

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5045 OF 2018**

M/s. Oil & Natural Gas Corporation Ltd. ..Petitioner

Versus

Union of India and others ..Respondents

**Mr. S. K. Talsania, Senior Advocate I/by Mr. R. V. Paranjape,
Advocate for the Petitioner.**

**Mr. P. M. Palshikar a/w Mr. C. N. Chavan, Advocate for
Respondent Nos.1 & 2.**

Mr. S. Mishra, Representative of Respondent No.3 is present.

**Mr. Sanjay Singhavi, Senior Advocate for Respondent – Union/
Intervenors a/w Mr. F. R. Mishra – Maharashtra Sanghatit
Asanghatit Kamgar Sabha.**

CORAM : B. R. GAVAI &

N. J. JAMADAR, JJ.

DATE : 29th JANUARY, 2019

P.C.

1] The Petition challenges the order dated 18th September 2017, vide which the Central Government has referred the dispute for adjudication by the learned Central Government Industrial Tribunal (herein after referred to as “CGIT”). The order of reference is passed on 18th September 2017.

2] We have heard Mr. S. K. Talsania, learned Senior Counsel for the Petitioner, Mr. S. Mishra, representative of Respondent No.3 and Mr. Sanjay Singhavi, learned Senior Counsel who appears on behalf of intervenors.

3] Mr. S. K. Talsania, learned Senior Counsel submits that as a matter of fact, a settlement has been arrived by the Petitioner with the representatives of the various Unions. He therefore submits that once a settlement is arrived at between the employer and the Unions representing the majority of the employees, the said settlement is binding upon all other employees. Mr. S. K. Talsania, learned Senior Counsel relies on the judgment of the Hon'ble Apex Court in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and others¹ in support of a proposition that a settlement of dispute between the parties themselves is to be preferred. Learned Senior Counsel further submits that if there are any allegations with regard to settlement being reached by fraud etc., it can be a matter of separate dispute. However, for the same demands, which already form part of the settlement, a reference cannot be made.

4] Mr. Sanjay Singhavi, learned Senior Counsel and Mr. S. Mishra, representative of Respondent No.3 submit that the Petitioner has not approached this Court with clean hands. It is submitted on their behalf that the alleged settlement is not a

1 (2000) 1 SCC 371.

settlement between the Petitioner and the Unions of the employees. It is submitted that the settlement as a matter of fact is between the employees and the contractors and that the Petitioner is only consenting party to the said settlement. It is further submitted that the Petitioner has approached this Court only after pleadings of the parties were complete and matter is kept for recording evidence of the Petitioner.

5] Mr. Sanjay Singhavi, learned Senior Counsel further submits that the settlement which is entered into between the contractors of the Petitioner on the one hand and some of the other Unions on the other hand cannot be binding on Respondent No.3 Union and the intervenors. He submits that Unions with whom settlement is entered are having minuscule membership and majority of the employees are with the Unions represented by Respondent No.3 and the intervenors.

6] Perusal of the material placed on record would reveal that initially a notice was issued by the Respondent No.3 on 26th August 2016 for direct actions i.e. work as per rules, Demonstrations, Protests, Strike etc. under ID Act. The demands

made in the notice are as under :-

- “1. To have uniform policies for all the workers irrespective of the contracts.
2. To get the MOU renewed with Pay Revisions w.e.f. 01.01.2008.
3. To request M/s. ONGC Management to Release an Advance minimum @ Rs.50,000/- per worker at the Eve Of of the auspicious Lord Ganesh Puja as a good gesture & Token to respect to the workers, with the conditions of adjustment of the advance with the Arrears to be arose after impending Pay Revisions.”

7] Immediately after the notice was issued by the Respondent No.3, the Petitioner has addressed a communication to the Chief Labour Commissioner pointing out therein that the Petitioner has been declared as Public Utility Service. It is further mentioned that threat by the Respondent No.3 will cause great loss to the exchequer and therefore, a prayer has been made for initiating conciliation proceedings.

8] It is further to be noted that in pursuance to the communication addressed by the Petitioner to the Chief Labour Commissioner, a Conciliation Officer vide his notice dated 15th September 2016 kept the matter for conciliation on 19th September

2016 at 12:30 hrs. Perusal of the minutes would reveal that in the said meeting, the representative of the Petitioner as well as the Respondent No.3 were directed to do certain compliances. However, it appears that on same day i.e. 19th September 2016 at 15:00 hrs., settlement was entered into by the representative of the certain Union and ONGC and 57 contractors of the ONGC. It is to be noted that though the said settlement was to be arrived on the same day, the Petitioner neither informed the Conciliation Officer in the present proceedings about such a settlement being arrived at. The conduct of the Petitioner in not bringing to the notice of the Conciliation Officer in the present proceedings, the settlement which was to arrive within hours with representative of certain Unions before some other Conciliation Officer, in our considered view is not a conduct defeating the employer who is an organ of State and State within the meaning of Article 12 of the Constitution of India.

9] It is further to be noted that though the Respondent No.3 and the Petitioner have completed their pleadings before the learned CGIT and though there were rounds of litigations, which

reached upto this Court arising out of the interlocutory orders, the Petitioner has chosen to move this Court for ad-interim orders only after the matter was kept for their evidence. We are of the considered view that having consciously submitted to the jurisdiction of the learned CGIT, it is not now open for the Petitioner to complain at such a belated stage that the reference was not warranted.

10] Apart from that the question as to whether the settlement arrived at between some of the the Unions at one hand and the Petitioner's contractors on the other hand is binding on the Respondent No.3 and intervenors, can be very well looked into by the learned Tribunal in the proceedings before it.

11] In that view of the matter, we are not inclined to entertain the present Petition in its extraordinary jurisdiction under Article 226 of the Constitution of India. The Writ Petition is therefore rejected.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]