IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1136 OF 2021

Petroleum Workmen's Union & Ors. … Petitioners
V/s.
Union of India & Ors. … Respondents

Mr.Sanjay Singhvi, Senior Counsel with Mr.Rahul Kamerkar, Advocate for the Petitioner.
Mr.Neel Helekar with Mr.A.A.Garge, Advocate for the Respondent Nos.1 and 2.
Mr.R.S.Pai, Advocate with Mr.Anand Pai, Mr.Akshay Udeshi, Mr.Kaushal Udeshi i/b M/s.Sanjay Udeshi and Co. for Respondent No.3.

CORAM : UJJAL BHUYAN AND
MADHAV J. JAMDAR, JJ.

DATE OF RESERVE : 13th JULY, 2021
DATE OF PRONOUNCEMENT : 17th JULY, 2021

<u>JUDGMENT</u> : (Per Madhav J. Jamdar, J.)

1. In this Writ Petition filed under Article 226 of the Constitution of India, the Petitioners, who are the Unions representing workers of Respondent No.3 – Bharat Petroleum Corporation Ltd., have sought for the following reliefs :

> "34. The Petitioners therefore pray that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature or Mandamus or any other appropriate writ, order or direction :
> (A) Referring to the Ld. Industrial Court the Demands mentioned in the FoC, namely concerning –
>
> (i) Privatization
> (ii) 95% DA neutralization and 12% Fitment

(iii) Pay Scale Maxima of Rs. 1,36,000/- for Grade 9
(iv) Clause 1(f)
(v) Enhanced Roles & Responsibilities
(vi) Manning to be Management prerogative
(vii) Abolition of Chargehand position (Highest promotional post in the workmen category)

(B) Directing the Respondent No. 3 to allow the Petitioners to accept the terms of settlement given to other workers, without prejudice to the Petitioners' demands, and rights to litigate their demands before the Ld. Industrial Tribunal"

2. Respondent No.3 – Bharat Petroleum Corporation is a Public limited Company registered under the Companies Act, 1956 and is a Government Company under section 617 of the said Act. Respondent No.3 is engaged in business of refining of crude oil and marketing/storage/supply and distribution of petroleum products etc. Respondent No.3 is a Government of India Undertaking and is declared to be a "public utility service" under the Industrial Disputes Act, 1947 (hereinafter referred as "I.D. Act").

3. The Charter of Demands dated 28/11/2019 of the Petitioners was served on Respondent No.3 on 20/12/2019. Respondent No.3 filed Writ Petition No.355 of 2020 before this Court immediately after receipt of the Charter of Demands seeking relief regarding proposed strike of the Petitioners on the ground that the Conciliation proceedings were pending before Respondent No.2 – Chief Labour Commissioner (Central).

4. Similarly, Petitioners raised the Charter of Demands dated 16/10/2020 and immediately Respondent No.3 filed Writ Petition (L) No.5041 of 2020 inter alia seeking relief regarding proposed strike of the Petitioners.

5. Petitioners also filed Writ Petition No.859 of 2020 seeking that

Respondent No.3 – Corporation be directed to refund with 18% interest, the wrongfully deducted 2 days wages and allowances vide order dated 23/12/2019.

6. This Court by consent of parties passed common order dated 23/11/2020 in Writ Petition No.355/2020, Writ Petition No.859/2020 and Writ Petition (L) No.5041/2020 which reads as under :

> "2. Hence, by consent of the parties, the following order is passed :
>
> a. Liberty granted to the parties to file their documents/pleadings before the Conciliation Officer on or before 2.12.2020.
>
> b. Both the parties shall remain present before the Conciliation Officer on 15.12.2020, for hearing.
>
> c. The Conciliation Officer shall conciliate the matters on 15.12.2020 or in any case on or before 15.01.2021.
>
> d. The statement made by the learned Counsel for the Union that the Union has decided to postpone their strike, indefinitely, is accepted.
>
> e. All contentions of both the parties are kept open.
>
> f. The Writ Petitions stand disposed of accordingly."

7. The Conciliation Proceedings were conducted by the Assistant Labour Commissioner (Central-I), Mumbai and Conciliation Officer (hereinafter referred to as "Conciliation Officer") on 23/12/2020, 12/01/2021 and 24/02/2021. The Conciliation Officer on 30/03/2021 sent Failure of Conciliation (FOC) Report to Respondent No.1 - Secretary, Government of India, Ministry of Labour and Employment. The relevant portion of said FOC report is as follows :

> “The Management have made their submissions vide letter dated 31.08.2020 & 22.10.2020 and in compliance of Hon'ble Bombay High Court Order in WP (L)NO. 5041/2020 vide letter MR.HR.ER 3 STRIKE dated 02.12.2020 {Exhibit as Annexure II (i), (ii), (iii)). The Management consistently maintained their stand that the clause 1(f), 95% DA and 12% Fitment benefit and pay scale maxima of Rs. 1, 36,000(later revised offer was Rs. 1, 45, 000/- for Grade 9) is the basic framework of long term settlement and are non-negotiable and they have nothing more to offer on their part. Management also stated that union members have resorted to three strikes since November 2019 during the pendency of conciliation in violation of the provisions of the ID Act, 1947 and blatantly violated the restraining orders passed by the Hon'ble Bombay High Court.
>
> During the conciliation proceedings, the Conciliation officer to resolve the deadlock has given following suggestions which was not accepted by the management: 1. in the proposed clause 1(f) inserting the words Management after discussing with the unions reserve the right to review, modify, alter....... 2. Inserting similar clause like clause 36 of certified standing order in the Memorandum of Minutes after clause 1(f). 3. Exploring options like offering 95 DA and 15% Fitment benefit or 100% DA and 15 % fitment benefit as has been given in other PSUs of oil sector industry such as HPCL, IOCL and ONGC.
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> The matter was finally seized in conciliation and detailed conciliation proceedings were held on 24.02.2021, which was attended by both the parties. As the parties were holding divergent views, it was evident that there is no scope for an amicable settlement in the matter and accordingly conciliation proceedings were concluded treating it as Failure of Conciliation. Copy of the conciliation proceedings dated 24-02-2021 is enclosed as {Annexure-III(i)}.”

8. Although FOC report was submitted on 30/03/2021 to Respondent No.1 – the Secretary, Government of India, Ministry of Labour and Employment, the appropriate Government has not referred the dispute to the Industrial Tribunal as per section 10(1) (d) of the I.D. Act.

9. Mr.Sanjay Singhvi, learned Senior Counsel appearing for the Petitioners submitted that considerable time has passed and inspite of the same Respondent No.1 which is appropriate Government failed to take any steps. He therefore submitted that it is necessary to refer demands mentioned in FOC Report to the learned Industrial Court. However, Mr.Singhvi, learned Senior Counsel fairly pointed out the observations in the minutes of conciliation proceedings recorded on 12/01/2020 regarding the issue of privatisation/disinvestment of BPCL wherein it is observed that as the matter involves policy decision it was outside purview of conciliation and hence not taken up for conciliation. He therefore submitted that the Petitioners shall take up the issue regarding privatisation by approaching appropriate Forum and the same may not be referred to the learned Industrial Court. He submitted that basically three issues i.e. regarding clause 1(f) of the Memorandum of Agreement, 95% D.A. neutralisation and 12% fitment and pay scale maxima of Rs.1,36,000/- for Grade 9 be referred to the learned Industrial Court. He further submitted that Respondent No.3 be directed to allow the Petitioners to accept the terms of settlement given to other workers, without prejudice to the Petitioners' demands and their rights to litigate their demands before the learned Industrial Court. As far as contention that pending dispute before the learned Industrial Tribunal, benefits of terms of settlement given to other workers be provided to the members of the Petitioners. Mr.Singhvi, learned Senior Counsel relied on the following judgments :-

(i) Judgment of this Court reported in ***1984 SCC Online Bom. 374*** equivalent to ***(1987) 54 FLR 727 (Bom.)*** in the matter between ***Grindwell Norton Limited vs. Grindwell Norton Workers Union and Others*** **-** paragraph 7.

(ii) Judgment of the Supreme Court reported in ***(1986) 2 SCC 234*** in the matter between ***Employees of Engineers India Ltd. and Others vs. Engineers India Ltd. and Others*** - paragraphs 2 and 3.

(iii) Judgment reported in ***1992 I.L.L.N. 729*** in the matter between ***C.T.R. Manufacturing Industries Ltd. vs. C.R.T. Trade Union and Others.***

(iv) Judgment reported in ***(2005) 6 SCC 725*** in the matter between ***Hindustan Steel Works Construction Ltd. and Anr. Vs. Hindustan Steel Works Construction Ltd. Employees Union*** - paragraph 8.

10. On the other hand Mr.R.S.Pai, learned Counsel appearing for Respondent No.3 submitted that the decision under section 10(1)(d) of the I.D. Act has to be taken by appropriate Government and, therefore, the Writ Petition seeking Writ of Mandamus to refer the dispute for adjudication to the Industrial Tribunal is not maintainable. He submitted that the issue of privatisation cannot be referred for adjudication. He relied on the Judgment of this Court dated 12/11/2020 passed in ***Writ Petition (Stamp) No.5665 of 2020*** in the matter between ***Federation of All Maharashtra Petrol Dealers Association Vs. The Union of India and other connected Writ Petitions***, and submitted that the issue regarding privatization is policy decision and already decided by this Court in the said Judgment. He relied on the judgment of Supreme Court dated 11-04-2019 passed in Civil Appeal No. 3803 of 2019 in the matter between ***Chairman and Managing Director, The Fertilizers and Chemicals, Travancare Ltd. And Anr. V/s. General Secretary, FACT Employees Association*** and contented that general principle of res judicata applies to an industrial adjudication. He therefore,

submitted that the issue regarding privatization can not be referred to adjudication.

11. He submitted that the Unions representing the workmen in Marketing Division and except the Unions representing the workmen in Mumbai Refinery and Cochin Refinery, all have signed the settlement under section 2(p) read with section 18(1) of the I.D. Act. He submitted that the Petitioners' i.e. Unions representing workmen working in Mumbai Refinery have not signed settlement dated 24/09/2020 and 18/12/2020. He submitted that all unions representing the workmen in marketing division though raised identical charter of demands before the Conciliation Officer, Mumbai, they withdrew their charter of demands and as the Petitioners are not parties to said settlement, they are not entitled for the reliefs sought in prayer clause (b) of the Writ Petition. He submitted that Writ Petition seeking prayer clause (b) is also not maintainable. He submitted that the Writ Petition is premature as the issue regarding reference is pending before the appropriate Government i.e. Central Government which has not yet taken decision on the matter.

12. As far as judgments relied on by Mr.Singhvi, learned Senior Counsel appearing for the Petitioners is concerned, Mr.Pai, learned Counsel appearing for Respondent No.3 submitted that in those cases the dispute was referred to the Labour Court/Industrial Court etc. and the interim relief was refused by the Courts to which reference was made and in the Writ Petitions challenging said orders, directions were issued to give benefit to those Petitioners as given to other employees on the basis of factual position in those cases. He submitted that therefore the Petitioners are not entitled for said relief.

13. Mr.Neel Helekar, learned Counsel appearing for Respondent No.1 submitted that as per his instructions the decision to refer the dispute to the Central Government Industrial Tribunal will be taken within a period of two weeks.

14. By prayer clause (a) of the Writ Petition, reference to the Industrial Court of the Demands mentioned in FOC is sought. Section 10 of the I.D. Act is regarding Reference of Disputes to Boards, Courts or Tribunals. The relevant portion of section 10 is reproduced hereinbelow :

> 10. Reference of disputes to Boards, Courts or Tribunals :-
> (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,--
>
> (a) …. …. ….
> (b) …. …. ….
> (c) …. …. ….
>
> (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:
>
> [(2-A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government.”

15. It is true that there is no limitation prescribed for making reference under section 10 of the I.D. Act. However, it is to be noted that it is the statutory duty of the appropriate Government to make Reference under section 10, if appropriate Government is of opinion that any industrial dispute exists or is apprehended. It is settled legal position that even if there

is no prescribed time limit for performing statutory duty, the same has to be performed within reasonable time. However, the "reasonable time" will depend on the facts and circumstances of each case. Sub-section (2-A) of section 10 in fact provides that an order referring an industrial dispute under section 10 to a Labour Court, Tribunal or National Tribunal shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government. Thus it is very clear that the purpose of section 10 is that if the industrial dispute exists or is apprehended then the same shall be adjudicated expeditiously. It is well established that industrial peace and harmony is the object of the I.D. Act.

16. In the present case, Petitioners submitted the Charter of demands on 28/11/2019 and 16/10/2020. The FOC report is submitted to Respondent No.1 on 30/03/2021. It is important to note that one of the issues mentioned in said FOC report is regarding clause 1(f) of the Memorandum of Agreement. The said clause 1(f) contemplates review of the Memorandum of Agreement, once in every three years, with first such review due with effect from 1st June, 2022. The other issues are regarding D.A. neutralization, fitment and pay scale. Thus, it is clear that there is urgency to decide industrial dispute regarding said issues. It is also to be noted that this Court by order dated 23/11/2020 had directed Conciliation Officer to conciliate on or before 15/01/2021. However, the Conciliation Officer submitted FOC report on 30/03/2021 i.e. after time limit granted by this Court had expired. In any case the fact that this Court prescribed time limit for completing conciliation proceedings and the nature of issues which are subject matter of conciliation shows that the same are required to be adjudicated urgently. In such circumstances when there is failure of Respondent No.1 to take decision in accordance with section 10 of the I.D.

Act within reasonable time, prima facie no fault can be found with the Petitioners in approaching this Court. However, we are not discussing said aspect in detail and we are also refraining ourselves from examining the submissions of Respondent No.3 concerning maintainability of the Writ Petition as Mr.Neel Helekar, learned Counsel appearing for Respondent No.1 made a statement that within a period of two weeks the industrial dispute will be referred to the appropriate Industrial Tribunal.

17. As far as the submission of Respondent No.3 that issue regarding privatization cannot be referred to the Industrial Court, we have already recorded the submission of Mr.Singhvi, learned Senior Counsel that the Petitioners will adopt appropriate proceedings in that behalf.

18. As far as prayer clause (b) of the Writ Petition is concerned, regarding directing Respondent No.3 to allow the Petitioners to accept terms of settlement given to other workers without prejudice to the Petitioners' demands and right to litigate their demands before the Industrial Tribunal, there is substance in the contention raised by Mr.R.S.Pai, learned Counsel appearing for Respondent No.3. He is right in his submission that authorities on which Mr.Singhvi, learned Senior Counsel has relied, in all those cases the dispute was referred to respective Courts by the appropriate Government and in the said Reference, workers/ union had applied for interim relief and the same was refused and, therefore, such workers/unions approached the higher Courts and interim relief was granted by the higher Courts.

19. In any case as Mr.Neel Helekar, learned Counsel appearing for Respondent No.1 made a statement that dispute as set out in F.O.C. report dated 30/03/2021 will be referred to the Industrial Court within a period of

two weeks, we are not considering the merits concerning prayer clause (b).

20. In the result, we partly allow the Writ Petition by passing the following orders :-

(a) We record the statement of learned Counsel appearing for Respondent No.1 that dispute which is the subject matter of FOC report dated 30/03/2021 will be referred to the Central Government Industrial Tribunal within a period of two weeks and we order accordingly.

(b) We further direct that the concerned Industrial Tribunal to decide the application for interim relief within a period of eight weeks from the date of filing of such application seeking interim relief in the said reference.

(c) We clarify that we have not examined the merits of the case and all the contentions of both the parties on merits are expressly kept open.

21. The Writ Petition is disposed of in the above terms. No cost.

[MADHAV J. JAMDAR, J.] **[UJJAL BHUYAN, J.]**