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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on: 30.01.2020

+ **W.P.(C) 7645/2016 & CM APPL. 31493/2016**

INDIAN OIL CORPORATION LIMITED Petitioner

Through: Mr. V.N. Koura, Adv. with
Ms. Paramjeet Banipal, Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Parvinder Chauhan, Adv. with
Mr. Nitin Jain, Mr. Rahul Adhana, for R-9
Mr. Rajesh Gogna, CGSC for UOI.
Ms. Arti Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition under Article 226 and 227 of the Constitution of India challenges the legality and validity of the reference dated 10.05.2016 issued by respondent no.1 in purported exercise of power conferred by clause (d) of sub-section 1 and under sub-section 2A of section 10, Industrial Disputes Act, 1947.

2. The learned counsel for respondent no.1 refers to the dicta of the Supreme Court in *D.P. Maheshwari vs. Delhi Administration & Ors.* (1983) 4 SCC 293, to contend that a reference by the Government under the

Industrial Disputes Act, 1947, ordinarily, ought not to be interfered with by the High Court under Article 226 of the Constitution of India. The petitioner contends, the said judgment is inapplicable in the facts of the present case because the Supreme Court upheld that award of learned Industrial Tribunal to the effect that each of the 1100 employees were contractual. Therefore, in the case of a contractual employee, there being no employer-employee relationship between the parties, there could not possibly be an industrial dispute for which a reference was made in the present case.

3. The learned counsel for respondent no.1 further relies upon the dicta of the Supreme Court in *Steel Authority of India Ltd. vs. Union of India & Ors.* (2006) 12 SCC 233, to state that in the circumstances where there is a doubt about the nature of employment i.e. a sham screen or defence is raised by the management that the workers are under contractual employment or not, then an industrial reference would be resorted to, to examine whether the contract is sham or not. He submits that even if such reference is made, the High Court may not exercise its jurisdiction under Article 226 of the Constitution of India. However, the Court would note that it has already been determined that since there is no employer-employee relationship between Indian Oil Corporation Limited and the contractual workers as recorded hereby, therefore, the reference to said judgment is inapplicable to the facts of the present case.

4. Mr. Koura, the learned counsel for the petitioner submits that the issue whether the labourers were on a contract or were employees of the petitioner is settled by the Supreme Court's judicial imprimatur, upholding

the opinion of the award passed by the learned Industrial Tribunal, wherein it *inter alia* held as under:-

“

Hence there is no substance in the objection of the management and it is held that this award will cover the entire contract labour employed at the Mathura Refinery of the Indian Oil Corporation.”

It further held:-

“

Hence, I find that no merit in the contention of the management and it is held that the contract labour employed in the Marketing Division is also covered by the terms of the present reference.”

....

17. In the light of the forgoing discussions it is held that contract labour employees in the Mathura Refinery are in law not employees of the Indian Oil Corporation.”

5. In its award, the Industrial Tribunal has referred to the workmen who later were petitioners before the Supreme Court; they were 400 + 48 workmen. The entire award was upheld. The respondents herein are identically placed to those contractual workmen. Their case could not be better than that of the other workmen who have been held to be contractual. The respondents too will have to be dealt with equally. Therefore, as held by the Supreme Court in the other case, the respondents are nothing more than contractual employees. Additionally, they were getting statutory benefits as per law. The reference was made apropos persons who are not even on the Temporary Rolls of the petitioner; they are working for the

petitioner through a contractor, hence, they are effectively employees of the contractor.

6. Therefore, the industrial reference in these peculiar facts apropos regularization of contractual workmen by the corporation, is untenable. Accordingly, the reference is quashed and is set aside.

7. The petition is allowed and disposed off in the above terms.

NAJMI WAZIRI, J

JANUARY 30, 2020/kb



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