

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.230 OF 2018

Bharat T. Lokhande

.. Petitioner.

Vs.

Bharat Petroleum Corporation Ltd.

.. Respondent.

Mr.Jaiprakash Sawant for the Petitioner.

Mr.Ratnakar S. Pai with Anand R.Pai with Aditya S. Bhat i/b M/s.Sanjay Udeshi
& Co. for the Respondent.

CORAM : A.K. MENON, J.

DATED : 27TH FEBRUARY, 2019

P.C. :

1. The challenge in this petition is to the award dated 27th April, 2017 whereby the reference came to be decided against the petitioner. The factual background in brief is as follows : The petitioner was engaged as a Marfatia Contractor by the respondent corporation on or about 27th February, 1989. The contract in question sets out numerous tasks which the petitioner was required to perform. In addition to the tasks listed in clause 2 of the contract, there were general terms and conditions which were deemed to be part of the contract. The contract was for a fixed period of time.

2. It is the case of the petitioner that he has been working with the respondent ever since the first contract dated 2nd February, 1989 was

awarded. The contract describes the work of the petitioner as “miscellaneous part time jobs”. At end of contractual period, the petitioner had sought renewal of contract and conveyed his willingness to continue on the same terms and conditions. It appears that the contractual arrangement continued till December 31, 2004 when the contract was terminated. The emoluments payable to the petitioner were paid and accepted by the petitioner. In the meantime the petitioner has raised dispute and he had claimed permanency. The Reference was made in the following terms :

“Whether the action of the Management of Bharat Petroleum Corporation Ltd., Marketing Division, Mumbai in terminating the services of Shri Bharat Lokhande w.e.f. 1.1.2005 is justified ? If not, what relief, Shri Bharat Lokhande is entitled to ?”

3. The parties were then heard and the impugned order came to be passed after framing following two substantial issues.

“(i) Whether the second party Bharat Lokhande was a workman within the definition of section 2(s) of the Act or he was a Contractor ?

(ii) Whether the termination of his services was illegal/irregular ?”

4. Mr.Sawant, learned counsel appearing for the petitioner submitted that the impugned order is bad for non consideration of the preliminary issue as to whether the petitioner was a “workman” under section 2(s) of the Industrial Disputes Act and in the alternative, whether he was a contractor. Mr.Sawant has invited my attention to the reasons given in the impugned award and he submits that there is no discussion whatsoever on section 2(s). He therefore submitted that the impugned award has failed to consider the petitioner's case seeking permanency.
5. Issue no.1 required the CGIT to consider whether the petitioner was a workman or a contractor. There is long discussion on the arrangement between the parties. The Tribunal has come to conclusion that there were distinguishing factors which clearly establishes the facts specifically after considering cross examination of the petitioner. As part of his cross examination the Tribunal found that there is an admission that he was given the contract as a result of the personal relationship he had with the respondent corporation. This admission has been pressed into service in the impugned award.
6. Furthermore, when confronted with numerous letters in which he has sought continuation as Marfatia contractor, the allegations of coercion or duress or inducement were not raised. In these

circumstances the Tribunal concluded that the contractual arrangement continued from year to year and therefore held that the petitioner was a contractor. In my view the finding of the Court cannot be faulted. The award is based on sound reasoning and admissions on behalf of the petitioner himself. In that view of the matter nothing is found to be perverse. The challenge therefore cannot succeed hence I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No costs.

(A.K. MENON,J.)