

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 19 OF 2015
IN
LETTERS PATENT APPEAL NO. 389 OF 2011
IN
WRIT PETITION NO. 3260 OF 2011**

SARVA SHRAMIK SANGH **..Applicant**

IN THE MATTER OF

INDIAN OIL CORPORATION **...Petitioner**

Vs.

SARVA SHRAMIK SANGH **..Respondent**

**Ms. Nayana Buch, a/w Mr. S. K. More for the Applicant.
Mr. K. P. Anilkumar for Respondent**

**CORAM : R. M. SAVANT, J &
SMT. SADHANA S. JADHAV, J.
DATE : 14th JUNE, 2017**

P.C.

1 The above Civil Application has been filed invoking section 17-B of the Industrial Disputes Act, 1947. The applicant by the Civil Application seeks to espouse the cause of about 11 workers out of 21 workers in respect of whom a Reference being Reference CGIT No. 2-61 OF 2009 has been made to the Central Government Industrial Tribunal ('CGIT' for short). The above Letters Patent Appeal has been admitted on 09/01/2012 and is pending hearing and final disposal.

2 The genesis of the proceedings which have come to this Court lies in the Reference made under Section 10 (1) of the Industrial Disputes Act, 1947 in respect of the dispute which has been raised by the Applicant Union on behalf of the said 21 workers to the effect whether the said 21 workers can be said to be employees of the Indian Oil Corporation (IOC). It is an undisputed position that the said 11 workers who are amongst the 21 workers were contract labour engaged through a canteen contractor. The refusal of the Central Government to make a reference resulted in the applicant filing a Writ Petition in this Court bearing No. 833 of 2004 wherein a Division Bench of this Court [Coram: A. P. Shah as His Lordship then was, and A.S. Oka, JJ.] had passed an order in terms of the Minutes of the Order. Though the demand was raised on behalf of 21 workers but before Division Bench, the claim made was only in respect of 16 workers. The gist of the said order was that the workers would be continued till the decision of the reference and that they would be paid wages as notified from time to time under the Minimum Wages Act, 1948 as applicable to a club/canteen without prejudice to the rights and contentions of the parties and without admitting any liability of the Respondent no. 1 towards them and without prejudice to the rights of the IOC to take disciplinary action for any misconduct. The issue as regards the refusal of the Central Government to make a reference under section 10 (1) of the I.D. Act again engaged the attention of the Apex Court in Civil Appeal No. 2423 of 2009. The Apex Court

on the basis of contentions of the parties, formulated two questions, in the context of the present Civil Application. Question no. (ii) is relevant which is reproduced herein under:

“Whether the decision of the Central Government refusing reference requires interference?”

3 The said question was answered by the Apex Court. The Apex Court found fault with the refusal of the Central Government to make a reference on the ground that workers were not employees of the IOC, when according to the Apex Court the dispute that required reference is whether workers should be considered as employees of the IOC. The Apex Court accordingly directed the Central Government to reconsider the matter in the light of the observations made by the Apex Court and take appropriate decision.

4 It is pursuant to the said Judgment and Order dated 13/04/2009 of the Apex Court that reference in question which is now pending adjudication of the CGIT has been made. It seems that pending the said reference, the contract was not renewed as a result of which services of the 21 workers stood terminated. This resulted in Applicant herein filing an application before the CGIT for interim reliefs in the said Reference proceedings. The said application came to be allowed by the CGIT by an order dated 16/03/2011 and the said 21 workers were directed to be reinstated. The said order was challenged by the

IOC by filing a Writ Petition in this Court being Writ Petition No. 3260 of 2011. The said Writ Petition came to be dismissed by a learned Single Judge of this Court by order dated 02/12/2011 and thereby the interim order passed by the CGIT came to be confirmed. The Respondent IOC thereafter has filed the instant Letters Patent Appeal bearing No. 389 of 2011 challenging the said order. The said challenge was on the ground that the interim relief in the nature granted by the CGIT could not have been granted. As indicated above, the above Letters Patent Appeal has been admitted in the year 2012. The instant Civil Application has been filed in February 2015 i.e. a good three years after the admission of the LPA. The fact that the said 21 workers are contract labour cannot be disputed. In support of the claim under section 17-B, reliance is sought to be placed on the order of the Division Bench wherein the Division Bench has passed an order in terms of the Minutes of Order whereby Respondent had agreed to not to terminate the services of 16 workers pending reference.

5) The said concession given by the respondent IOC in our view would not entitle the applicant to file an application under section 17-B of the I.D. Act as the status of all the 21 workers is yet to be adjudicated in the Reference.

6) In our view, therefore, section 17-B of the I.D. Act is not available for invocation at the behest of the workers whose status is yet to be decided. If

there is a breach or violation of the order passed by the Division Bench of this Court as recorded in the Minutes of the Order, the same would give rise to a separate cause of action but would not entitle the Applicant to invoke Section 17-B the I.D. Act so as to claim wages from the respondent IOC.

7) We are fortified in our view by the Judgment of a Division Bench of this Court reported in 2011 (4) Mah.L.J. Page 120 in the matter of **Hiru B. Barot Vs. IPCA Laboratories Ltd, Silvasa and another** in which in almost similar facts, the Division Bench has held that section 17-B of the I.D. Act could not be invoked.

8) In that view of the matter, no relief can be granted to the Applicants. The Civil Application is accordingly rejected.

9) Both the learned Counsel are agreeable to the expeditious disposal of Reference of CGIT No. 2-61 of 2009. This Court hopes and trusts that the said Reference would be decided expeditiously.

[SMT. SADHANA S. JADHAV, J.]

[R.M.SAVANT, J]