

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 8053/2016

Rajya Rashtriya Kamgar Sangh (INTUC)

... Petitioner

V/s.

Hindustan Petroleum Corporation Ltd.

... Respondent

Mr. S. D. Patihane for the petitioner

Mr. Lancy D'Souza i/b. V. M. Parkar for the Respondent.

**CORAM: K.K. TATED, J.**

**DATED : DECEMBER 15, 2016**

**JUDGMENT :**

1. Heard the learned counsel for the parties. The matter was on board on 22.11.2016. On that day, at the request of the learned counsel for petitioner, the matter was adjourned to 23.11.2016, for final hearing. Same was heard on that date. For further hearing, the matter was posted for today.

3. By this petition under Article 226 and 227 of the Constitution of India, the petitioner second party Union challenges the Award dated 29.02.2016 passed by the Central Government Industrial Tribunal Cum - Labour Court No.1 (CGIT) Mumbai (hereinafter referred to as the Tribunal) in Reference (IDA) No.19/2007 answering the Reference

stating that the demand of the concerned workman/person in Reference for regularisation of their service in HPCL respondent first party management at par with the direct employees of respondent is neither justified nor proper. Hence, no relief.

4. Few facts of the matter are as under:

The petrol pump was run by various dealers from 01.01.1997 to 30.09.2014. Initially same was allotted to M/s. Chagan Mithra & Co. from 01.01.1997 to May 2005 on dealership basis. Dealership agreement was executed by the respondents in favour of Munir Mitha, Fateh Mitha and Razia A. Mithra to carry on business in the name and style M/s. Chagan Mitha & Co. Thereafter the same was granted to Mumbai Tax Association Cooperative Consumer Society from 04.05.2005 to May 2010 on dealership basis. To that effect, the respondent executed dealership agreement. Thereafter the dealership agreement was executed in favour of M/s. Kapadia Brothers from May 2010 to 29.04.2012 and again in favour of M/s. Suburban Service Station from 30.04.2012 to 30.09.2014. Again w.e.f. 01.10.2014, same was allotted in favour of M/s. Renuka Enterprises.

5. Petitioner's some of the members were working on the said petrol pump. The petitioner Union filed complaint with the Government of India, Ministry of Labour making several grievances to regularize their services in the HPCL and all other benefits as per the permanent employee. Pursuant to the said complaint, the reference was made by order dated 12.02.2007 for following issues:

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

6. The petitioner filed their statement of claim dated 11.01.2012 before the Tribunal. Same was registered as Reference (IDA) No.19/2007. The respondent filed their written statement dated 27.11.2014 and denied the petitioner's claim.

7. Considering the submissions made by both the parties and on the basis of the pleadings, initially, the Tribunal passed an Award dated 25.02.2013 rejecting the Reference on the ground that the petitioner Union has failed to prove its case. The said Award was challenged by the petitioner before this court by filing Writ Petition No.9772/2013, which was allowed by this court by setting aside the Award dated 25.02.2013 remanding the Reference to the Tribunal for fresh hearing. The operative part of the said order reads thus:

### **“O R D E R**

*(i) The Award dated 25th February, 2013 passed in Reference (IDA) No. 19 of 2007 passed by the Learned Presiding Officer, Central Government Industrial Tribunal (CGIT)-cum-Labour Court, Mumbai in Reference (IDA) No. 19 of 2007 is set aside.*

*(ii) Reference (IDA) No. 19 of 2007 is remanded to CGIT, Mumbai for fresh hearing.*

(iii) *The respondent is at liberty to file an application before the CGIT, Mumbai for permission to file written statement. The application, if any, shall be filed within a period of 3 weeks from today. On such application being filed, the same shall be considered by the CGIT in accordance with law.*

(iv) *The reference shall be heard and disposed off by CGIT, Mumbai within a period of 8 months from today.”*

8. After remand, the petitioner Union made an application for interim relief which was rejected by the Tribunal vide order dated 30.04.2015. Said order was challenged by the petitioner Union in Writ Petition No.6035/2015, which was disposed of by this court, as the Tribunal had by that time passed a final order.

9. As the Union was not appearing before the Tribunal, after disposal of the interim relief application, the respondent made an application for proceeding *exparte*. The respondent also issued letter dated 19.02.2015 to the Union enclosing therewith a copy of an application for proceeding *exparte* and a copy of draft issues. The respondent by the said notice also intimated the date of hearing before the Tribunal which was 10.02.2015. Said letter was acknowledged by the advocate for the petitioner's members themselves endorsing the remark “we have not received any court notice. Whether the extension has been granted and to whom.” As the Union failed to appear before the said Tribunal on 10.12.2015, despite notice, the said Tribunal passed a reasoned order for proceeding *exparte*. Said order reads thus:

*“It appears that this Tribunal by the Award dated 25.02.2013, disposed of Reference No.CGIT-1/19/2007. The second party? union filed a Writ Petition being Writ Petition No.9772/2013 before the Bombay High Court. The Hon'ble Bombay High Court*

by its order dated 01.09.2014 disposed of the said Writ Petition in terms as mentioned in paragraph 2 of the said order.

Pursuant to the said order dated 01.09.2014 passed by the Hon'ble Bombay High Court, the matter came up before this Tribunal. An application for interim relief was filed on behalf of the second party/Union on 10.10.2014. An affidavit in support of the said interim relief application was filed on behalf of the second party/Union on 14.11.2014, as noted in the order passed on the said date.

Reply in respect of the interim relief application was filed on behalf of the first party/Management. Rejoinder on behalf of the second party/Union in respect of the aforesaid reply filed on behalf of the first party/Management was also filed on behalf of the second party/Union.

The argument in respect of the interim relief application were heard on various dates as mentioned in the order sheet of the present case.

On 19.01.2015, arguments of the learned counsel for the parties on interim relief application concluded. Thereupon, by the order dated 19.01.2015, the Tribunal reserved its order in respect of the interim relief application. The order dated 19.01.2015 is reproduced below:

Pursuant to the order dated 15.01.2014, the case is put up today.

Mr. Lancy D'Souza, learned counsel for the first party/Management and  
Mr. S. D. Patihane, learned counsel for the second party/ Union are present

Arguments of the learned counsel for the parties on interim relief application concluded today.

Order reserved.

*On 30.04.2015, the Tribunal pronounced its order on the aforesaid interim relief application filed on behalf of the second party/Union. The order dated 30.04.2015 is quoted below:*

*Pursuant to the order dated 19.10.2015, the case has been put up today for orders on interim relief application filed on 10.10.2014.*

*Intimation regarding the fixation of today's date for orders on the aforementioned application was given to Mr. Lancy D'Souza, learned counsel for the first party / Management and Mr. S. D. Paithane, learned counsel for the second party/ Union on telephone by the Secretary to this Tribunal.*

*Mr. Lancy D'Souza, learned counsel for the first party/ Management is present.*

*Mr. S. D. Paithane, learned counsel for the second party/Union has informed the Secretary to this Tribunal that as he is at present in Pune, one of the workmen will be present before the Tribunal on behalf of the second party/ Union today.*

*Accordingly, Shri Sugriv Kamble, one of the Workmen is present on behalf of the second party/Union. Order on interim relief application filed on 10.10.2014, has been pronounced today in open court.*

*interim relief application has been rejected.*

*Order is on separate sheets.*

*Fix on 05.06.2015 for framing of issues and filing of documents on behalf of the parties.*

*From the perusal of the above order dated 30.04.2015, it is evident that Mr. Sugriv Kamble, one of the Workmen was present on behalf of the second party/Union on the said date. In the above order dated 30.04.2015, it is also recorded that intimation regarding the fixation of the said date for orders on the aforesaid interim relief application was given to Mr. Lancy D'Souza, learned counsel for the first party/Management and Mr S. D. Patihane, learned counsel for the second party/Union on telephone by the Secretary to this*

*Tribunal.*

*The above order further records that “Mr. S. D. Paithane, learned counsel for the second party/Union has informed the Secretary to this Tribunal that as he is at present in Pune, one of the Workmen will be present before the Tribunal on behalf of the second party/Union today.*

*It is thus evident that the second party/Union as well as its counsel Mr. S. D. Paithane were fully aware of the said date i.e. 30.04.2015 fixed for pronouncing the order on the aforesaid interim relief application filed on behalf of the second party/Union.*

*By the said order dated 30.04.2015, the matter was fixed on 05.06.2015 for framing of issues and filing of documents on behalf of the parties.*

*It may be noted that as the time fixed by the Hon'ble Bombay High Court in its order dated 01.09.2014 passed in Writ Petition No.9772/2013, as mentioned above, was going to expire on 30.04.2015, this Tribunal sent a communication dated 30.04.2015 to the Registrar General, High Court of Bombay, Mumbai interalia stating that the said communication be placed “before the Hon'ble High Court with the request that the period for disposing of the aforesaid Reference may kindly be extended by a further period of 10 months.*

*In response to the said communication dated 30.04.2015, a communication dated 21.07.2015 was received by this Tribunal, from the Bombay High Court. Relevant portion of the said Communication dated 21.07.2015 is reproduced below :*

*“With reference to your letter dated 30.04.2015 outward No.CGIT-1/19/07/189/15, for grant of further extension of ten months for the disposal of Reference No.CGIT-19 of 2007. I am directed to state that your letter under reference along with the Writ Petition was placed before the Court (Coram : Smt. R. P. SondurBaldota,J.) on 24/06/2015 for order; and that the Court pleased to pass the following order:*

***Time extended as per the request:***

*Kindly take note of the Court's order and act accordingly.*

*Thus, the request made by this Tribunal for extending the period for disposing of the Reference by a further period of 10 months was accepted by the Hon'ble Bombay High Court. The said period of 10 months would be expiring on 29.02.2016.*

*Reverting to the facts of the present case, pursuant to the order dated 30.04.2015, the case was put up before the Tribunal on 05.06.2015. On the said date, i.e. 05.06.2015, as noted in the order passed on the said date, Mr. Lancy D'Souza, learned counsel for the first party/Management was present. However, none was present for the second party/Union.*

*In the circumstances, by the order dated 05.06.2015, the case was adjourned to 15.07.2015 for framing of issues and filing of documents on behalf of the parties.*

*Pursuant to the order dated 05.06.2015, the case was put up on 15.07.2015.*

*On 15.07.2015, as noted in the order passed on the said date, Ms. Deepika Agrawal, holding brief for Mr. Lancy D'Souza, learned counsel for the first party/ Management was present.*

*Mr. Ambadar Kamble, one of the Workmen was present on behalf of the second party/Union.*

*By the order dated 15.07.2015, the case was adjourned to 27.08.2015 for framing of issues and filing of documents on behalf of the parties.*

*Pursuant to the order dated 15.07.2015, the case was put up on 27.08.2015.*

*On 27.08.2015, as noted in the order passed on the said date, Ms. Deepika Agrawal, holding brief for Mr. Lancy D'Souza, learned counsel for the first party/Management was present. However,*

*none was present for the second party/Union.*

*Ms. Deepika Agrawal, holding brief for Mr. Lancy D'Souza, learned counsel for the first party / Management submitted Draft Issues in the present case on the said date i.e. 27.08.2015. However, as none was present on behalf of the second party/Union, the Tribunal by its order dated 27.08.2015 adjourned the case to 01.10.2015.*

*Pursuant to the Order dated 27.08.2015, the case was put up on 01.10.2015.*

*On 01.10.2015, as noted in the order passed on the said date, Ms. Shehwar Qureshi, holding brief for Mr. Lancy D'Souza, learned counsel for the first party/Management was present. However, none was present for the second party/Union. In view of the absence of the second party/Union, the Tribunal by its order dated 01.10.2015, adjourned the case to 18.11.2015.*

*On 18.11.2015, as noted in the order passed on the said date, Ms. Shehwar Qureshi, learned counsel for the first party/Management was present. However, none was present on behalf of the second party/Union. Ms. Shehwar qureshi, learned counsel for the first party/Management, filed an application dated 18.11.2015 on the said date i.e. 18.11.2015 interalia praying that the Reference be proceeded exparte.*

*In the circumstances, by the order dated 18.11.2015, the case was adjourned to 10.12.2015.*

*Pursuant to the order dated 18.11.2015, the case is put up today.*

*Today, Mr. Lancy D'Souza, learned counsel for the first party/Management is present. However, none is present for the second party/Union.*

*An application dated 10.12.2015 has been filed today on behalf of the first party/Management. Along with the said application, a copy of the communication dated 19.11.2015 along with enclosures thereto sent by Mr. Lancy D'Souza,, learned counsel for the first*

*party/Management to Mr. S. D. Paithane learned counsel for the second party/Union has been enclosed.*

*A perusal of the said communication dated 19.11.2015 shows that along with the said communication, copy of the draft issues submitted on behalf of the first party/Management on 27.08.2015 as well as copy of the application dated 18.11.2015 filed on behalf of the first party/Management, interalia praying that the Reference be proceeded exparte, were enclosed.*

*A perusal of the said communication dated 19.11.2015 further shows that the said communication interalia informed Mr. S. D. Paithane learned counsel for the second party/Union made the following endorsement: "We have not received any Court Notice. Whether extension has been granted and to whom?"*

*It is thus evident that despite having intimation regarding today's date, none is present today on behalf of the second party/Union.*

*As noted above, the extended time granted by the Hon'ble Bombay High Court is going to expire on 29.02.2016.*

*Having regard to the facts and circumstances narrated above and keeping in view that the extended time fixed by the Hon'ble Bombay High Court is going to expire on 29.02.2015, there is no option but to proceed with the Reference exparte as against the second party/Union.*

*It is accordingly directed that the Reference will proceed exparte as against the second party/Union.*

*Let the matter be fixed on 06.01.2016 for framing of issues and filing of documents.*

*Sd/-"*

10. The matter was proceeded for framing issues and for filing documents on 06.01.2016. On that day also, none appeared on behalf of the petitioner Union. Hence, the tribunal closed the evidence of the petitioner Union and the matter was fixed on 20.01.2016 for evidence

of the respondent. The order dated 06.01.2016 reads thus:

*“Pursuant to the order dated 10.12.2015, the case is put up today.*

*By the order dated 10/12/2015, the Reference was directed to proceed to ex parte as against the second party/Union (Hindustan Petroleum Petrol Pump Kamgar Union).*

*By the said order dated 10.12.2015 the case was directed to be fixed on 06.01.2016 i.e. today for framing for issues and filing of documents.”*

*The case is accordingly put up today.*

*Shri Lancy D'Souza, learned counsel for Hindustan Petroleum Corporation Ltd. (i.e. first party/Management or first party/Company) is present.*

*None is present for the second party/Union.*

*I have perused the pleadings exchanged between the parties and heard the submissions made by Shri Lancy D'Souza, learned counsel for Hindustan Petroleum Corporation Ltd. (i.e. first party/Management or first party/Company)*

*Having perused the pleadings exchanged between the parties and having considered the submissions made by Shri Lancy D'Souza, learned counsel for Hindustan Petroleum Corporation Ltd. (i.e. first party/Management or first party/Company), the issues as mentioned in separate sheet are framed in the present case.*

*No other issue arises in the present case nor has any other issue been pressed by the learned counsel for Hindustan Petroleum Corporation Ltd. (i.e. first party/Management or first party/Company).*

*As the matter is proceeding ex parte against the second party/Union and none is present even today on behalf of the second party/Union, the evidence on behalf of the second party/Union is*

*closed.*

*Let the case be fixed on 28.01.2016 for evidence on behalf of Hindustan Petroleum Corporation Ltd. (i.e. first party/Management or first party/Company)."*

11. On 20.01.2016, the respondent filed their affidavit of evidence along with compilation of documents. As none appeared on behalf of the petitioner Union, the Tribunal passed the impugned award on 29.02.2016 holding that the petitioner Union is not entitled. to any relief. The operative part of the said Award reads thus:

*"175. In view of the above discussion, the Reference is answered by stating that the demand of the concerned workmen/concerned persons in the present Reference for regularization of their alleged services in Hindustan Petroleum Corporation Ltd. ("the first party/ Management" or "the HPCL" or "the Corporation" or "the First Party/Company") at par with the direct employees of Hindustan Petroleum Corporation Ltd. ("the first party/ Management" or "the HPCL" or "the Corporation" or "the First Party/Company") is neither justified nor proper. No relief in this regard can be granted in respect of the concerned workmen/ concerned persons in the present Reference."*

12. Being aggrieved by the said Award, the petitioner filed the Writ Petition on several grounds.

13. The learned counsel for the petitioner submits that the impugned Award was passed by the CGIT without hearing the petitioner second party. Hence, same is *exparte*. He submits that being *exparte* Award, same is required to be set aside and the matter be decided on merits.

14. The learned counsel for the petitioner submits that this court, by order dated 01.09.2014 in Writ Petition No.9772/2013 directed the CGIT-cum- Labour Court to decide the Reference as early as possible within 8 months from the date of order. He submits that thereafter the matter appeared before the CGIT on several occasions. But the CGIT failed to decide the same within stipulated time as directed by this court. He submits that neither this court, nor the Tribunal cum Labour Court informed the petitioner about the extension of time to decide the matter. Hence, no one was present when the matter was taken up for final hearing. He submits that as soon as they learnt about passing of Award, they filed the present Writ Petition for setting aside the *exparte* award. He submits that being *exparte* award, the Tribunal has not considered any evidence brought by the petitioner on record. Hence, same is required to be set aside and/or remand to the Tribunal for deciding on its own merits.

15. The learned counsel for the petitioner submits that in the present proceedings the respondent entered into an agreement dated 01.01.1997 with Munir Mitha, Fateh Mitha and Razia A. Mitha for conducting the said outlet in the name and style M/s.Chagan Mitha & Co. He submits that in fact, the respondent, by agreement dated 01.01.1977 was conducting the business of outlet in partnership with M/s. Chagan Mitha & Co. In support of this contention, the learned counsel for the petitioner relies on clause, 13, 14, 43, 46 of dealership agreement dated 01.01.1977 which read thus:

*“13. The corporation has installed at its own expense at and under the premises the outfit described in the second schedule*

hereunder written. The corporation may install at the premises such other apparatus and equipment from time to time as it may deem necessary for the efficient working of the retail outlet and all such other apparatus and equipment shall be deemed to be and form part of the outlet. Provided that the corporation shall have the right to remove any particular item or items of apparatus or equipment comprised in the outfit without assigning any reason therefor.

14. The corporation will maintain the outfit in proper working condition at its own expenses.

43. The dealer shall indemnify and save harmless the corporation from all losses, damages, claims, suits or actions which may arise out of or result from any injury to any person or property or from violation of any statutory enactments, rules or regulations or other written orders or other laws or caused by or resulting from non observance by the dealer of the provisions of this agreement.

46. The dealer shall be solely responsible for and shall himself bear all expenses of and in connection with the dealership business, including administration, office insurance premia, telephone, license or other fees, rates, taxes and all other charges and outgoing of every kind connected with the said business and shall pay the same promptly and without fail. The dealer shall also be solely responsible for any breach or contravention by himself, his servants or agents or any laws, rules, regulations or bye-laws passed or made by the central and/or State Government and/or municipal local and/or other authorities as may be applicable from time to time to the business including, without prejudice to the generality of the foregoing the concerned authorities respectively appointed under the Petroleum Act, Payment of Wages Act, Shops and Establishments Act, Factories Act and the Workmen's Compensation Act or any statutory modifications or re-enactments of the said statutes or rules and the corporation shall not be responsible in any manner for any liability arising out of non compliance by the dealer with the same. The dealer shall at all times indemnify and keep indemnified the corporation against all actions proceedings, claims and demands made against it by the Central and/or State

*Government and/or Municipal, Local and/or other Authorities and/or by any customer of the product and/or by any other third party as a result or in consequence of any act or omission of whatsoever nature of the dealer, his servants or agents, including without prejudice to the generality of the foregoing, any accident or loss or damage arising out of the storage, handling and/or sale of the products or attributable to the use of the said premises for the aforesaid purposes whether or not such act or omission or accident or loss or damage was due to any negligence want of care or skill or any misconduct of the dealer, his servants or agents.”*

16. Some time in May 2005 said out-let was handed over to new dealer Mumbai Tax Association's Consumer Society. Same was run by them upto June 2010. In between, the petitioner Union filed justification demand before the Assistant Commissioner and thereafter the Reference was made. During pendency of the Reference, the respondent removed the petitioner from their outlet and appointed some other person.

17. The learned counsel for the petitioner submits that bare reading of agreement dated 01.01.1977 between respondent and M/s. Chagan Mitha & Co. shows that both of them were running the petrol pump on partnership basis. Therefore, the Tribunal ought to have held that the petitioner's members were working directly with the respondent and therefore, they were entitled to all the benefits like permanent employees of respondent. He submits that the respondent never denied that the petitioner's members were working on the said petrol pump for more than 20 years. He submits that the respondent failed to consider the petitioner's members' demand for granting them status of permanent employee and the benefits to that effect. In support of this

contention, the learned counsel for the petitioner relies on the apex court judgment in ***G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union*** in Civil Appeal No.4755/2001 dated 16.05.2008. He submits that in this authority, the apex court directed the ONGC to grant status of permanent employee to the worker, labourer who were working with them on contractual basis. He mainly relies on para 18 of the said judgment which reads thus:

*“18. The pleadings in the present matter would show that the core issue before the Tribunal was with regard to the status of the employees as employees of the ONGC or of the contractor and that it was this issue simplicitor on which the parties went to trial. Mr. Dave's argument with regard to the decision of the Tribunal being beyond the reference, is to our mind, and in the circumstances, hyper technical. In this background, we feel that the judgments cited by Mr. Dave pertaining to regularization of contract labour are not applicable to the facts of the case.”*

18. The learned counsel for the petitioner submits that the Tribunal failed to consider the fact that the competent authority issued license for petrol pump in the name of the respondent and the petitioner's members were working on the said petrol pump. That itself shows that they were working as per the terms conditions of the respondent. The learned counsel for the petitioner submits that even the license was issued by the Government in the name of respondent HPCL to carry on out-let. He submits that the petitioner's members were working with the respondent for more than 20 years. He submits that the CGIT failed to consider these facts at the time of deciding the relationship of the employer and employee between the petitioner and the respondents.

19. The learned counsel for the petitioner also relied on the judgment of the apex court in the matter of *Steel Authority of India Ltd. Vs. National Union Water Front Workers & Ors. in Appeal (Civil) 6009-6010/2001 dated 30.08.2001*, wherein it is held that where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be a master and servant relationship between the principal employer and the workman. He submits that in the case in hand, the petitioner's members were working with the respondent on their outlet for last more than 20 years. He submits that the respondent may appoint different dealers for different period. But the petitioner's members' employment required to be considered with the principal i.e. respondent. He submits that these facts were not considered by the Tribunal according to law and therefore, the Award passed by the Tribunal is required to be set aside answering the Reference in favour of the petitioner.

20. On the basis of these submissions, the learned counsel for the petitioner submits that this Hon'ble Court be pleased to allow the Writ Petition by setting aside the impugned Award dated 29.02.2016 passed by the learned Presiding Officer, CGIT cum Labour Court No.1, Mumbai in Reference (IDA) No.19/2007 and answer the Reference in favour of the petitioner. He submits that the respondent may be directed to pay arrears of wages and other benefits to the petitioner as they were permanent employees with them. He submits that if the petition is not allowed irreparable loss and injury will be caused to the petitioner.

21. The learned counsel for the respondent made following legal submissions :

a. *After remand, the respondent filed its written statement in the Reference.*

b. *The respondent contended that there was no employer-employee relationship between the concerned persons and itself. There are detailed pleadings from paragraphs 30 to 41 of the written statement on the absence of employer-employee relationship between the concerned persons and the respondent.*

c. *The Union did not file any rejoinder to the written statement refuting the contentions of the respondent despite the fact that under sub rule 4 of Rule 10B of the Industrial Disputes (Central) Rules 1957 the Union had a right to file a rejoinder to the written statement filed by the employer.*

d. *The Union did not lead any evidence to prove and/or justify its demand.*

e. *The averments made in the written statement have been proved through the evidence of the respondents witness. The evidence was unchallenged as the witness was not cross examined by the Union.*

f. *There is no relationship of employer and employee between the concerned persons.*

g. *Renuka Enterprises employed its own manpower and the respondent No.1 had no say in the matter.*

22. The learned counsel for the respondent vehemently opposed the Writ Petition. He submits that though the petitioner specifically intimated the date of hearing to the petitioner's advocate in writing, they failed and neglected to remain present when the matter was heard on its own merits.

23. The learned counsel for the respondent submits that in the present proceedings the respondent used to appoint dealers to carry on business on their outlet from time to time. He submits that as per the terms and conditions of those dealership agreement, the dealers used to appoint their employees/workers. Hence, there is no question of any relationship between the petitioner and the respondent as employer and employee.

24. The learned counsel for the respondent submits that though the respondent placed on record of dealership agreement, the petitioner failed and neglected to challenge the validity of the same. Apart from that they failed to raise any objection about the same as sham and bogus in the present pleadings. This itself shows that the petitioner's members have no knowledge about several dealership agreement between different persons. They used to work on the said outlet with dealers. He submits that the respondent specifically made averments in the written statement that the dealer used to pay salary and provident fund contribution of the petitioner directly. These facts were not denied by the petitioner in any proceedings. This itself shows that they accepted that their appointment was made by the dealer from time to time. He submits that the Tribunal framed issue No.2 to the effect that, “whether the petitioner's members proved relationship of employer and workman between the HPCL and the concerned persons?” He submits that the Tribunal considered the evidence on record holding that the petitioner failed to prove the relationship of employer and employee between the petitioner and respondent.

25. The learned counsel for the respondent in support of this contention relies on the apex court judgment in ***General Manager (OSD) Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal & Anr. 2011 (1) CLR 1 SC***, in which the apex court held that if the labours are supplied by the contractor for a particular period then they cannot claim any benefit of permanent employee. He relies on para 9 of the said judgment which reads thus:

*“9. On a careful consideration, we are of the view that the Industrial Court committed a serious error in arriving at those findings. In regard to the first test as to who pays the salary, it placed the onus wrongly upon the Appellant. It is for the employee to aver and prove that he was paid salary directly by the principal employer and not the contractor. The first Respondent did not discharge this onus. Even in regard to second test, the employee did not establish that he was working under the direct control and supervision of the principal employer. The Industrial Court misconstrued the meaning of the terms ‘control and supervision’ and held that as the officers of Appellant were giving some instructions to the first Respondent working as a guard, he was deemed to be working under the control and supervision of the Appellant. The expression ‘control and supervision’ in the context of contract labour was explained by this Court in International Airport Authority of India v. International Air Cargo Workers Union 2009 (13) SCC 374 thus:*

*If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer; if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.*

*The principal employer only controls and directs the work to be done by a contract labour, when such labour is*

*assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.*

*Therefore we are of the view that the Industrial Court ought to have held that first Respondent was not a direct employee of the Appellant, and rejected the application of the first Respondent.”*

26. The learned counsel for the respondent also relied on the judgment of this court in ***Hindoostan Spinning and Weaving Mills, Mumbai Vs. Hindustan Crown Mills Siddhivinayak Kamgar Karmachari Sangharsha Sanghatana and Ors. 2008(1) LLJ 243***. He submits that in this authority, it is held that statement and pleadings are admissions against the party making them. He submits that in the case in hand, the petitioner failed and neglected to lead any evidence in spite of several opportunities granted by the Tribunal. Hence, there is no question of considering the objection raised by them in the Writ Petition. He relies on paragraph 65 and 67 of the said judgment which read thus:

*“65. With the aforesaid rival pleadings on record, the parties were permitted to lead oral as well as documentary evidence. However, before proceeding to examine the rival evidence, looking to the nature of defence taken, it is necessary to examine legal position based on law of evidence with regard to the number of admissions given and burden of proof incurred by the Union.*

67. *The statements in pleadings are admissions against the party making them. In Union of India v. Moksh Builders etc. [1977]1SCR967, the Supreme Court cited a statement from its own earlier decision to the effect that an admission is substantive evidence of the fact admitted and when properly proved is relevant irrespective of the fact whether the maker approved it in the witness box or not and when he appears; whether he was confronted with those statements or not in case he made a statement contrary to his admission. Admission so far as facts are concerned binds the maker of the admission. Admission may be oral or contained in documents, e.g. Letters, depositions, affidavits, complaints, written statements, deeds, receipts etc. Admissions in pleadings are judicial admissions. They can be made foundation of rights. Admission in the written statement filed in some other case have been held by the Supreme Court to be an important piece of evidence and, therefore, entitle to its due weight though like all other admissions, it is neither conclusive nor irrefutable. (see Shankar v. Vithalrao, AIR1989SC879. In the case on hand, admissions are given in the written statement filed in the very case.”*

27. The learned counsel for the respondent also relied on the judgment of this court in **Somnath Tulshiram Galande Vs. Presiding Officer, IInd Labour Court, Pune & Ors. 2008 1 CLR 656**, wherein a Division Bench of this court held that the court cannot disturb the finding of facts in Letters Patent Appeal unless and until same are against the well settled principles of law. He relies on paragraph Nos.7 and 8 which read thus:

*“7. This was the documentary and oral evidence relied upon by the labour Court to arrive at a finding that the appellant did not satisfy the ingredients of being a 'workman' and thus was incapacitated from raising an industrial dispute. It is a settled principle of law that the onus lies upon the workman to prove that he satisfies the essential ingredients of being a workman and, therefore, could raise an industrial dispute. This is a mixed question of fact and law and unless the finding arrived at by the Labour*

*Court was patently perverse or contrary to law, this Court could hardly disturb the findings of facts in a letters patent appeal.”*

8. *In the case of All India Reserve Bank Employees' Association and Anr. v. Reserve Bank of India and Anr. (1965) IILLJ 175 SC , the Supreme Court while approving the findings recorded by the Labour Appellate Tribunal in Ford Motor Co. of India Ltd. v. Ford Motors Staff Union held thus:*

*“.....the question whether a particular workman is a supervisor within or without the definition of 'workman' is "ultimately a question of fact, at best one of mixed fact and law..." and "will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factor.”*

28. On the basis of these submissions and the authorities, the learned counsel for the respondent submits that there is no substance in the Writ Petition and same is required to be dismissed with costs.

29. Heard both sides at length. The Tribunal, considering the pleadings on record framed following issues for consideration:

*“1. Whether Hindustan Petroleum Petrol Pump Kamgar Union (hereinafter also referred to as “the second party/Union”) has locus standi to prosecute the present Reference and file statement of claim on behalf of the persons mentioned in the Order of Reference (hereinafter also referred to as the “concerned persons”)?”*

*2. Whether any relationship of Employer and Workmen between Hindustan Petroleum Corporation Ltd. (hereinafter also referred to as “the first party/Management” or “the first party/Company”) and the concerned persons have been proved by the second party/Union ? If not, its effect?*

*3. Whether the demand of the concerned persons for*

*regularization of their services in the services of Hindustan Petroleum Corporation Limited (i.e. the first party/Company” or “the first party/Management”) at par with the direct employer-employees of Hindustan Petroleum Corporation Ltd. (i.e. “the first party/Company” or “the first party/Management”) is justified and proper ?*

4. *To what relief, if any, the second party/Union is entitled?”*

30. It is to be noted that, though the advocate for the respondent issued notice dated 19.11.2015, the petitioner failed and neglected to remain present before the Tribunal at the time of hearing.

31. In the present proceedings the trial court framed issues about the demand of the petitioner's members for regularization of their services with HPCL at par with the direct employer-employees of HPCL. It is to be noted that, in the present proceedings though the petitioner relied on several dealership agreements, made averments that the respondent was doing business with M/s. Chagan Mithra & Co. in partnership, but they failed and neglected to place on record any document showing that the respondent was doing business with M/s. Chagan Mithra & Co. in partnership. It is to be noted that the dealership agreement executed between the respondent and M/s. Chagan Mithra & Co. clearly shows that M/s. Chagan Mithra & Co. was acting as a dealer on behalf of the respondent with certain and conditions for a particular period.

32. Thereafter the respondent appointed various dealers for running the said petrol pump. Apart from that the petitioner failed to place on record any documentary evidence to show that the salary was paid by the respondent company to them. The respondent company placed on

record the fact that from time to time the dealer used to pay salary of the petitioner's members and also the provident fund. This itself shows that there was no relationship between the petitioner's members and the respondent as the employer-employees. These facts were correctly decided by the trial court. If the petitioner failed to prove the relationship of employer-employee with the respondent company, there is no question of granting them any relief as per issue No.3 framed by the trial court in the present proceedings.

33. In the present proceedings, the respondent made an application for *exparte* hearing on 10.12.2015 which was also served on the advocate for the petitioner. In spite of service on the petitioner, they failed and neglected to remain present. Hence, the Tribunal passed order on 10.12.2015 to proceed with the matter *exparte*. The respondent filed their affidavit of evidence as well as documents.

34. Bare reading of the dealership agreements executed by the respondent in favour of the dealers, shows that the dealer used to engage the services of petitioner's members from time to time. Apart from that the dealer used to pay salary as well as provident fund contribution. This itself shows that the respondent never engaged the petitioner's members as their employee on the said outlet. These facts were considered by the Tribunal at the time of deciding issue No.2 in outlet. Apart from that at the time of hearing the Writ Petition, the petitioner failed to produce any other document to show the relationship of employer and employee between them and the respondent. Therefore, the finding given by the Tribunal on the issue

No.2, does not require any interference at this stage.

35. During pendency of the proceedings before the Tribunal, the Union filed a contempt petition being No.130/2015 before this court alleging that the respondent had committed breach of order dated 01.09.2014 passed by this court in Writ Petition No.9772/2013. The Union contended that the respondent committed a contempt w.e.f. 01.10.2014 by allowing the service provider to deploy his own man power. This court dismissed the contempt petition holding that no case was made out for initiating any contempt proceedings and Union was at liberty to adopt appropriate proceedings in case if they are of the opinion that during pendency of the proceedings before the Tribunal, the respondents have changed service conditions.

36. Considering the fact that in spite of giving sufficient opportunities to the petitioner before the Tribunal they failed and neglected to remain present at the time of final hearing and several dealership agreements were executed by the respondent with the dealers clearly show that the petitioner failed to make out any case to answer the Reference in their favour.

37. Hence, I do not find any substance in the Writ Petition. Same stands dismissed. No order as to costs.

**(K.K. TATED, J.)**