

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 3128 of 2015 (M)

PETITIONER :

**T.K.BABU, AGED 55 YEARS,S/O.KANDA,
RESIDING AT THYPPARAMBIL, UDAYAMPEROOR.P.O.,
ERNAKULAM.**

BY ADV. SRI.P.G.JAYASHANKAR

RESPONDENT(S):

- 1. ASSISTANT LABOUR COMMISSIONER (CENTRAL),
KENDRIYA SHRAM SADAN, OOLIMUGHAL, KAKANAD,
COCHIN-682 030**
- 2. INDIAN OIL CORPORATION, PANAMPILLI,
AVENUE, PANAMPILLI, NAGAR, COCHIN-682 036**
- 3. PLANT MANAGER, INDIAN OIL CORPORATION,
INDANE LPG BOTTLING PLANT, UDAYAMPEROOR,
ERNAKULAM-682 307**
- 4. C.M.KUNJUMHAMMED, NIAZ MANZIL,
NETTOOR, KOCHI, PRESENTLY WORKING AS HOUSEKEEPING AND
HAULAGE CONTRACTOR, INDIAN OIL CORPORATION,
INDANE LPG BOTTLING PLANT, UDAYAMPEROOR,
ERNAKULAM-682 307.**

**R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 & R3 BY SRI.M.GOPIKRISHNAN NAMBIAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.3128/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE MEMORANDUM OF SETTLEMENT BEARING NO.ID
NO.8/105/2012/D2 DATED 30/07/2012**
- P2 COPY OF THE REPRESENTATION DATED NIL FILED BEFORE THE 3RD
RESPONDENT**
- P3 COPY OF THE APPLICATION BEFORE THE 1ST RESPONDENT.**
- P4 COPY OF THE CLAIM PETITION (WITHOUT ANNEXURE) PREFERRED BEFORE
THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

K. VINOD CHANDRAN, J.
=====

W.P.(C) No.3128 of 2015 - M
=====

Dated this the 30th day of January, 2015

J U D G M E N T

The petitioner claims to be a workman under the 4th respondent and seeks for an order restraining the 2nd respondent from refunding the security amounts to the 4th respondent for reason of a claim petition having been filed before the Central Government Industrial Tribunal cum Labour Court. The 4th respondent admittedly is a contractor under the 2nd respondent and the petitioner is one of the workmen, who has filed the claim, which is produced at Ext.P4. Immediately it has to be noticed that, the claim petition is filed by 46 workmen claiming to be employed by the 4th respondent, and the claim of the petitioner is that, the amounts claimed should be protected, by way of a restrain order issued to the 2nd respondent.

2. I have heard the Counsel for the 2nd respondent also. The claim petition before the Central

Government Industrial Tribunal cum Labour Court has not even been numbered. The claim relates to a prior period commencing from 2012 onwards. The petitioners in Ext.P4 raise a monetary claim based on Ext.P1 settlement. The claim rests, as of now, on the assertion that amounts as per the agreement has not been paid. The 4th respondent, employer would have to be heard by the Central Government Industrial Tribunal cum Labour Court as to the pre-existing right and if the same is found to exist; computation of amounts due would have to be resorted to under Section 33C(2) of the Industries Disputes Act, 1947 (for brevity, 'the I.D Act').

3. The petitioner herein claims pre-emption of such adjudication, by this Court, by issuance of a restrain order, in the nature of a garnishee proceeding. Admittedly amounts due from September 2012 were due and the claim has been filed just prior to the expiry of the contract period. Extraordinary remedy under Article 226 of the Constitution of India cannot be invoked as a coercive measure to force

the employer to accede to the demand of the workman. Though there is no limitation for making a claim under Section 33C(2) of the I.D Act, the facts would not commend exercise of the discretionary remedy.

4. Even the adjudication of the claim having not commenced before the Central Government Industrial Tribunal cum Labour Court, there can be no restrain order passed under Article 226 of the Constitution of India by this Court in the above writ petition.

The writ petition would stand dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge.