

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 23964 of 2014
(IA No. CAN 2 of 2023)
Kanailal Sardar & ors.
versus
Indian Oil Corporation & ors.**

For the Petitioners : Mr. Samim Ahmed
Mr. Arka Maiti
Mr. Ambiya Khatun
Ms. Saloni Bhattacharyya
Mr. Arka Ranjan Bhattacharyya
Mr. Aniruddha Singhadvocates

For the I.O.C.L : Mr. Soumya Majumdar
Mr. Victor Chatterjee
Ms. Sarmistha Ghosh
Mr. Tirthankar Nandi ... advocates

Reserved on : 03.08.2023

Judgment on : 10.08.2023

Hiranmay Bhattacharyya, J.:-

1. The petitioners have prayed for issuance of a mandamus to command the Indian Oil Corporation to take a decision for regularisation of their service on the ground that they have been rendering their services uninterruptedly for a long period of time.
2. The petitioners claim that they were appointed on temporary basis as a casual worker at different points of time on and from the year 1982 by the respondent Indian Oil Corporation and they have been performing

the duties of messenger, peon etc. The writ petitioners further claim that when they were pressing their claim for regularisation of their appointment, the respondent authorities have introduced one M/s. L.N.Enterprise as a contractor in order to deprive their legitimate claim for regularisation. The petitioners claim that their salaries are being paid by Indian Oil Corporation and also that the services of the petitioners are being fully utilised by the respondent authorities. The petitioners state that they are doing the job which are being done by the permanent employees.

3. Indian Oil Corporation filed an affidavit-in-opposition denying the allegations contained in the writ petition. It was specifically stated in the said affidavit that the writ petitioners are the employees of L.N.Enterprise, a contractor, engaged by India Oil Corporation. It was further stated therein that L.N.Enterprise has deployed the petitioners in various works in the establishment of the Indian Oil Corporation in discharge of its obligation as a contractor. It was specifically denied therein that the writ petitioners are doing the same nature of job as discharged by the permanent employees of the Indian Oil Corporation.
4. Mr. Samim Ahmed, learned advocate representing the writ petitioners in course of his argument, referred to various documents annexed to the writ petition and other affidavits filed by the petitioner to buttress his submission that Indian Oil Corporation is paying the remuneration directly to the writ petitioners. By referring to some of such documents, Mr. Ahmed contended that there is no existence of the contractor in the name and style of M/s. L.N.Enterprise. He further submitted that Indian Oil Corporation is exploiting the writ petitioners by utilizing their services which are performed by the regular and permanent employees of Indian Oil Corporation in lieu of payment of a meager amount which is far below the salary paid to the permanent employees. In support of his

submission that this court can direct the Indian Oil Corporation to regularise the service of the writ petitioners, Mr. Ahmed placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Nihal Singh and ors. vs. State of Punjab and ors.*** reported at **(2013) 14 SCC 65**. He further submitted that it would be evident from records that the writ petitioners are directly working under the Indian Oil Corporation and, therefore, this Court can pass an order for regularisation. In support of such contention Mr. Ahmed referred to the decisions of the Hon'ble Supreme Court in the case of ***Indian Petrochemicals Corporation Ltd. and another vs. Shramik Sena and others*** reported at **(1999) 6 SCC 439** and ***Chennai Port Trust vs. Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and others*** reported at **(2018) 6 SCC 202**.

5. Mr. Majumder, learned advocate representing the respondents submitted that the issue whether the writ petitioners are employees of Indian Oil Corporation or that of a contractor is a disputed question of fact which cannot be decided by the writ court. He further submitted that the mere fact that wages have been paid to the bank account of the writ petitioners by the Indian Oil Corporation cannot conclusively establish the relationship of master and servant between the Indian Oil Corporation and the petitioners. Mr. Majumder placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Steel Authority of India Ltd. and ors. (for short "SAIL") vs. National Union Waterfront Workers and others*** reported at **(2001) 7 SCC 1** in support of his contention that the question whether the petitioner is an employee under Indian Oil Corporation or not is to be decided by the industrial adjudicator and not by this Court.
6. Heard the learned advocates for the parties and perused the materials placed.

7. After going through the documents annexed to the writ petition more particularly the inter office memo dated 24.02.2005, it appears to this Court that there was a contract in between the Indian Oil Corporation and M/s. Lakshmi Narayan Enterprise to provide certain miscellaneous services like messenger services, movement of files and papers, handling of dak in central dispatch, pantry services for senior officials in Indian Oil Bhawan, Kolkata. It further appears therefrom that there had been an agreement dated 27.06.2002 with recognised union of Eastern Region by the then Eastern Region management under Industrial Disputes Act wherein the engagement of 35 number of labourers under the contract with M/s. Lakshmi Narayan Enterprise was concerned has been covered. In view thereof it is difficult for this Court to accept the argument of Mr. Ahmed that M/s. Lakshmi Narayan Enterprise is not in existence. It is the specific case of Indian Oil Corporation that the writ petitioners are employees of M/s. L.N.Enterprise. However, the issue as to whether the alleged contract between Indian Oil Corporation and M/s. Lakshmi Narayan Enterprise is the genuine contract or a mere camouflage is a disputed question of fact. It is the contention of Indian Oil Company that such contract is a genuine one whereas according to the writ petitioner it is a sham contract. In order to decide whether there exists a relationship of master and servant between Indian Oil Corporation and the petitioner, it is to be seen as to whether the appointment was made by the Indian Oil Corporation and also whether the disciplinary control vests with such authority. As rightly argued by Mr. Majumder, mere payment of remuneration by the Indian Oil Corporation cannot conclusively establish that there exists a master-servant relationship between the Indian Oil Corporation and the petitioners. The Hon'ble Supreme Court in paragraph 17 of **Nihal Singh** (supra) held thus-

"17. From the mere fact that the payment of wages came from the bank at whose disposal the services of each of the appellants

was kept did not render the appellants employees of those banks. The appointment is made by the State. The disciplinary control vests with the State. The two factors which conclusively establish that the relationship of master and servant exists between the State and the appellants. A fact which is clearly recognised by the Division Bench of the High Court in LPA No.209 of 1992. It may be worthwhile mentioning here that under the law of contracts in this country the consideration for a contract need not always necessarily flow from the parties to a contract. The decision of the SSP to reject the claim of the appellants only on the basis that the payment of wages to the appellants herein was being made by the banks concerned rendering them disentitled to seek regularisation of their services from the State is clearly untenable.”

8. It is not in dispute that the writ petitioners were deployed at the office of the Indian Oil Corporation. The Hon'ble Supreme Court in **Nihal Singh** (supra) observed that under the law of contract the consideration for a contract need not always flow from the parties to a contract. Therefore, mere payment of remuneration by Indian Oil Corporation to the bank account of the petitioners does not necessarily imply that there is a master-servant relation between the Indian Oil Corporation and the petitioner.
9. This takes this Court to consider whether the documents relied upon by the parties prove existence of such relationship. The Hon'ble Supreme Court in **SAIL** (supra) held that the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for the supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/ camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder has to be decided by the industrial adjudicator. It was further held therein that if the contract has been found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the

contract labour in the establishment concerned subject to certain conditions as laid down in the said reports. Whether the petitioners are in fact the employees of the Indian Oil Corporation being a disputed question of fact, such question, in the considered view of this Court, should be decided by a fact finding tribunal and not by the writ court. The documents annexed to the affidavits filed by the respective parties, to the mind of this Court, are not sufficient for the purpose of deciding such factual dispute.

10. In ***Nihal Singh*** (supra) the Hon'ble Supreme Court observed that the initial appointment of the appellants therein was made in accordance with the statutory procedure contemplated under the Act and the decision to appoint was taken at the highest level of the State and for which the appointment of the appellants therein was held to be not an irregular appointment. On such facts the Hon'ble Supreme Court directed the State to regularise the service of the appellants therein by creating necessary posts within a specified time frame. The claim for regularisation may arise only after it is held that the petitioners were appointed by the Indian Oil Corporation and such appointment was not an illegal but an irregular one. In view of the observations made hereinbefore, the decision in the case of ***Nihal Singh*** (supra) cannot come to the aid of the petitioner at this stage.
11. In ***Indian Petrochemicals Corporations*** (supra) the workmen first approached the Industrial Court contending before such court that the management was indulging in an unfair labour practice and in fact they were employed by the company. They specifically contended therein that they are entitled to continue in the employment of the company irrespective of the change of the contractor. The industrial court accepted such contention of the workmen as against the plea put forth by the management therein. The Hon'ble Supreme Court after taking note of the

fact that the employer did not challenge such decision of the industrial court which had attained finality arrived at a finding that the management accepted as a matter of fact that the workmen are permanent employees of the management's canteen. In view of such admitted facts the Hon'ble Supreme Court held that the workmen are in fact the workmen of the management. The said decision being distinguishable on facts cannot be applied to the instant case.

12. In **Chennai Port Trust** (supra) the Hon'ble Supreme Court granted similar reliefs as in the case of **Indian Petrochemicals Corporation** (supra) on the ground that there is no distinguishable facts pointed in **Chennai Port Trust** (supra) qua **Indian Petrochemicals Corporation** (supra). This court has already observed that **Indian Petrochemicals Corporation** (supra) cannot be applied to the facts of this case and for such reason the decision in the case of **Chennai Port Trust** (supra) is also not applicable to the case on hand.
13. Accordingly the writ petition fails and the same is dismissed, without, however, any order as to costs. The connected application stands disposed of accordingly. The petitioners are left free to approach the appropriate forum in accordance with law, if so advised.

(Hiranmay Bhattacharyya, J.)