

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

Date of decision: 15th September, 2011.

+ **W.P.(C) 6975/2009**

% **BHARAT PETROLEUM CORPORATION LTD. ...Petitioner**

Through: Mr. V.N. Kaura with Ms. Paramjeet
Benipal, Advocates.

Versus

UOI & ORS.

..... Respondents

Through: Ms. Amita Singh, Adv. for R-1 UOI.
Ms. K.B. Hina, Adv. for R-3 to 28.

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? | yes |
| 2. | To be referred to the reporter or not? | yes |
| 3. | Whether the judgment should be reported in the Digest? | yes |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the reference, in exercise of powers under Section 10 of the Industrial Disputes Act, 1947, made by the respondent no.1 of the following dispute to the Industrial Adjudicator:

“Whether the action of the management of BPCL in terminating the services of 25 workmen (details as per list attached) w.e.f. 19/5/2007 engaged by their contractor M/s Oberai Service Station consequent upon termination of his dealership is just, fair and legal? What relief the concerned workmen are entitled to and from which date? ”

2. Notice of the petition was issued and vide order dated 18th February, 2009 which continues to be in force, the operation of the reference dated 13th October, 2008 stayed. Resultantly, the proceedings before the Industrial Adjudicator are stalled.

3. The case of the petitioner is that M/s Oberai Service Station was the dealer of the petitioner for sale of petroleum products at a petrol filling station situated at S-19 Green Park Extension, New Delhi; that the dealership of M/s Oberai Filling Station was terminated for various breaches of the terms and conditions of the dealership agreement; on termination of such dealership, the license given by the petitioner to the said M/s Oberai Service Station to operate the petrol pump and sell the petroleum products therefrom came to an end; that the workmen whose disputes have been referred for adjudication were engaged by the said M/s Oberai Service Station and at no point of time there was any employer-employee

relationship between the petitioner and the said workmen; that the claims if any of the said workmen are to be against M/s Oberai Service Station. On the basis of the said pleas, it is contended that in the absence of any relationship of employer and employee between the petitioner and the workmen, the question of any industrial dispute between the workmen and the petitioner and the question of reference thereto or the question of the Industrial Adjudicator having jurisdiction to adjudicate the same, does not arise. It is further contended that M/s Oberai Service Station was carrying on independent business of buying petroleum products from the petitioner and selling the same to the public and was not a contractor of the petitioner within the meaning of the Contract Labour (Regulation & Abolition) Act, 1970.

4. Counter affidavits have been filed by the respondent no.1 UOI which had made the reference as well as by the respondent workmen.

5. The counsel for the petitioner has referred to:

(i) ***Newspapers Ltd. Vs. State Industrial Tribunal, U.P.*** AIR 1957

SC 532 where a reference of an industrial dispute was quashed for the reason of proceeding on the assumption that a dispute existed between the employer and his workmen and the appropriate Govt. laboring under the misapprehension that the dispute was between the employer on the one hand and the workmen on the other, which in fact it was not;

(ii) ***I.T.D.C. Vs. Delhi Administration*** 1982 Lab. IC 1309 where a Full Bench of this Court finding the reference to be not addressing the real industrial dispute held that an order of reference though an administrative function but is amenable to judicial review. It was further held that Industrial Adjudicator cannot enlarge the scope of jurisdiction on concession and decide a dispute which is not referred to him.

(iii) ***Eagle Fashions VS. Secretary (Labour)*** (1999) 1 LLJ 232 where also finding that the terms of reference had not been properly drawn up, the order of reference was quashed.

(iv) ***Food Corporation of India Vs. Union of India*** 137 (2007)

DLT 387 to contend that defect in notification (of reference) goes to the very root of the matter and defects in reference cannot be supplied by mere amendment or rectification and the only remedy is to quash the reference.

6. Per contra, the counsel for the respondent no.1 has referred to:

(a) ***Ramesh Kumar Vs. UOI*** 144 (2007) DLT 394 where the Division Bench of this Court held that whether the contract with a private contractor is a sham or camouflage is not to be decided by the appropriate Govt. when reference of dispute is sought and is to be decided by the Industrial Adjudicator to whom reference is to be made.

(b) ***Sarva Shramik Sangh Vs. Indian Oil Corporation Limited*** (2009) 11 SCC 609 also laying down that the jurisdiction to decide whether the contract between the IOC and the canteen contractor was sham, nominal and a mere camouflage to avoid extension of labour

law benefits to the workers was to be decided by the Industrial Adjudicator and not by the appropriate govt.

(c) ***Telco Convoy Drivers Mazdoor Sangh Vs. State of Bihar*** AIR 1989 SC 1565 where also the contention that without a relationship of employer and employee reference could not be made, was negatived and the dispute as to whether convoy drivers were employees of Telco was held to be referable to the Industrial Adjudicator.

7. The counsel for the respondent workmen has also contended that the question whether the respondent workmen are employees of the contractor M/s Oberai Service Station or employees of the petitioner is a question of fact to be decided by the Industrial Adjudicator and cannot be adjudicated by the challenge as made to the reference order.

8. Though the counsel for the petitioner also contended that the language of the reference presumes that the workmen are the employees of the petitioner and thus does not leave the said question open for adjudication by the Industrial Adjudicator but no merit is found in the said argument. The

language of the reference order makes it abundantly clear that the workmen were engaged by the contractor M/s Oberai Service Station. The counsel for the petitioner faced with the same invites attention to the recital to the reference order dated 13th October, 2008 which is as under:

“No.L-30011/16/2008 (IR(M)) : Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the management of BPCL, Bijwasan Installation, and their workmen in respect of the matters specified in the Schedule hereto annexed;”

Emphasis is placed on the words “their workmen” to contend that the reference assumes relationship of employer and employee between the petitioner and the workmen and is thus vitiated.

9. I am however unable to accept the aforesaid argument also. Though undoubtedly in the recital to the reference order the words “their workmen” have been used but the reference order clearly avoids referring to the workmen as employees of the petitioner. Rather, the reference order is clear that the workmen were engaged by the contractor M/s Oberai Service Station. Moreover, once reference has also been made on the question whether the termination is illegal, the petitioner expressing its own anxiety,

cannot restrict the scope of the reference otherwise of a wide amplitude. There is nothing in the operative part of the reference to indicate that the petitioner would be precluded from denying the relationship of employer and employee before the Industrial Adjudicator or that the Industrial Adjudicator would be restricted in any manner from determining whether there exists any relationship of employer and employee between the petitioner and the workmen for the petitioner to be liable to the workmen in any manner whatsoever. The error even if any in the recital to the order cannot restrict the scope of the otherwise wide and all encompassing operative part of the reference. The workmen also are understanding the reference as leaving it for adjudication of the Industrial Adjudicator, whether any relationship of employer-employee exists between the petitioner and the workmen. The workmen having taken the said stand would be estopped from subsequently contending to the contrary. The same also allays the apprehension of the petitioner. The reference even otherwise is to be construed widely and not in a narrow and restricted sense. The Supreme Court in *Express Newspapers (P) Ltd., Madras Vs. Workers* AIR 1963 SC

569 held that an order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and which must always be avoided; when question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner but fairly and reasonably. Again in *Indian Express Newspapers (Bombay) P. Ltd. Vs. Employees' Union* (1978) 2 SCC 188 it was held that the order of reference is to be construed liberally. Similarly, in *Agra Electric Supply Co. Ltd., Agra Vs. Workmen* (1983) 1 SCC 436 it was held that when the reference is comprehensive enough, it is within the jurisdiction of the Industrial Adjudicator to investigate all aspects. The judgments cited by the counsel for the petitioner turned on their own facts and in the face of the language of the reference order in the present case, the same would have no application.

10. Undoubtedly, the appropriate government could have worded the reference in better words and which perhaps would not have led to this petition and the consequent delay in adjudication of the industrial dispute. However as long as the language, even though deficient and not the best, is

not found to cause any prejudice to the petitioner, no case for interference in exercise of powers of judicial review is made out. The Supreme Court recently in ***Reliance Airport Developers (P) Ltd. Vs. Airports Authority of India*** (2006) 10 SCC 1 held that no judicial review lies for the reason of the best practice having not been followed, as long as the practice followed is within the ambit of law, even though there may have been a better way to achieve the same objective.

11. I may notice that another Division Bench of this Court in ***Moolchand Khairati Ram Hospital Karamchari Union Vs. Labour Commissioner*** MANU/DE/1222/1996 held that the High Court can go into the validity of the reference in certain situation, though it is not to sit in appeal over the order of the State Government and is not entitled to consider the propriety or the satisfactory character of the reasons. However, the said observations came to be made in the context of the reference not addressing the real dispute which had arisen between the workmen and the employer. The Supreme Court in appeal against the aforesaid judgment of the Division Bench, in judgment reported in (2002) 10 SCC 708 also affirmed that in

certain situations challenge to the reference itself is maintainable.

12. Mention must also be made of the recent dicta of the Division Bench in ***Bata India Ltd. Vs. Union of India*** 180 (2011) DLT 351 though qua reference under Section 7B of the I.D. Act holding that there is no absolute bar for interference in exercise of power under Article 226 when a matter is referred by a Government to an Industrial Tribunal if the reference suffers from jurisdictional error or no industrial dispute exists and on ancillary grounds. It was further held that if factual disputes are involved, it is advisable that the Industrial Tribunal should adjudicate the same and the writ Court should not exercise the discretion and refrain from interfering with the order of reference.

13. I have in ***Radhey Lal Pradeep Kumar Vs. Sh. Shyam Lal*** MANU/DE/1670/2010 held that if it were to be held as a general rule that the challenge to reference should be by impugning the order of the appropriate government of reference and the employer would not be entitled to impugn the ultimate award on such ground, even if a defence before the Industrial Adjudicator, for the reason of having not challenged the order of

reference, the same is likely to delay considerably the adjudication by the Industrial Adjudicator. It was thus held that such challenge can be made at the time of challenge to the award also.

14. I have recently in judgment dated 25th August, 2011 in W.P.(C) No.13663/2009 titled ***M/s ICICI Prudential Asset Management Co. Ltd. Vs. Union of India*** also held that reference in such circumstances cannot be challenged and cannot also be said to be bad for the reason of non-impleadment of the contractor therein.

15. I am also pained by the delay caused in the adjudication of the main dispute by the challenge on preliminary aspect. The Supreme Court in ***National Council for Cement & Building Materials Vs. State of Haryana*** (1996) 3 SCC 206 noticed the appalling situation created due to challenge to the decision of the Industrial Adjudicator on such preliminary issues being in the High Court or the Supreme Court and during which time the reference is stayed and lies dormant. Reference was made to ***Cooper Engineering Limited Vs. P.P. Mundhe*** (1975) 2 SCC 661 laying down that there was no justification for a party to stall the final adjudication of the dispute referred

to the Industrial Adjudicator by questioning the decision on preliminary issues before the High Court. Reference was also made to ***S.K. Verma Vs. Mahesh Chandra*** (1983) 4 SCC 214 deprecating / disapproving the practice of raising frivolous preliminary issues / objections at the instance of the employer to delay and defeat adjudication on merits. Reference was further made to ***D.P. Maheshwari Vs. Delhi Administration*** (1983) 4 SCC 293 and to ***Workmen Vs. Hindustan Lever Ltd.*** (1984) 4 SCC 292 laying down that all issues whether preliminary or otherwise should be decided together so as to rule out the possibility of any litigation at the interlocutory stage. The Supreme Court thus held that the High Court should refuse to intervene in the proceedings pending before Industrial Adjudicator at an interlocutory stage.

16. Similar issues have also been dealt with recently in ***Glaxo Smithkline Consumer Healthcare Ltd. Vs. Presiding Officer*** (2010) 4 LLJ 739 (Del) and in ***Management of M/s Sterling Hi-Tech Ltd. Vs. Govt. of NCT of Delhi*** MANU/DE/2138/2011 (intra court appeal whereagainst has been dismissed).

17. The petition therefore fails; though I would have imposed heavy costs on the employer in such circumstances but since earlier, costs of ₹26,000/- had been imposed on the petitioner and which have been paid today, the costs of this petition of further ₹26,000/- only are imposed on the petitioner payable @ ₹1,000/- to each of the 26 workmen on the next date of hearing before the Industrial Adjudicator.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 15, 2011

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(corrected and released on 10th October, 2011)