



W.P.No.14462 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2023

PRONOUNCED ON : 27.11.2023

CORAM

THE HONOURABLE MR. JUSTICE Dr.D.NAGARJUN

W.P.No.14462 of 2014

and

M.P.No.1 & 2 of 2014

Indian Oil Employees' Union,
Southern Region (Regd),
Rep. By Its General Secretary,
Indian Oil Bhavan,
139, Nungambakkam High Road,
Chennai 34.

... Petitioner

Vs.

1. Regional Labour Commissioner (Central)
And Certifying Officer Under Industrial
Employment (Standing Orders) Act,1946,
4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi-110 001.

2. M/S.Indian Oil Corporation Ltd.,
Rep. By Its Executive Director (HR),
Marketing Division,HO,
G-9, Ali Yavar Jung Marg,
Bandra(E), Mumbai-400 051.



W.P.No.14462 of 2014

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3. General Manager,
Indian Oil Corporation Ltd.,
Marketing Division, Southern Region,
Indian Oil Bhavan,
139, Mahatma Gandhi Road,
(Nungambakkam High Road) Chennai 34.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 1st respondent bearing No.ND.37(1)2014-PA dated 16.04.2014 and quash the same and consequently direct the respondents 2 to 3 to apply for modification of certified standing orders of Indian Oil Corporation Ltd., (Marketing Division) as per Section 10 of the Industrial Employment(Standing Orders) Act,1947.

For Petitioner : Mr.K.M.Ramesh for
Mr. K.Bhaathi

For Respondents : Mr.Anand Gopalan for
M/s.T.S.Gopalan (for R2 & R3)

No appearance (for R1)



W.P.No.14462 of 2014

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ORDER

This writ petition is filed seeking to quash the impugned orders bearing No.ND.37(1)2014-PA dated 16.04.2014, issued by the first respondent, consequently directing the respondents 2 to 3 to apply for modification of Certified Standing Orders of Indian Oil Corporation Ltd., (Marketing Division), as per Section 10 of Industrial Employment (Standing Orders) Act 1947.

2. The facts in brief as per the affidavit are as under:

The petitioner is the General Secretary of Indian Oil Employees' Union, Southern Region and submitted that the second respondent Corporation had submitted a draft Standing Orders for certification to the Central Labour Commissioner during the year 1969 for its Marketing Division and the said Standing Orders were certified in the year 1969 which are in vogue till today.

3. The petitioner refers to Clause 2.5 of the Certified Standing Orders which reads as under :

“ 'Head of Department' means the person in overall



W.P.No.14462 of 2014

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chare of a particular department of the Division whether in Head Office/Branch Office.”

and Clause 2.7 of the Certified Standing Orders reads as under :

“ 'Competent Authority' means Managing Director, General Manager/ Deputy General Manager/ Branch Manager/ Aviation Manager/ Head of Department whether in Head Office or Branch Office as the case may be”

4. The second respondent has issued an Office Memo dated 07.10.2013, to change the Disciplinary Authority and Appellate Authority for workmen of Marketing Division and the memo reads as under:

“Upon reviewing, it is felt that a reading of the definition of "Competent Authority" along with definition of "Head of the Department", as well as the historical practice before the formation of State Office, the written interpretation and practice both in terms of law and logic would be to designate the Head of various functions who are currently stationed at different State Offices.

Regions are, therefore, advised to adopt the above referred shift with immediate effect and to treat the Disciplinary Authority and Appellate Authority for the workmen of Marketing Division as given hereunder:



W.P.No.14462 of 2014

WEB COPY

(a) For all the Workmen of the Marketing Division falling under the jurisdiction of State Offices, the respective Functional In-charges in State Offices such as Head of LPG, Ops., Engg., Finance, Retail Sales, Consumer Sales, etc. will act as the Competent Authority in terms of Clause 2.7 of the Certified Standing Orders and State Head will function as Appellate Authority.

(b) No change for all other workmen who are not falling under the jurisdiction of State Offices.

(c) The above shall, however, not be applicable, to the disciplinary cases which are currently in progress against the workmen under State Offices."

5. The petitioner Union has taken objection to the proposed amendment as the proposed amendments are not interpretation of the standing orders but a modification or amendment of the orders.

6. By way of proposing the alleged interpretation, the second respondent introduced the amendment which can only be done in the manner prescribed in Sub Section (2) of Section 10 of the Industrial Employment (Standing Orders) Act, 1946.



W.P.No.14462 of 2014

WEB COPY

7. The Division Bench of this Court in the case of ***Tamil Nadu Electricity Board Vs. Central Organisation of Tamil Nadu Electricity Employees*** and another reported in ***1997 II-LLJ 1043***, held that :

"When once the Standing Orders are certified under Section 5 of the Act, by the Certifying Officer, the only recourse open to either the workmen or the employer is to file an appeal under Section 6 of the Act before appellate forum and after the disposal of such an appeal, the Standing Orders will come into force within 7 days from the date of disposal of the appeal by virtue of Section 7 of the Act. Under Sec. 10(1) of the Act, once the standing orders are finally certified, it is not open to the parties to seek for a modification until the expiry of six months from the date of the said certification. Whenever any modification is proposed to the existing standing orders by the respondent Board, the workmen employed by them keenly contested such modifications with the help of their trade unions and the matter was resisted before the certifying officer as well as before the appellate forums and at time modifications were made or done with the consent of the employees and after an agreement signed with the recognized union and the Board. During the year 1976, taking advantage of the



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W.P.No.14462 of 2014

emergency situation prevailing in the country the Board unilaterally proposed amendments under Section 10(2) of the Act. On resistance by the Unions, the amendments proposed by the Board were rejected by the Certifying Officer and the Board did not pursue any further appeal on such rejection. In the year 1978, again the Board proposed certain changes, some of them were drastic. The Certifying Officer by order dated March 31, 1980, rejected the alteration of terms of service conditions sought for by the appellant herein."

8. The respondent Corporation cannot by-pass the procedure contemplated for preventing the amendment or modification of the certified rules. The proposed modification is not bona fide and they are proposed only to undermine the recognised unions. Thereby, the petitioner's Union has requested the respondent not to proceed further.

9. The petitioner Union has also submitted a representation to the Chief Labour Commissioner (Central), New Delhi and requested to intervene in the matter. The said representation was forwarded to the second respondent Corporation for counter comments. After going through the comments given by the second respondent Corporation, the petitioner



W.P.No.14462 of 2014

Union submitted its further representation dated 19.02.2014 on the date of the joint discussion wherein in it is stated that the Management is attempting to oversimplify the entire issue by bringing in extraneous and irrelevant factors which are not germane to the issue involved.

10. The petitioner further submits that Clause 2.7 of the Certified Standing Orders refers only to “Head Office / Branch Office as the cause may be” and by way of the present interpretation sought to be introduced by the Management so as to read into the above Section “State Office” and the proposed amendment is meant to dilute the same. The second respondent Corporation has got four regions represented by one union for one region. Present proposal of the second respondent Management, to give a right to State Office to enjoy disciplinary proceedings, in the days to come, tend to damage the unity of the workmen. The second respondent Corporation has no right whatsoever to interpret clauses of the standing orders.

11. The second respondent is taking steps to implement unilateral decision of the first respondent, thereby sought for setting aside the orders passed by the 3rd respondent, dated 16.04.2014 in proceedings



W.P.No.14462 of 2014

No.ND.37(1)2014-PA.

WEB COPY

12. The respondent Nos. 2 and 3 have filed a counter affidavit through their learned Standing Counsel and the respondent Company submitted draft Standing Orders to be applicable to the employees of the Marketing Division to Chief Labour Commission, New Delhi, for Certification. The Marketing Division has got separate Departments like Aviation , Operation , LPG, Lubes, Human Resources Department, Finance, Vigilance, Supply and Distribution, Quality Control, Information Systems and Safety etc. In the draft Standing Orders, the term "Establishment Unit" was defined to mean Head Office and Branch Office or any other Establishment of the Marketing Division. The said draft Standing Orders were duly certified by the appropriate authority. In the said rules, "Head of Department" has been defined to mean the person in overall charge of a particular Department of the Division, whether it is in the Head Office or Branch Office. "Branch Manager" was defined to mean the person having ultimate control of the affairs of the Branch of the Indian Oil Corporation. The term "Competent Authority" has been defined to mean the Managing Director/ General Manager/ Dy. General Manager/ Branch Manager/ Aviation Manager/ Head of Department at the Head



W.P.No.14462 of 2014

Office or at any of the Branch offices, as the case may be.

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13. Subsequent to certification of the standing orders, it became necessary to delegate the powers of the Competent Authority even to the Head of the Department of the State Office. On 7.10.2013, the Head of the Department in the State Offices were declared as Competent Authority, so as to enable him to discharge the powers of the Disciplinary Authority. The respondent submitted that the certified standing orders do not stipulate as to who should exercise the powers of the Competent Authority and who are Disciplinary Authorities. It is further submitted that the circular dated 07.10.2013 does not call for any interpretation of the certified Standing Orders. The term “interpretation” as contemplated in Section 13(A) of the Industrial Employment Standing Orders Act, 1948, would arise only when there is a change necessitated in the context and literature of this Certified Standing Orders, such as change in text, which is not in the instant case.

14. On erroneous assumption of the purport of the Circular dated 7.10.2013, the petitioner has approached the Regional Labour Commissioner (Central) assailing the circular dated 07.10.2013 as one of the modification of the certified standing orders. After hearing the parties



W.P.No.14462 of 2014

on both sides, the first respondent issued orders dated 16.04.2014, stating that the conditions are not satisfied for a change to be termed as a modification, and that he has no power to give any interpretation to the purport of the circular dated 07.10.2013. Constrained by the same, the present writ petition is filed.

15. It is submitted further that the respondents have not introduced any amendments and their impugned proceedings Circular dated 7.10.2013 is only the interpretation of the certified orders and therefore, sought for dismissal of the petition.

16. Heard both sides and perused the records.

17. When the learned counsel for the petitioner made an attempt to submit his arguments, the learned counsel appearing for the respondents has taken preliminary objection that this situation is not maintainable as there is a provision for Appeal under Industrial Employment Standing Orders (Central) Rules, 1946, which is extracted hereunder:

“6. Appeals (1) [Any employer, workman, trade union or other prescribed representatives of the workmen] aggrieved



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W.P.No.14462 of 2014

by the order of the Certifying Officer under sub-section (2) of section 5 may, within thirty days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.”

Therefore, while availing the alternate remedy available under the rules, the petitioner shall not be permitted to avail the writ petition under Section 226 of the Constitution of India.



W.P.No.14462 of 2014

18. Provisions under Section 17(A) Section 17(A) of the Industrial Employment (Standing Orders) Central Rules, 1946, is extracted hereunder:

“17(A). (1) Any person desiring to prefer an appeal in pursuance of sub-section (1) of Section 6 of the Act shall draw up a memorandum of appeal setting out the ground of appeal and forward it in quintuplicate to the appellate authority accompanied by a Certified copy of the standing orders, amendments or modifications, as the case may be.

(2) The appellate authority shall, after giving the appellant an opportunity of being heard, confirm the standing orders, amendments or modifications as certified by the certifying officer unless it considers that there re reasons for giving the other parties to the proceedings a hearing before a final decision is made in the appeal.

(3)Where the appellate authority does not confirm the standing orders, amendments or modifications it shall fix a date for the hearing of the appeal and direct notice thereof to be given.”

19. On considering the above provisions, it is clear that even though, there is a provision in the Standing Orders, enabling the petitioner to prefer an appeal, the petitioner Union has filed this writ petition. When alternative



W.P.No.14462 of 2014

remedy is available for the petitioners to agitate the grievances, they cannot be permitted to approach this Court under 226 of the Constitution of India.

20. In the case of ***Raj Kumar Shivhare v. Directorate of Enforcement [(2010) 4 SCC 772]***, the Apex Court held as follows:

“31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however, dismissed the writ petition on the ground of lack of territorial jurisdiction.

32. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum.”

21. In view of the above submissions and considering the fact that



W.P.No.14462 of 2014

alternative remedy is available without commending on the merits of this case, this Court is of the opinion that the petitioner shall be given an opportunity to prefer an appeal under Section 17(A) of the Industrial Employment (Standing Orders) Central Rules, 1946, in respect of the proposed amendment and therefore, this writ petition shall not lie and accordingly require to be closed.

22. Accordingly, this writ petition is **disposed off** giving liberty to the petitioner to approach the appropriate Appellate Authority and on availing of such appeal, the Appellate Authority is directed to consider the same and dispose it off as quickly as possible. No costs. Consequently, connected miscellaneous petitions are closed.

27.11.2023

Index : Yes
Speaking Order
Neutral Citation : Yes
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W.P.No.14462 of 2014

To
WEB COPY

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W.P.No.14462 of 2014

Dr.D.NAGARJUN. J.,

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W.P.No.14462 of 2014

27.11.2023