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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 1668 OF 2015

M/s. Indian Oil Corporation.

... Petitioner.

V/s.

The Secretary General Petroleum
Employees Union.

... Respondent.

Mr. K.P. Anilkumar for the Petitioner.
Mr. Ramesh D. Bhat for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 24 NOVEMBER, 2015.

ORAL ORDER :-

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal by consent.

2. The Petitioner – Indian Oil Corporation challenges the order passed by the Central Government Industrial Tribunal, Mumbai, dated 24 September 2014, answering the Reference made to it in affirmative and holding that the contracts entered into by the Petitioner with various contractors are sham, bogus and nominal and the workmen represented by the Respondent –

Union are declared as employees of the Petitioner and that the Petitioner should pay them allowances and grant status at par with regular Class IV employees with effect from their completion of two years service as on probation alongwith monetary benefits.

3. The Government of India by order dated 16 December 2004 made a reference under Section 10 of the Industrial Disputes Act, 1947 to the Tribunal for adjudication of two issues, firstly whether the contract between the Petitioner and the contractors is sham and bogus and secondly, whether the workmen whose names were enlisted in Exhibit 'A' are to be declared as permanent workmen. The Respondent-Union filed its statement of claim in the Reference. According to the Respondent – Union, the work of the concerned workmen was of perennial nature. They were working since almost 20 years and even though contractor was changed, they continued to be the same work. According to the Respondent – Union, the workmen were paid wages which were much less than regular employees and had inferior service conditions. It was contended that the contracts entered into by the Petitioner were only to deprive the workmen of their legitimate rights. The Respondent – Union accordingly prayed for that the relief of declaration of the contracts being sham and bogus and relief of permanency in service. The Petitioner filed its written statement and contested the claim. According to the petitioner, the Union and the employees had initially sought to get the contract labour system abolished and after failing in their attempt,

they have sought to resort to making a reference which they were precluded from doing so. It was contended that the contracts are not sham and bogus and all the concerned employees are employed through contractors who are having separate legal identity. It was denied that the contract labourers were doing the same work as a regular employee. It was also contended that in view of the various orders and Judgments passed by this Court and the Apex Court, the relief of permanency cannot be granted. Both the parties examined their witnesses who were cross-examined. The Tribunal by the impugned order concluded that the contracts were sham and bogus and that the concerned workmen were entitled to permanency and accordingly, disposed off the Reference by the impugned order.

4. I have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent. The learned Counsel for the parties have advanced various submissions. In the memo of the Petition the Petitioner has taken various grounds to assail the impugned order. The Respondent – Union has also filed an affidavit-in-reply annexing certain documents to justify the relief granted in their favour. However, perusal of the impugned order shows that the Tribunal has drawn direct conclusions and there is no discussion as to why and how these conclusions were drawn. Upto paragraph 6 of the impugned order, the learned Judge has narrated facts. In paragraph 7 a direct conclusion is drawn that the Petitioner was paying the concerned employees directly. It is

also stated that the Deputy Manager of the Petitioner has admitted in her cross-examination that the workmen were performing work as per the instructions of the officer and has recorded that the position that workmen were working since 1983 and 1987 and 1993 is an admitted position.

5. The learned Counsel for the Petitioner has made a serious grievance that there is no such admitted position and this claim has been contested by the Petitioner. There is no reference at all to the contention of the Petitioner before drawing a conclusion that the entire position is admitted. The learned Counsel for the Petitioner submitted that there is a variance in the number of workmen mentioned in the statement of claim as well as in the impugned order and the evidence. In paragraphs 8,9,10,11 and 12, the learned Judge has referred to the arguments of the parties and the case laws cited by them. In paragraph 13 again the learned Judge refers to an admitted position that the workmen are working for 20 years continuously and states that all these facts indicate that contract is sham and bogus. The only fact referred in the preceding paragraphs is the so called admission in the cross-examination. There is no other discussion and the learned Judge has repeatedly referred to an admitted position. In the circumstances in which the concerned workmen have continued for 20 years has also not been considered as it is the contention of the learned Counsel for the Petitioner that they have been continued under the interim orders of this Court.

6. The learned Judge thereafter again from paragraphs 14 to 18 has referred to case laws cited and in paragraph 19 concluded the issue by drawing six conclusions. Thereafter, the learned Judge refers to the decision of the Apex Court and holds that sensitivity must be shown in implementation of the labour legislation. But before this conclusion is arrived at there must be discussion of rival contentions. The Tribunal being an original authority must carry out the exercise of fact/finding and discussion of various rival contentions. The various arguments which are advanced on behalf of both the parties, are enumerated in the memo of the Petition and the affidavit-in-reply filed and the learned Judge has not referred to them at all.

7. In the circumstances, for absence of any kind of reasoning in the Award leading to the conclusions, it will be appropriate that the matter is remanded back to the Industrial Court for consideration of the various facets which have sought to be advanced by the learned Counsel for the parties. The merits and demerits of the contentions which are advanced are not being dealt with as it may prejudice the parties upon the remand. Since there is complete absence of reasoning as afore-stated and that the issue is of importance, both to the Petitioner and the Respondent – Union and that in the writ jurisdiction, it is not possible to re-appreciate the entire evidence that too at the first instance, a remand to the Tribunal is necessary. It is informed that in view of

the interim orders passed by this Court in Writ Petitions which are pending, the services of the concerned employees are protected.

8. In the circumstances, the Writ Petition is disposed off by quashing and setting aside the Award passed by the Industrial Court dated 24 September 2014. The Reference is restored to file.

9. Considering the fact that the remand was necessitated because of the lack of the reasoning in the Award, the Presiding Officer will give priority to the disposal of the Reference. The learned Counsel for the parties assure that the respective clients will co-operate with the Tribunal for early disposal of the Reference. All contentions of the parties on merits are kept open.

10. Rule made absolute in the above terms.

(N.M. JAMDAR, J.)