

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

+ **W.P. (C) 7993/2008 and CM APPL Nos. 15405/2008 and 2012/2010**

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Reserved on: 23rd August, 2012
Decided on: 26th September, 2012

BHARAT PETROLEUM CORPORATION LTD Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

versus

BHARAT PAL Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 7994/2008 and CM APPL No 2017/2010**

BHARAT PETROLEUM CORPORATION LTD Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

versus

AMAR CHAND Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 7995/2008 and CM APPL Nos. 15407/2008 and 2010/2010**

BHARAT PETROLEUM CORPORATION LTD Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

versus

BHAGWAT DAYAL Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 7996/2008 and CM APPL Nos. 15408/2008 and 2011/2010**

BHARAT PETROLEUM CORPORATION LTD Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

versus

KHAJAN SINGH Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 7997/2008 and CM APPL Nos. 15409/2008**

BHARAT PETROLEUM CORPORATION LTD Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

versus

MAHENDER SINGH Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 7999/2008 and CM APPL Nos. 15411/2008 and 2018/2010**

BHARAT PETROLEUM CORPORATION LTD Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

versus

PREM CHAND Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 8000/2008 and CM APPL Nos. 15412/2008 and 2019/2010**

BHARAT PETROLEUM CORPORATION LTD Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

Versus

SHER SINGH Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 8001/2008 and CM APPL Nos. 15413/2008 and 2023/2010**

BHARAT PETROLEUM CORPORATION LTD Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

Versus

SHIV RAM Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 8003/2008 and CM APPL Nos. 15416/2008 and 2026/2010**

BHARAT PETROLEUM CORPORATION LTD Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

versus

BIR PAL (DECEASED) THR.
SH. VINOD KUMR Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 8777/2008 and CM APPL Nos. 16862/2008**

BPCL Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

versus

MR. VED PAL Respondent
Through: Mr. S.S. Saini, Advocate.

+ **W.P.(C) 8778/2008 and CM APPL Nos. 16863/2008 and 6513/2010**

BPCL Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.

versus

MR. HOSHIR SINGH Respondent
Through: Mr. S.S. Saini, Advocate.

+ W.P.(C) 8781/2008 and CM APPL Nos. 16865/2008

BPCL Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.
versus

MR. GAJRAJ Respondent
Through: Mr. S.S. Saini, Advocate.

+ W.P.(C) 8782/2008 and CM APPL Nos. 16866/2008

BPCL Petitioner
Through: Mr. V.N. Koura and Ms. P.K. Benipal,
Advocates.
versus

MR. HAR PRASAD Respondent
Through: Mr. S.S. Saini, Advocate.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. These writ petitions are being disposed of by a common judgment as factual premise and legal issue involved are identical. The Respondents in the writ petitions were working as Security Guards with the Bharat Petroleum Corporation Limited (BPCL) when their services were allegedly terminated on 31st May, 1999 by a verbal order. On disputes being raised, 13 industrial disputes on the following terms of reference were sent to the learned Trial Court for adjudication “whether the termination of services of workmen with effect from 31st May, 1999 by the management of the BPCL Piyala is just and legal, if not to what relief the applicant is entitled”. The claims were filed by the Respondents and the written statements by the

Petitioner in all the cases. Subsequently, a corrigendum dated 21st November, 2007 was issued by the Ministry and the terms of reference were modified. The corrigendum dated 21st November, 2007 reads as under:

“New Delhi, Dated: 21/11/2007

CORRIGENDUM

In this Ministry's order of even number dated 8/8/2007, in the schedule, the terms of reference:-

“Whether the termination of service of Shri Bharat Pal S/o Shri Jagmal Singh, Security Guard w.e.f. 31/5/99 by the management of BPCL, Piyala is just and legal? If not, to what relief the applicant is entitled to?”

may now be read as:-

“Whether the termination of service of Shri Bharat Pal S/o Shri Jagmal Singh Security Guard w.e.f. 31/5/99 by M/s. Reliance Security Services (P) Limited, contractor of BPCL, Piyala is just and legal? If not, to what relief the applicant is entitled to?”

AND in the endorsement, the name of M/s Reliance Security Services (P) Limited may be treated as added at Sl. 3. All remaining serial numbers will change accordingly.

(N.S. BORA)
DESK OFFICER”

2. The learned Trial Court treated the corrigendum as a second reference and held that it was to decide both the references, though it did not issue any notice to M/s. Reliance Security Pvt. Ltd. Thus M/s. Reliance Security Pvt. Ltd. never entered appearance as a party before the learned Trial Court. Further the Respondents also did not modify their claim. The learned Trial Court after considering the evidence of the management and the workmen which were identical in all the cases framed the following issues:

“1. Whether there is master and servant relationship between the management of BPCL and the workmen applicants?

2. Whether the workmen applicants are entitled to reinstatement?

3. To what amount of back wages the workmen applicants are entitled?”

3. On the issue no.1 the learned Trial Court came to the conclusion that there existed a relationship of employer and employee between the management of BPCL and the workmen/ applicants. As regards the 2nd issue, it held that the BPCL management had illegally removed these workmen and violated the provisions of Section 25F, G & H of the Industrial Disputes Act, 1947 (in short ‘the ID Act’) and since the work still existed, the workmen were entitled to reinstatement. As regards issue No.3, it was held that the termination of the services of the workmen by the management of BPCL was neither just nor legal and thus the management would reinstate the workmen/ applicants along with 25% back wages within two months from the date of publication of award.

4. Learned counsel for the Petitioner challenging the award states that the finding of the learned Trial Court that it was to deal with both the references was wholly illegal. In view of corrigendum issued, the earlier reference became nonest and void. The only subsisting reference before the learned Trial Court was the one referred by the corrigendum dated 21st November, 2007. Thus, the learned Trial Court was duty bound to issue notice to M/s. Reliance Security Pvt. Ltd. and ask for fresh pleadings from the parties. No fresh pleadings were filed by the parties and despite a fresh reference, the matter was adjudicated on the basis of the pleadings already filed. It is stated that the word ‘corrigendum’ means “correction”. The error in the

earlier reference having been corrected, the earlier reference did not survive any more. Since the learned Trial Court had no jurisdiction to try the earlier reference the proceedings and the consequential awards passed by the learned Trial Court are void ab-initio and nonest in law. Reliance in this regard is placed on *Indian Tourism Development Corporation Vs. Delhi Administration, Delhi & Ors.* 1982 (2) LLJ 665 FB DHC. It is next contended that there is no pleading from the workmen that the contract with the M/s. Reliance Security Pvt. Ltd. was sham and bogus and in view thereof the BPCL was the principal employer. The finding of the learned Trial Court that BPCL was the employer and it terminated the services is wholly without any basis. Reliance is placed on the decision in *Steel Authority of India Ltd. and Ors. Vs. National Union Waterfront Workers and Ors.* (2001) 7 SCC 1, to show that the decision in *Air India Statutory Corporation Vs. United Labour Union and Ors.* 1997 (76) FLR 119 (SC) stood overruled. BPCL has no regular cadre of security services. Only in case the contract was held to be sham this issue would have arisen in the present case. In view of the decision in *State of Karnataka & Ors. Vs. Uma Devi & Ors.* JT 2006 (4) SC 420 the learned Trial Court could not have directed reinstatement of the workmen in the public sector undertaking. The Trial Court could not have examined a case not pleaded by the workmen. Besides a plea of settlement was also taken which was not examined by the Trial Court. Non-application of mind is writ large from the fact that though the workmen Birpal in W.P.(C) 8003/2008 had expired during the proceedings before the Trial Court, he was also directed to be reinstated with back wages.

5. Learned counsel for the Respondent on the other hand contends that the Government has no power to adjudicate whose employees the Respondents/ workmen were. Further, there is no power with the Government to cancel or supersede a reference on its own nor can the Government claim such power by implication on the strength of Section 21 of the General Clauses Act. Reliance is placed on *State of Bihar Vs. D.N. Ganguly and Ors. AIR 1958 SC 1081*. The reference dated 27th November, 2007 was not a corrigendum but a fresh referendum and since Government had no jurisdiction to send the same, the industrial Trial Court rightly did not adjudicate the same. Thus, no notice was required to be given to M/s. Reliance Security Pvt. Ltd.. Even if the Petitioner has not challenged the corrigendum issued, this Court in its power under Article 226 of the Constitution of India would be well within its jurisdiction to hold such a reference as non-est in law. The workmen have duly exhibited the attendance register and the gate passes. Since the Petitioner was supervising the functioning of the Respondents/ workmen and paying wages, it was the employer. Reliance in this regard is placed on *Air India Statutory Corporation Vs. United Labour Union & Ors. 1997 (76) FLR 119*. In view of the notification, no contract labour was permissible. Once contract labour stood abolished there was a direct contract between the labour and the principal employer. Even if it is a case of insufficient evidence, no interference can be made by this Court in view of the law laid down in *Harjinder Singh Vs. Punjab State Warehousing Corporation (2010) 3 SCC 192*. Hence, there is no error in the impugned judgments and the writ petitions be dismissed.

6. I have heard learned counsel for the parties.

7. The claim and evidence of the Respondents/workmen before the Trial Court was that they were employed with the management since 16th November, 1997 and working as Guards on a monthly wages of Rs. 2200/- per month. The BPCL terminated the services of the workmen with effect from 31st May, 1999 by a verbal order. It was stated that the termination of the services and retrenchment being in non-compliance of the mandatory requirement of Section 25F and 25G of the ID Act amounting to unfair labour practice. To prove that the workmen were working with the Petitioner gate passes, attendance sheet registers have been proved on record. It is stated that the workmen were working under the supervision and control of the Petitioner. The workmen have not been paid any retrenchment compensation nor any notice pay, nor amount of gratuity nor leave encashment nor earned bonus.

8. The Petitioner raised number of preliminary objections including the objection that the workmen were not employed by it and were employed by the contractor M/s. Reliance Security Services Pvt. Ltd. and it has not been arrayed as a party. Further when the reference was amended, no notice was issued to M/s. Reliance Security Services Pvt. Ltd. despite the fact that it has been arrayed as a party at serial number 3. It was stated that unless and until claimant files revised statement of claim in accordance with the corrigendum, counter affidavit would not be proper and the corporation reserved its right to add or modify its counter on the basis of revised claim statement. Since the Petitioner is a public sector enterprise under the administrative control of Ministry of Petroleum and Natural Gas, Govt. of

India, it was bound to comply with the directives issued by the Government. The answering Management was required to obtain security/ surveillance services only from agencies sponsored by Directorate General Resettlement (DGR) or through a State Ex-servicemen Corporation or from an Ex-servicemen Cooperative Society. Accordingly DGR had sponsored M/s. Reliance Security Services for providing the surveillance and vigilance services at the said LPG Bottling plant for Petitioner during 1996. M/s. Reliance Security Services in discharge of its contractual obligation used to engage and provide personnel at the Petitioner's establishment. At the end of the contract period no fresh sponsorship was received in favour of M/s. Reliance Security Services Ltd. It is stated that M/s. Reliance Security Services was having supervision and control over the employees engaged by it and used to deposit contributions under EPF & MP Act under its own code number. It was denied that any relationship of employer and employee ever existed between the workmen and the Petitioner. It is further stated that the services were terminated on 31st May, 1999 whereas the reference was made in 2007 and thus being a belated reference it was required to be quashed on the said ground itself. It is also stated that workmen had raised an industrial dispute alleging wrongful termination with its immediate employer M/s. Reliance Security Services Ltd. before the conciliation officer wherein a settlement had been arrived at under Section 12(3) of the ID Act and the workmen had received compensations in lieu of reinstatement in full and final settlement of all their claims.

9. The Petitioner in its evidence produced Shri Pawan Kumar, territory coordinator at Village Piyala, Tehsil Ballabgarh who stated that the

Petitioner was a public sector undertaking under legal obligation to follow the Guidelines and Presidential directives with regard to employment in its establishment. It neither issued any advertisement in the newspaper for wide circulation nor requested any Employment Exchange to sponsor candidates for the post of Gunman/ security guard during the period of alleged engagement. He denied that the workmen were employed by the Petitioner as per Petitioner's recruitment policy. It is further stated that in view of the sponsorship from the DGR M/s. Reliance Security Services Pvt. Ltd. was awarded the contract of surveillance and vigilance services at the said LPG Bottling plant of the Petitioner during 1996. The letter Ex.MW1/1 has been duly exhibited. This contract was further extended vide letter dated 18th August, 1998 vide Ex.MW1/2. Copies of the agreement with M/s. Reliance Security Services Ltd. were exhibited as Ex.MW1/3 and MW1/4. M/s. Reliance Security Services was depositing the contribution under EPF & MP Act and the license under the CL(R&A) Act were exhibited as Ex.MW1/5 and Ex.MW1/6. Since the workmen were not employed by the Petitioner, it had no authority to terminate their services and thus no relief could be claimed against it.

10. The full Bench of this Court in *Indian Tourism Development Corporation* (supra) held that the jurisdiction the Labour Court/ Industrial Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the point of reference. An industrial adjudicator is not vested with any inherent power or jurisdiction. It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot

travel beyond the terms of reference except for ancillary matters. The issue in the present case is not whether the Government was justified in issuing the corrigendum because the issuance of the corrigendum has not been challenged by the Respondent, but whether on receiving a corrigendum the learned Trial Court was justified in proceeding with the first reference. On the receipt of the revised reference by way of the corrigendum the learned Trial Court grossly erred in holding that it had two reference. The earlier reference stood revised by the corrigendum.

11. Section 10(5) of ID Act reads as under:

“10. Reference of dispute to Boards, Courts or Tribunals:

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a [Labour Court, Tribunal or National Tribunal] under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.]”

12. In *State of Bihar Vs. D.N. Ganguly and Ors. AIR 1958 SC 1018* their Lordships held that the Act does not expressly confer any power on the appropriate Government to cancel or supersede a reference made under Section 10(1) of the ID Act. There is no dispute to this proposition. Having made a reference the Government cannot cancel or supersede a reference,

however it can certainly amend the reference. In the said case relied by the Respondent, the Hon'ble Supreme Court was dealing with the issue of cancellation of the reference and termination of the proceedings and it is in this context that it was held that the rule of construction enunciated by Section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of Section 10(1) of the ID Act. In the case in hand there is no cancellation or rescinding of the terms of reference but modification thereof, as is apparent from the corrigendum issued. It was reported:

“10. It is clear that the policy of the Act is to secure and preserve good relations between the employers and their workmen and to maintain industrial peace and harmony. It is with this object that section 3 of the Act contemplates the establishment of the works committee whose duty it is to promote measures for securing and preserving amity and good relations between the employers and the workmen. If the Works Committee is unable to settle the disputes arising between the employer and his workmen, conciliation officers and the boards of conciliation offer assistance to the parties to settle their disputes. Sections 3, 4, 5, 12 and 13 refer to the working of this machinery contemplated by the Act. It is only where the conciliation machinery fails to bring about settlement between the parties that the Act contemplates compulsory adjudication of the industrial disputes by labour courts and tribunals as the last alternative. The appropriate Government is authorised to constitute labour courts and tribunals under and subject to the provisions of the section 7 and section 7A respectively. It is in respect of the compulsory adjudication that under section 10, the appropriate Government is given wide discretion to decide whether or not the dispute between the employer and his employees should be referred to the board, court or tribunal. Section 10(1)(d) provides inter alia that where the appropriate Government is of opinion that any industrial dispute exists or is

apprehended, it may at any time, by order in writing refer the dispute to a tribunal for adjudication. The condition precedent for the reference to the industrial tribunal is that the appropriate Government must be satisfied that an industrial dispute exists or is apprehended. It is not in every case where the parties allege the existence of an industrial dispute that a reference would be made under section 10(1); it is only where the test of subjective satisfaction of the appropriate government is satisfied that the reference can be made. Thus it is clear that the appropriate Government is given an important voice in the matter of permitting industrial disputes to seek adjudication by reference to the industrial tribunal. But once an order in writing is made by the appropriate Government referring an industrial dispute to the tribunal for adjudication under section 10(1), proceedings before the tribunal are deemed to have commenced and they are deemed to have concluded on the day on which the award made by the tribunal becomes enforceable under section 17A. This is the effect of section 20(3) of the Act. This provision shows that after the dispute is referred to the tribunal, during the continuance of the reference proceedings, it is the tribunal which is seized of dispute and which can exercise jurisdiction in respect of it. The appropriate Government can act in respect of a reference pending adjudication before a tribunal only under section 10(5) of the Act, which authorizes it to add other parties to the pending dispute subject to the conditions mentioned in the said provision. It would therefore be reasonable to hold that except for cases falling under section 10(5) the appropriate Government stands outside the reference proceeding, which are under the control and jurisdiction of the tribunal itself. Even after the award is made it is obligatory on the appropriate Government under section 17(1) to publish the said award within a period of thirty days from the date of its receipt by the appropriate Government. Sub-section (2) of section 17 says that subject to the provisions of section 17A, the award published under sub-section (1) of section 17 shall be final and shall not be called in question by any Court in any manner whatsoever. Section 19(3) provides that an award shall, subject to the other provisions of section 19, remain in operation for a period of one

year from the date on which it becomes enforceable under section 17A. It is true that sections 17A and 19 confer on the appropriate Government powers to modify the provisions of the award or limit the period of its operation but it is unnecessary to refer to these provisions in detail. The scheme of the provisions in Chapters. III and IV of the Act would thus appear to be to leave the reference proceedings exclusively within the jurisdiction of the tribunals constituted under the Act and to make the awards of such tribunals binding between the parties, subject to the special powers conferred on the appropriate Government under sections 17A and 19. The appropriate Government undoubtedly has the initiative in the matter. It is only where it makes an order in writing referring an industrial dispute to the adjudication of the tribunal that the reference proceeding's can commence; but the scheme of the relevant provisions would prima facie seem to be inconsistent with any power in the appropriate Government to cancel the reference made under section 10(1).”

13. In *Chandra Spinning and Weaving Mills Ltd., Bangalore Vs. State of Mysore and Ors. (1964) II LLJ 604* Kant it was held:

“24. The legal position that emerges from a careful review of all these decision is that a reference made by a State Government under S. 10(1) of the Act can be amended either by way of addition or modification so long as the amendment has not the effect of withdrawing or superseding the reference already made.”

14. The learned Trial Court grossly erred in coming to the conclusion that it had before it two references in view of the modified reference sent to it. The Respondent at no point of time challenged the corrigendum and the modification of the earlier reference sent. Thus, the impugned awards are set aside and the matters are remanded back to the learned Trial Court who will

consider the same in accordance with the revised reference received by it after taking fresh pleadings of the parties, if need be, and after issuing notice to M/s. Reliance Security Services Pvt. Ltd.

15. Petitions and applications are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 26, 2012
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