

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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CM(M) No.815/2007

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Date of decision: 16th February, 2010

OIL AND NATURAL GAS CORPORATION LTD.

..... Petitioner

Through: Mr. V.N. Kaura with Ms. Paramjit Benipal & Mr.
Munindra Divedi, Advocates.

Versus

SANTOSH KUMAR SHARMA & ORS.

..... Respondents

Through: Mr. J.S. Bhasin with Ms. Rashmi Priya, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 |

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 227 of the Constitution of India has been preferred with respect to the order dated 16th April, 2007 of the Central Government Industrial Tribunal No.1 (CGIT), New Delhi giving interim protection to the respondents during the pendency of the reference before the CGIT and restraining the petitioner from terminating or discharging the services of the respondents without obtaining approval therefor from CGIT.

2. The respondents No.1 to 52 workmen are direct employees of the respondents No.55 & 56 who had entered into an agreement/contract with the petitioner for providing

services of security and of allied nature. The said workmen are informed to have filed writ petitions in this Court claiming to be employed as contract labourers on perennial jobs with the petitioner and further claiming to be entitled to be regularized and absorbed in the permanent cadre of the petitioner. Though the said writ petitions were dismissed but liberty was granted to the said workmen to avail of other legal remedies if entitled to in law. During the pendency of the said writ petitions since 1997 and till the disposal thereof in 2001-02 there was an order of interim protection in favour of the workmen. The said interim protection was further continued for six weeks even after dismissal of the writ petitions to enable the workmen to avail of appropriate remedy. Thereafter the workmen raised an industrial dispute and on which a reference was made to CGIT in the following terms:

“Whether the action of the management of ONGC, New Delhi in not regularizing the services of the 50 workmen (as per list) from the date of their initial appointment is just, fair and legal? If not, what relief the 50 workmen are entitled to, and from what date?”

3. It is informed that another round of writ petitions were filed by the workmen in 2003 seeking a direction to the petitioner not to remove/terminate the services of the workman and not to choose a security agency of its own choice leading to termination of service of the workmen. There was an interim order in the said writ petition also directing maintenance of status quo. In the meanwhile, the workmen filed an application before the CGIT to whom reference as aforesaid had been made, seeking the same interim relief during the pendency of the reference. The writ petitions filed by workmen in 2003 were also dismissed in 2005 with a direction to the CGIT to expeditiously take a decision on

the application of the workmen for interim relief. Thus it will be seen that the interim protection of the workmen has continued since 1997.

4. The contention of the counsel for the petitioner is that the CGIT, functioning under the provisions of the Industrial Disputes Act, 1947 has no power to grant any interim relief. He refers to *Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal* AIR 1961 SC 689 laying down that when a tribunal is considering a complaint under Section 33-A, it is not open to the tribunal to order reinstatement or full wages in case the employer did not take back the workman in his service as a interim relief, for that would be giving the workman the very relief which he could get only if on trial of the complaint the employer failed to justify the order of dismissal. He however fairly informs that the Supreme Court vide order dated 8th March, 2006 in Civil Appeal No.1007/2004 titled *Goa MRF Employees' Union Vs. M/s MRF Ltd.* has referred the question of the power of the Labour Tribunal to grant interim relief under Section 33-A of the Act to a Larger Bench and the said reference is still pending. Though the counsel has also relied on other judgments on the merits of not granting such relief but it is not relevant to refer thereto inasmuch as that question would arise only upon holding that such power exists.

5. Per contra, the counsel for the respondent has referred to *The Management of Hotel Imperial, New Delhi Vs. Hotel Workers' Union* AIR 1959 SC 1342, generally perceived as laying down that the labour court/tribunal has power to grant interim relief and to a judgment of the single judge of the Bombay High Court in *ONGC Ltd. Vs. Transport & Dock Workers Union* 2007 LLR 538 holding that the Labour Court has

such a power to grant interim relief. He has also referred to *Lokmat Newspapers Pvt. Ltd. Vs. Shankar Prasad* (1999) 6 SCC 275 to contend that the Labour Tribunal/Court has such a power.

6. Though none of the counsels referred to the same, but I find that a single judge of this court in *Airport Authority of India Vs. Pyare Lal* MANU/DE/3838/2006 in near identical facts held that such interim relief cannot be granted. In that case also the workmen were seeking regularization of their service with the Airport Authority from the date of their joining of service and which dispute had been referred to the CGIT and the workmen had sought interim relief restraining Airport Authority from removing the workmen from their services. The CGIT had granted an order of status quo. This Court after considering the several judgments of the various courts reached at a conclusion that the consistent judicial view is that although an Industrial Tribunal/Labour Court can in certain situations pass an interim award, it has no jurisdiction to pass an order of injunction of the nature which a civil court can pass under provisions of Order 39 of the CPC. It was further held that the interim injunction granted by the CGIT virtually granted the final relief to the workmen inasmuch as the workmen had been secured in the service of Airport Authority despite its plea that it was not at all the employer of the said workmen. This Court had accordingly allowed the writ petition and quashed the interim order of status quo granted by the CGIT.

7. Judicial propriety binds me to the aforesaid view. Even if I was to hold an opinion different therefrom, the reference to a Larger Bench of this Court would not be necessary since the question is already pending adjudication before the Supreme Court.

8. This petition accordingly has to succeed. However, since the respondents/workmen have enjoyed interim protection as noticed above since the year 1997 and will in all likelihood prefer to agitate this matter further before the Supreme Court in appeal, to prevent any hardship to them, it is deemed expedient that the interim protection which the workmen have enjoyed for so long, is continued for another three months.

9. The petition is therefore allowed. The interim order of the CGIT impugned in this petition is set aside and quashed for the reason of the CGIT having no power to grant such interim injunction. However for the reasons aforesaid, the order vacating the said interim injunction shall come into force after a period of three months from today.

No order as to costs.

RAJIV SAHAI ENDLAW
(JUDGE)

February 16th, 2010

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