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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	30.09.2021
Pronounced on	:	06.04.2022

CORAM :

The Hon'ble Mr.JUSTICE T.RAJA

AND

The Hon'ble Mrs.JUSTICE T.V.THAMILSELVI

Writ Appeal No.924 of 2013

and

M.P.No.1 of 2013

M/s. Indian Oil Corporation Limited,
(Formerly M/s.IBP Co. Limited),
rep. by its Chief ER Manager

...Appellant

-Vs-

1.The Deputy Chief Inspector of Factories,
Thiruchirapalli.

2.R. Senthilkumar,
S/o. B.Ramu

3.G.K.Packirisamy,
S/o. G.Kalyanasundaram

4.S.Palinivelrajan,
S/o. R.Selvarajan

5.P.Kumar,
S/o. (late) Thangavel

6.T.Pavadaisamy,
S/o. (late) Thangavel

7.K.Venkatesan,
S/o. Krishnan

8.S.Pazhamudhircholai,
S/o. M.Singaravelu

9.A.Panneerselvam,
S/o. Ayyakannu



10.M.Vijayaraju,
S/o. M.Murugaiyan

11.G.Sargunam,
S/o. S.Kothandabani

12.N.Vaduvambal,
S/o. (late) Nagamuthu

13.M.Suresh,
S/o. Murugaiyan

14.R.Selvaraj,
S/o. Rethinam

15.V.Raja,
S/o. L.Veerasingam

16.A.Senthilkumar,
S/o. A.P.Appapillai

17.Deivasigamani,
S/o. Rethinasamy Nadar

C.Parthiban (late)
S/o. R.Chinnaiyan

18.S.Ganesan
C/o. Subramanian

19.Selvam,

20.Ganesan

21.Sampath
S/o. Ramaiyan

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 22.03.2013 passed in W.P.No.46387 of 2002.

Prayer in W.P.No.46387 of 2002: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to calling for the records of the 1st respondent in Application No.2167/2001 quash the order dated 22.10.2002.



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For Appellant : Mr.A.L.Somayaji,
Senior Advocate for
Mr.Anand Gopalan for
M/s. T.S.Gopalan & Co.

For Respondents : Mr.V.N.Subramanian,
for RR1, 2, 4 to 7, 9 to 17,
19 & 20

Mr.T.P.Senthilkumar
for RR 3, 8, 18 & 21

Advocate Commissioner : Mr. K.Raju

J U D G M E N T

(Delivered by Mrs.Justice T.V.Thamilselvi)

The appellant herein is unsuccessful petitioner in Writ Petition No.46387 of 2002 challenging the impugned order passed by learned Single Judge, which confirms the award passed by the 1st respondent, Deputy Chief Inspector of Factories, Thiruchirapalli in Application No.2167/2001 dated 22.10.2002.

2. Background facts in a nutshell are as follows :-

The appellant is an Indian Oil Group Company and having a Cauvery Basin Marketing Terminal at Muttom in Nagapattinam District. The appellant has been engaging contractors for monitoring movement of vehicles and visitors, plumbing service, electrical service, maintenance, upkeep of building and horticulture work and making payments based on the terms of contract and the said contractors would disburse the wages to their workmen/respondents 2 to 22.

3. The contention of the appellant is that the respondents 2 to 22 are not directly working under the Appellant/Petitioner herein and they are the contract workers engaged through contractors viz., M/s. Hi-Tech Services, M/s.P.Puhalendi, M/s. S.M.Constructions for various jobs like office cleaning, cleaning/water washing of tank lorry filling sheds, maintenance and upkeep of various buildings/open areas in the terminal premises. Subsequently, M/s. IBP Land Affected Persons Society was engaged for maintenance and upkeep of various buildings/open areas in the terminal. The appellant company used to make payment to the contractors and they would disburse the wages to their workmen. Hence, the appellant company has no supervisory control over the workmen engaged by the contractors. But, the respondents 2 to 22 filed an application claiming permanent



status before the 1st respondent in Application No.2167 of 2001, inspite of objections by this Appellant Company that there was no employer and employee relationship between them and the respondents 2 to 22, but, the 1st respondent without sufficient materials and without any documentary proof concludes that the respondents 2 to 22 were working under the control of the appellant company, the work carried out by the workmen were perennial in nature, the workmen had worked for 480 days continuously in a period of 24 calender months and they should be made permanent with effect from 11.05.1994 with all consequential benefits.

4. The learned counsel for appellant would contend that the 1st respondent has rendered a perverse findings in holding that there was sufficient evidence to prove that there was existence of contract between the principal employer and the contractor and also committed grievous error in ignoring the statutory records viz., registration certificate showing the appellant company as a principal employer and these respondents 2 to 22 were working under the supervision of the contractor. Hence, the petitioner had filed the Writ Petition to quash the proceedings passed by the 1st respondent. But, the learned Single Judge while passing the impugned order concludes that the order passed by the 1st respondent is not required any interference. Accordingly, the Writ Petition was dismissed.

5. The learned counsel appearing for appellant also pointed out that the learned Single Judge having accepted and concluded that there is an Association, which sponsored candidates to the appellant/petitioner company and also observed that there was an agreement between the appellant and the contractors, but without appreciating those legal aspects, the learned Single Judge erroneously dismissed the Writ Petition confirming the order passed by the 1st respondent. The learned counsel would also submit that as per the decision of the Constitution Bench of Supreme Court reported in 2001 (11) LLJ 1087, contract workmen can claim to be in the employment i.e. principal employer, only by invoking provision i.e. Industrial Disputes Act by raising valid industrial dispute.

6. Per contra, the learned counsel appearing for respondents 2 to 22 would submit that for setting up Cauvery Basin Marketing Terminal at Muttom, near Nagoor, the appellant company acquired the lands in the year 1992 with the promise to pay compensation and also to provide employment to one member in each family who are dispossessed of the land, unfortunately the appellant company provided employment only to nine individuals and after negotiation with District Collector, the appellant company agreed to provide employment to the affected persons initially to the contractors and in pursuance of the said



agreement, the appellant company started engaging the respondents 2 to 22/affected individuals for maintenance, cleaning and other routine works from May 1994 onwards and they continuously worked without any interruption. But, even after lapse of seven years, the appellant company refused to make them permanent. So, they have approached the 1st respondent and after due enquiry on 22.10.2002 the 1st respondent directed appellant IBP company to give permanent status to the respondents 2 to 22 with effect from 11.05.1994 for the reason that they have completed 480 days in a period of 24 calendar month under Sec.3 (1) of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Instead of implementing the said order, the appellant company preferred this Writ Appeal. However, the learned Single Judge rightly dismissed the Writ Petition by affirming the order passed by the 1st respondent.

7. At this juncture, the learned counsel appearing for appellant pointed out that even before the enquiry conducted by the 1st respondent, there was no documentary proof on the side of workers that they were employed directly and they were working under the control of appellant company from the year 1994 onwards. Further, he would also submit that these respondents were engaged in cleaning and upkeep of various buildings/open areas, which are all non-perennial work concerned with petroleum products and even without any proof for their attendance of 480 days, the 1st respondent erroneously held that they were contract workers. While discussing the order, the learned Single Judge also observed that no document was produced on either side, but the benefit of doubt was given in favour of workers as concluded by the 1st respondent. However, the dispute concerned between parties are to be decided by competent Industrial Tribunal and not by the 1st respondent who has no jurisdiction to decide the said issue. But, without appreciating the provision of law properly, the finding given by the 1st respondent and confirming the same by Hon'ble Single Judge is perverse in nature and accordingly prayed for setting aside the same.

8. Heard the learned counsel appearing on either sides and perused the materials available before this Court.

9. During the pendency of Writ Appeal proceedings, when the appellant argued that the operations of the appellant company was permanently stopped and no work was going on, the Respondent denied the same. Therefore, this Court appointed an Advocate Commissioner to find out the operation of the Terminal and the Advocate Commissioner also after visiting the place in question filed his detailed report. On perusal of Commissioner's report, it would reveal that the appellant terminal had suspended its activities from October 2019 and no activities, except house-



keeping, clearing vegetation inside and outside the terminal are being carried out by the contractors. It is also noted that the respondents 2, 4, 7, 9, 10, 13, 14, 15, 20 and 21 are still working as contractual workmen of a private contractor in the said terminal whenever the need arises. Further, the acquisition of lands for CPCL expansion or any new project is under the proposal. Therefore, as on date, the respondents 2 to 22 are working only under the contractor according to the Commissioner's report but, not under the appellant. Ironically, on seeing the award passed by the 1st respondent, without any documentary proof on either side, the respondents 2 to 22 were declared as workers. Besides, no oral or documentary evidence is produced to substantiate their claims that these workers are directly employed or paid by the Appellant Corporation. Therefore, there is no relationship of master and servant established. Hence, their claim cannot be accepted. It is not in dispute that the respondents 2 to 22 are working in the said company from 11.05.1994 onwards, at that time, when there was no IBP Land Affected Persons Society, however as per the contention of appellant company, they were engaged through the contractors and not directly recruited. It is also admitted fact that many of the workers' lands were taken for appellant's company project and now they have become landless persons. Hence, the respondents 2 to 22 claiming permanent status, which was refused by appellant company squarely attracts the industrial dispute. But, the 1st respondent by issuing the impugned order dated 22.10.2002 acted beyond its jurisdiction and the same was wrongly confirmed by Hon'ble Single Judge, hence, the impugned order is liable to be set aside accordingly it is set aside. Therefore, the right forum to decide issue between the parties is Industrial Tribunal, not the 1st respondent. Both parties are directed to approach Industrial Dispute Tribunal for appropriate relief for fresh disposal.

10. In the result, this Writ Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

rpp

To

The Deputy Chief Inspector of Factories,
Thiruchirapalli.



Copy to:

1.The Industrial Tribunal,
Chennai.

2.The Industrial Tribunal,
Trichy.

3.The Regional Labour Commissioner (C)
Chennai.

4.The Labour Enforcement Officer (C)
Trichy.

+lcc to Mr.T.S.Gopalan & Co, Advocate SR. No. 23574

W.A.No.924 of 2013

NR (CO)
PR (25/04/2022)