

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO.130 OF 2015

Rajya Rashtriya Kamgar Sangh
(INTUC),
Now Hindustan Petrol Pump
Kamgar Union, ..

Petitioner

Vs

Hindustan Petroleum
Corporation Ltd, ..

.. Respondent

Mr. S. D. Paithane, Advocate for Petitioner.

Mr. Lancy D'Souza, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 04/03/2015

PC:

1. Heard Mr. S. D. Paithane, learned counsel for the petitioner and Mr. Lancy D'Souza, learned counsel for the respondent at length.
2. The petitioner has instituted the above contempt petition alleging breach of the order dated 1.9.2014 passed by this Court (Coram: R.P. SondurBaldota, J.) in Writ Petition No.9772 of 2013. By that order, the Award dated 25.2.2013 made by the learned Presiding Officer, Central Government Industrial Tribunal (CGIT)-Cum-Labour Court, Mumbai (for short, "Tribunal) in Reference (IDA) No.19 of 2007 was set aside. The Reference was remanded to the Tribunal for fresh hearing. The respondent was given liberty to file application before the Tribunal for permission to file

Written Statement. The application, if any, was ordered to be filed within a period of three weeks from the date of the order. On such application being filed, the Tribunal was directed to consider the same in accordance with law. The Tribunal was also directed to dispose of the Reference within a period of eight months from the date of the order.

3. In support of this petition, Mr. Paithane submitted that by order dated 12.2.2007, Government of India, in exercise of the powers conferred by clause (d) of sub section (1) and subsection (2A) of Section 10 of the Industrial Disputes Act, 1947 (for short, "Act"), referred the following dispute for adjudication to the Tribunal.

"Whether the demand of the 36 workmen (list enclosed) is justified and proper to get regularised their services in the Hindustan Petroleum Corporation Ltd, who are working at the respective Petrol-Pumps of HPCL, especially at Hindustan Petroleum Corporation Limited Petrol Pump at Chembur at par with HPCL, direct employees? If so, then what are the relief these 36 workmen listed (list enclosed) are entitled to?"

4. Mr. Paithane submitted that the workers are working from 1975, 1978, 1980, 1982, as more particularly set out in the list of workers at page 14 of the Contempt Petition. He submitted that the respondent had terminated the dealership of M/s Chhagan Mitha and Company and in its place, has appointed M/s Renuka Enterprises for maintenance and handling of petrol pump as Service Provider by communication dated 10.9.2014. The said

communication also requires the Service Provider to obtain required statutory licence for providing man power from the Government Authorities. He submitted that in pursuance of that, Agreement was entered into by and between the respondent and M/s Renuka Enterprises on 30.9.2014. Clause 2.7 thereof provides that for the purposes of carrying out the activities as set out in that agreement at the retail outlet, the Service Provider shall provide-skilled workmen, semiskilled workmen, unskilled workmen to carry out the functions of forecourt management, cashier, driveway sales men, air boy, security guard, housekeeping boy, accountant, quick care point mechanic, windshield cleaning boy. The requirements of Driveway Salesmen shall be reviewed on a quarterly basis by the Corporation and communicated to the Service Provider for compliance. He further submitted that in the affidavit in reply dated 3.11.2014 to the application for interim relief and in particular paragraph 25 thereof, it is stated that M/s Renuka Enterprises had taken over the outlet with effect from 30.9.2014 and had started its operation by deploying its own man power.

5. Mr. Pathaine submitted that by virtue of the appointment of M/s Renuka Enterprise and also permitting them to deploy their man power, the Reference made by the Central Government is rendered infructuous and it amounts to interference of administration of justice by the respondent and, thereby, they

have committed contempt of the order passed by this Court. He submitted that the workmen in the list set out at page 14 have been working at the outlet for more than 30 years. The application filed by the petitioner for interim relief was heard by the Tribunal in the month of January 2015 and the orders are reserved. He, therefore, submitted that this is a fit case for taking action against the respondent under the Contempt of Courts Act, 1971.

6. On the other hand, Mr D'Souza submitted that if it is the case of the petitioner that the respondent has contravened the provisions of Section 33 of the Act during the pendency of the proceedings before the Tribunal, the petitioner has a remedy under section 33-A thereof. In other words, he submitted that the High Court remitted the matter to the Tribunal. The respondent has not committed contempt of any order of this court or the Tribunal.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, by order dated 1.9.2014 the High Court had set aside the Award dated 25.2.2013 made by the Tribunal and remitted the matter for fresh hearing. It is also not in dispute that on 7.10.2014 the petitioner had filed application for interim relief and the said application was heard in January, 2015. The order is reserved. In the application the

petitioner has prayed for the following reliefs:

“(a) This Hon'ble Tribunal be pleased to restrain and injunct First Party HPCL and its agents from arbitrarily and capriciously removing the workers of the first party union from their jobs/services without following the legal procedure, the workers as mentioned in Anenxure-A to this application”.

It is not in dispute that no ad-interim order was passed on that interim application. If at all the petitioner has a grievance about change of service conditions during the pendency of the proceedings before the Tribunal, it is not without any remedy. The petitioner has a remedy under section 33-A of the Act. The petitioner has not demonstrated that the respondent has violated order dated 1.9.2014 passed by this Court or the order passed by the Tribunal. In view thereof, I do not find that the petitioner has made out any case for initiating contempt proceedings against the respondent. Hence, the Petition fails and the same is dismissed. The petitioner is at liberty to adopt appropriate proceedings in case it is of the opinion that during the pendency of the proceedings before the Tribunal, the respondent has changed the service conditions.

(R.G.KETKAR, J.)