

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1**MUMBAI**

Present

SMT. PRANITA MOHANTY

Presiding Officer

REFERENCE NO.CGIT-1/13 of 2021

Parties: Employers in relation to the management of
Bharat Petroleum Corporation Ltd

Vs.

1. Bharat Petroleum Corporation (Refinery) Employees Union
2. Bharat Petroleum Corporation Process Technicians & Analysts' Union.
3. Bharat Petroleum Technical & Non-Technical Employee's Association .
4. Bharat Petroleum Workmen's Union.

Appearances:

For the first party Management : Mr.R.S.Pai, Adv

For the second party Union : Mr. Bennett D'Costa

State : Maharashtra

Mumbai, dated the 22nd day of July, 2022 .

ORDER

This order is to deal and dispose off the application filed u/s 2(b) r/w s 10(4) and s 10(2-A) of the ID Act ,by the second party workmen represented by BPCL Refinery employees union where in a prayer has been made for grant of interim relief to the workmen as a part I

preliminary award pending final adjudication of the dispute on the grounds taken in the petition.

Copy of the said petition being served on the 1st party Management a detail objection to the petition has been filed. Learned ARs representing the parties extended their elaborate argument in support and against the petition.

Bereft of un necessary details, the facts pleaded by the parties and relevant for disposal of the present petition are that the workmen are the employees of the management BPCL and working in it's Refinery. They are the members of the BPCL Refinery workers union. In the past various litigations were fought between the management and the employees of the management to bring in parity in the service condition and wage of the workers as the workers working in different domains of the corporation were often raising the issue of disparity and equal pay for equal work. In the year 1988, the parliament enacted "The Bharat Petroleum Corporation Limited (determination of the condition of service of employees) Act 1988 . The unions of workers though initially challenged the Act, subsequently as a measure of settlement signed the long term settlement in 1996 followed by other similar settlements on intervals and the last one was signed in 2013 effective from 1/1/2007 to 31/12/2016 and the same is still in force. There has been no revision in the service condition from 1/1/2017. The workmen represented by all the four unions gave their individual charter of demand in 2018 and insistence of the management a common charter was submitted too. The unions are not satisfied with the offer given by the management .

particularly the claimant union of this proceeding had disagreement on some of the clauses and no unanimity could be reached for implementation of the LTS due since 2017. In the meantime the management entered into a settlement with the marketing division union. The dispute being raised before the labour commissioner steps were taken for conciliation, which failed and the reference has been made for adjudication on the points

- (i) if the demands enumerated in the charter of demands raised by the union in relation with LTS of wage and service condition and in particular removal of clauses 1(f) and 100%DA merger and 15% fitment benefit and national basic maxima for grade 9 are proper.
- (ii) If the offer made by the management in relation to LTS and service condition in the context of DPE guide lines is just, fair and reasonable.

The management has filed written statement denying the stand taken by the claimant union on the unreasonableness of the LTS offered by the management. It has been stated that the marketing division workers union having a majority no of employees have already accepted the LTS offered by the management and the points of dispute raised by the claimant union during the conciliation proceeding as well as in their claim petition here are baseless and unworthy of acceptance.

When the matter is pending with this Tribunal for adjudication, the claimant union has come up with the present petition filed u/s10(4) of The Act for an interim relief/ part one award, pending final adjudication

of the dispute. The management by filing the written objection has raised question on the maintainability of the application for interim relief/part 1 award.

Whereas the learned AR for the claimants argued that the tribunal has the power to grant the interim relief to the claimants if the same is incidental to the relief sought in the main claim, the learned AR for the management disputed the same.

As seen from the interim relief petition filed by the claimant union the reason behind the same is the unreasonable delay in arriving at a decision in the adjudication process. The claimants have now come up with the prayer that the offer given by the management in the LTS and accepted by the Marketing division union be granted to the claimants as the interim relief subject to the final adjudication of the dispute. On behalf of the claimants an application to that effect has been placed on record after serving copy of the same on the management.

In the objection, the management BPCL has taken the plea that the present application is not maintainable since it does not come under the scope of the reference received from the Appropriate Government. The other objection taken by the management is that when before the conciliation officer the union had raised dispute with regard to the just and fairness of the LTS and repeated the said stand in their claim petition and when the reference is about the just and fairness of the LTS offered by the management the prayer for interim relief or part acceptance of the LTS is not maintainable. Hence the argument is that

the tribunal cannot travel beyond the reference received from the Appropriate Government.

In reply the Ld. A/R for the claimant/workmen drew the attention of this tribunal to the provisions of section 10(4) of the Id Act and submitted that the Tribunal while adjudicating the industrial dispute is obliged to adjudicate on the points formulated under the reference by the Appropriate Government and matters incidental thereto. To support his contention he placed reliance in the case of **Hotel Imperial vs. Hotel Workers Union reported in 1959 II 1959 LLJ 544** and various other subsequent judgments in which the judgment of Imperial Hotel has been referred to. Thereby he submitted that when the reference is for adjudication on the fairness of the offer by the management and disagreement of the union on some points and fairness of the said objection as well, there is no impediment in grant of interim order for acceptance of the offer made by the management which shall be subject to the result of final adjudication. He thus argued that the interim relief is incidental to the dispute and can be decided or ordered by this tribunal. Giving special emphasis to the judgments of the **Hotel Imperial** referred supra and to the case of **Goa MRF Employees' Union vs MRF Ltd , (2014)14 SC 483** , he argued that in both these cases the Hon'ble S.C have clearly held that when a question arises about the grant of interim relief the same shall be decided by the Industrial Tribunal only.

Now coming to the objection raised by the management for the same, it is pertinent to observe that the interim relief sought by the claimant is neither beyond the scope of the reference nor likely to put the

management in to a state of indecisiveness. To put the stand of the parties in a simple way it can be said that the LTS is the offer given by the management and at this juncture the claimants are willing to accept the same as an interim measure, subject to the final outcome in the adjudication. The argument of the learned AR insisting that claimants have to either accept the LTS in it's totality as has been done by other unions and some members of the claimants union or reject the same at this stage seems not acceptable as the same can not be imposed at this stage which would amount to pre judging of the matter.

The learned AR for the management while placing reliance in the case of **Herbertsons Ltd vs Their workmen & others** submitted that the question of adjudication has to be distinguished from a voluntary settlement. Hence the claimants of this proceeding should abstain from accepting the offer at one point and disputing the same at the other. But this argument is not accepted on the ground that for deciding the prayer for interim relief, the merit of the claim of the parties can not be gone into. The only aspect which need to be considered is, if the prayer of interim relief is incidental to the reference and the claim raised pursuant there to.

On a careful examination of the pleadings of the parties and argument advanced with reference to various judicial pronouncements and in particular the law laid down by the Apex court in the case of **Hotel Imperial and Goa MRF Employees Union** referred supra, this tribunal is of the view that the prayer of interim relief as made by the claimant union for accepting the LTS offered by the management subject to final

adjudication of the dispute is incidental to the claim as per the reference and same can, and should be allowed to the claimants as the interim relief to help them stave off the stiff rise in the cost of living. It would not be out of place to mention that the claimants, at the end of the litigation if would succeed , get more benefits and otherwise remain satisfied with the LTS offered by the management and allowed in this order. Thus, the interim relief granted in this order is no way detrimental to the interest of the management for final adjudication of the dispute. Accordingly it is ordered.

ORDER

The prayer for interim relief filed by the claimant union is allowed. The management of this proceeding, as an interim measure and subject to the final adjudication of the dispute as referred by the Govt shall grant all the benefits to the claimant employees in terms of the company's offer referred in clause 2 of the reference dt 29/07/2021 received from the appropriate Govt for adjudication. The management is further directed to implement the direction given in this order within two months from the date of communication of the order since the purpose of the order is to save the workmen from further misery in not getting their due wage and other benefits which is due since long. It is made clear that the claim of both the parties to be advanced and canvassed during adjudication of the referred dispute is kept open. The parties are directed to take all necessary steps and co operate in expeditious adjudication of the dispute.

PRESIDING OFFICER

CGIT-1 MUMBAI