite strike as threatened by them in

their strike notice dated 04-07-2006.

2. Briefly stated, facts necessary for the disposal of this suit are that the plaintiff is a Government of India undertaking engaged in the business of refining and marketing petroleum products in India and it supplies petroleum products to Indian Defence Services and also for domestic and international civil aviation etc. It has been declared to be a public utility service by the Central Government vide its notification dated 19-06-2007. Defendant no. 1 is the Officers' Association representing the officers of the plaintiff Corporation and defendant no. 2 is its President. Defendant no. 3 is the Apex Body of the Officers Association of public sector undertakings in the Oil sector and defendant no. 4 is its Convener. It is averred by the plaintiff in the plaint that a pay commission under the chairmanship of Justice S. Mohan (retired Judge of the Supreme Court) was appointed in 1996 by the Government to examine the existing structure of pay, allowances, perquisites and related benefits in respect of the Central Government and Public Sector Undertakings. The recommendations of the Committee were submitted on

31.10.1998 and pursuant thereto Government came out with some guidelines for pay revision in 1999. The defendants, however, protested against the implementation of those guidelines and decided to go on strike in case of non-fulfillment of their demands by 25.08.06. Apprehending that its employees may go on strike as proposed the plaintiff filed an injunction suit in this Court in which ad-interim stay against the employees going on strike was passed. That suit (being CS(OS) no. 1684/2006) was later on withdrawn as the cause of action did not survive because of the employees' strike not taking place.

3. It is further averred by the plaintiff that the Ministry of Petroleum and Natural Gas constituted a Committee with regard to the grievances of the defendant no. 3 Association but without waiting for this Committee's report the defendant no. 3 again reagitated its demands for immediate ad hoc relief of wage revision etc. vide its resolution dated 26.06.07 and also decided to start its agitation including indefinite strike in public sector petroleum industry w.e.f. 21/08/07. A notice of the said resolution was forwarded to Dy. Chief Labour Commissioner

(Central) by the plaintiff Corporation vide its letter dated 11.07.2007. The Regional Labour Commissioner, Mumbai took cognizance and initiated conciliation proceedings and first meeting was fixed for 17.08.2007 vide its notice dated 02.08.07 addressed to the plaintiff and defendants wherein their attention was also drawn to the provisions of Sections 22(1 & 2) and 23 of the Industrial Disputes Act, 1947 and the defendants were requested not to resort to go on strike during the pendency of conciliation proceedings. Despite that the defendants gave a strike notice dated 04.07.2007 threatening to go on indefinite strike with effect from 21.08.2007.

4. The plaintiff then filed this suit on 14.08.2007 praying for an injunction restraining the defendants to go on strike. By an order dated 17.08.2007 this Court restrained the defendants from going on strike or abetting its agents etc. also from doing that. The defendants after entering appearance in this case were given time to file their written statements but they failed to file their written statements within the given period of time. The defendants no. 3 and 4 filed an application under Order XXXIX

Rule 4 CPC for vacating the ex-parte injunction granted against them. Along with that application certain documents were also filed one of which was a copy of the minutes of meeting held on 28-02-2005 between the Regional Labour Commissioner, Mumbai and defendants when they had earlier given a strike notice. When the matter was taken up for hearing today in Court there was no appearance on behalf of the defendants. On the last date, i.e. 17-12-2007 also none had appeared for defendants. In these circumstances it was deemed fit to invoke the provisions of Order VIII Rule 10 CPC which provides for passing of a judgment straightaway in case of failure of the defendant to file written statement within the time permitted by the Court.

5. Learned counsel for the plaintiff submitted that there is a statutory bar under Section 22 of the Industrial Disputes Act, 1947 against going on strike by the employees of a public utility service during the pendency of conciliation proceedings. My attention was also drawn to one judgment of the Supreme Court in **“Syndicate Bank Vs. K. Umesh”, 1994 (V) SCC 572** with particular reference to the following observations made therein by

the Supreme Court:

“ 29. The strike as a weapon was evolved by the workers as a form of direct action during their long struggles with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is abuse by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, “irritation strike” or staying at work but deliberately doing everything wrong, “runningsore strike”, i.e., disobeying the lawful orders, sitdown, stay-in and lie-down strike etc. etc. The cessation or stoppage of works whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lockout and has also provided machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for machinery to receptive the disputes, resort to strike or lockout as a direct action is prima facie unjustified. This is, particularly so when the provisions of the law or of the contract or of the service rules that behalf are breached. For then, the action is also illegal.”

6. Since the averments made by the plaintiff in the plaint to the effect that conciliation proceedings in respect of the demands

raised by the employees in public undertakings in the oil sector including the plaintiff Corporation were initiated on receipt of the impugned strike notice dated 04-06-2007, as provided under Section 12 of the Industrial Disputes Act, 1947, have not been refuted by the defendants the same stand admitted. If that be so, the plaintiff's contention that there is a bar under Section 22 of the Industrial Disputes Act to the employees in a public utility service going on strike during the conciliation proceedings and consequently the threatened action of the employees of the plaintiff Corporation represented by the defendants to go on strike is illegal appears to be fully justified and the plaintiff Corporation is entitled to a decree of permanent injunction restraining the defendants and their office bearers, agents etc. from going on strike not only during the pendency of the conciliation proceedings but also for a period of seven days after the conclusion thereof as provided under Section 23 of the Industrial Disputes Act.

7. This suit is accordingly decreed and the defendants, their agents, representatives, office bearers and the employees of the plaintiff Corporation are restrained from going on strike for the

acceptance of the demands of the employees employed with the plaintiff Corporation during the pendency of conciliation proceedings in the office of the Regional Labour Commissioner (Central), Mumbai and also for a period of seven days after the conclusion of conciliation proceedings whenever the same are concluded.

8. Decree be drawn accordingly.

April 28, 2008
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P.K.BHASIN,J