

Sayali Upasani

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

WRIT PETITION NO.-1233 OF 2022

Indian Oil Corporation Limited	...Petitioner
Vs.	
Anish Zaveri Services and Anr	...Respondents

Mr. K.P. AnilKumar a/w Mr. Amit Saple and Chinmay Apte,
for Petitioner.

Adv. Namita Shirke i/b Mr. Jaydeep Thakkar, for Respondent
No. 1.

Mr. G.R. Naik i/b G.R. Naik and Co., for Respondent No. 2

CORAM:- N. J. JAMADAR, J.

DATED:- 6th MARCH, 2023

ORDER:-

- 1) Rule.
- 2) Rule made returnable forthwith and with the consent of Counsel for the parties, heard finally.
- 3) This Petition under Article 226 of the Constitution of India takes exception to the award dated 17th August, 2021, passed by the learned Presiding Officer, Central Government Industrial Tribunal-II, Mumbai (CGIT) whereby the learned Presiding Officer

declared that the demands of respondent No. 2 to reinstate and regularize the services of 32 employees, who were employed at Top Gear Indian Oil, COCO-II, Mumbai, was legal, just and proper. The Industrial Tribunal further declared that the workmen were entitled to Rs.2,00,000/- as a lumpsum compensation towards suffering as well as under Section 25 of Industrial Disputes Act, 1947.

4) The petitioner is a company registered under the Companies Act, 1956, under the Ministry of Petroleum. The respondent No. 1 is a “Service provider” of petroleum products and runs and operates the petrol pump of the petitioner situated at Bhulabhai Desai Road, Mumbai. The said petrol pump has been operated by different service providers over a period of time. A new service provider/dealer was appointed from 10th May, 2012 and the dealer had appointed the workmen.

5) On 22nd April, 2013, the Central Government in exercise of powers under Section 10(1)(d) and (2A) made reference to the CGIT as to whether the demand of respondent No. 2 of illegal termination of Shri. Mayur Shinde and 31 other employees, who were employed at Top Gear Indian Oil COCO-II, Mumbai, for reinstatement and regularization of their services in establishment of IOCL, was legal, just and proper. By the

impugned award, the CGIT was persuaded to hold those employees were illegally terminated and order payment of Rs.2,00,000/- as lumpsum compensation.

6) Mr. K. P. Anilkumar, the learned Counsel for the petitioner, strenuously submitted that the impugned award suffers from manifest infirmities. The CGIT has recorded contradictory findings.

7) I find substance in the submissions of Mr. Anilkumar. In paragraph No. 34 of the impugned award, the CGIT has, on the one hand, held that the petitioner failed to establish that the petitioner and the dealer had licence under Contract Labour (Regulation and Abolition) Act, 1970 and, on the other hand, the respondent No. 2 – Union failed to prove that there was employer - employee relationship between the petitioner and members of respondent No. 2-Union.

8) Faced with apparent infirmities and contradictory findings in the impugned award, Mr. G. R. Naik, the learned Counsel for respondent No. 2 - Union submitted that the reference may be remitted back to CGIT for a fresh decision in accordance with law.

- 9) Mr. K. P. Anilkumar, the learned Counsel for the petitioner submitted that the petitioner is not averse to the remand of the matter to CGIT for a fresh hearing and decision.
- 10) In view of the aforesaid submission and the nature of the impugned award, it would be expedient in the interest of justice that the CGIT decides the reference afresh after providing an opportunity of hearing to the parties.
- 11) Hence, the following order.

:ORDER:

- (i) The Petition stands allowed.
- (ii) The impugned award dated 17th August, 2021, stands quashed and set aside.
- (iii) Reference No. CGIT- 2/26 of 2013 stands remitted back to CGIT-II Mumbai for a fresh hearing and decision.
- (iv) The Presiding Officer, CGIT-II Mumbai, is directed to provide an effective opportunity of hearing to the parties to the reference and decide the same in accordance with law, as expeditiously as possible.
- (v) No costs.
- (vi) Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]