

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2,
MUMBAI**

PRESENT

S. S. Garg
Presiding Officer

REFERENCE NO.CGIT-2/26 of 2013

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF
M/S. INDIAN OIL CORPORATION LTD.**

The General Manager,
M/s. Indian Oil Corporation Ltd.
1st Floor, 254, Dr. Annie Besant Road,
Worli Colony,.
Mumbai – 400030.

AND

THEIR WORKMEN.

1. The General Secretary,
Maharashtra Rajya Rashtriya Kamgar
Sangh(INTUC)
Behind Shree Ganesh Sahakari Pataphedhi,
Ramgad, Ghoshala Road, Mulund [W],
Mumbai
2. M/s. Anish Zaveri Services,
A-703, Samarth Complex CHS Ltd.,
Saibaba Nagar, Borivali [W],
Mumbai – 400 026

APPEARANCES:

FOR THE EMPLOYER : Mr. K.P. Anil Kumar
Advocate

FOR THE WORKMEN : Mr. M. A. Shaikh
Advocate

Mumbai, dated the 17th August, 2021.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-30011/11/2013 – IR (M) dated 22.04.2013. The terms of reference given in the schedule are as follows :

“Whether the demand of Maharashtra Rajaya Kamgar Sangh (INTUC), Mumbai over the issue of illegal termination of shri Mayur Shinde and 31 other employees (As per Exhibit-I) were employed at Top Gear Indian Oil, COCO-II, Mumbai for reinstatement and regularization of their services in the establishment of IOCL, is legal, just and proper ? If so, what relief the workmen concern are entitled to ?

2. After the receipt of the reference, both the parties were served with the notices.

3. Union by filing Statement of Claim asserted that first party i.e. M/s. Indian Oil Corporation Ltd. is Central Government Undertaking which is in the form of Body / Corporation through Petroleum Ministry run their business of manufacturing and sale of various Petroleum products through outlets which is known as ‘COCO-TOP GEAR-II’ and through private dealers.

4. According to union, first party has been using services of concerned employees which in number 32. According to union, workers are the members of registered union [INTUC] which is registered under Trade Union Act. According to union, i.e. second party, they are engaged through contractor surreptitiously

but they are working since 2002 to 2007 onwards till 10.5.12. According to them, they are contractor engaged by party No.1 from the above period namely

- a) M/s. Steel Town Petroleum - During 2003 to 2008
- b) M/s. Jain Thapar Enterprises - During 2008 to 2011
- c) M/s. Guruprasad Services - During 25.8.11 to 10.5.12

5. According to union, party No.3 are given mere leave and permission to enter upon the site/establishment of the first party only for the purpose of supporting the business but present workers in dispute is performing continuously their duty from above period and their duty is selling Petroleum products to the customers was continuous, permanent and perennial in nature which the concerned employees were doing since January 2002 onward i.e. even before the introduction of the first so called Contractor M/s. Steel Town Petroleum and were continued uninterruptedly while the so called Contractors kept changing.

6. According to union, they are worker of party No. 1 for all practical and legal purpose alleged adhoc contractor only bogus and fictitious. In this way by filing statement of claim union pray that all the workers entitled to reinstatement to their original place of work with continuity of services and payment of full back wages with effect from 10.5.12 along with all consequential benefits.

7. They also pray that first party did not follow legal procedure to terminate their services because they did not follow the provisions of section 25F and/or 25N of I.D. Act. They also pray for appropriate direction and award.

8. By filing Written Statement on behalf of first party No.1 which is signed by Shri Nitin Tamhankar, Business Manager, denied all the material facts which is asserted by the union i.e. party No.2 in their respective claim.

9. According to party No.1, they had neither employed 32 work persons nor they terminated their services. According to them, present reference is not maintainable on the ground of demand for regularization is contrary to the other demand i.e. for reinstatement.

10. According to them, their dealers and service providers are as follows with their parties.

- i. M/s Steeltown Petroleum (Adhoc Dealer) for Operating Period :
18.05.2003 – 24.08.2008.
- ii. M/s. Jatin Thapar (Service Provider) for Operating period :
25.08.2008 – 24.08.2011.
- iii. M/s. Guruprasad Services (Adhoc Dealer) for Operating period :
25.08.2011 – 09.05.2012.
- iv. M/s. Anish Zaveri Services (Service Provider) : Operating since
10.05.2012.

11. According to them, such type of claim never maintainable nor they entitled to any prayer which is in the form of retrenchment and regularization. According to them, there is policy of first party that retail outlets run by the employees of the first party under its supervision.

12. According to them, allegations of union are inconsistent with the facts mentioned there in statement of claim. According to them, the contract to service provider was floated through public tender and as per the guidelines of the Government of India.

13. According to them, they check compliance of PF & ESI contribution through adhoc dealers and if there is any short-fall the same should be brought to the notice of respective dealers or to the notice of the First Party which has not been done.

14. According to first party No.1, demand of regularization of disputed employees is baseless, misleading. There is no question of first party being liable to make any retrenchment or retirement compulsorily to the contract workers because there is no such person should be a regular employee so following the provisions of section 25 of I.D. Act is not required. According to them disputed workers not entitled to any relief including regularization of services so they pray that reference is rejected and answer in negative.

15. On the basis of pleading of both parties my predecessor framed following issues which are required to be determined in this case.

ISSUES

1. Whether the workers under reference are the employees of the first party and there exists employee-employer relationship between them ?
2. Whether the labour contract is sham, bogus and mere camouflage to deprive the workmen from getting the benefits of permanency ?

3. Whether the termination / retrenchment of the workmen is legal, just and proper ?
 4. If not, whether the workmen are entitled to be reinstated in service with full back wages, continuity and regularization in service ?
 5. What order ?
16. Learned Counsel Shri M.A. Shaikh filed written arguments on behalf of union by raising the points that party No.1 is corporate body in which all the officers including Managing Director / Director are jointly and severally responsible, disputed workers worked in this company continuously and regularly from January 2002 to 2007 and disputed employees illegally terminated without regularization or absorption by the first party. He also argued that first party utilizing the services of the concerned employees at their retail outlets known as COCO-TOP-GEAR-II situated at Mumbai. Running these outlets and maintenance is the responsibility of party No.1 but they terminated these so called contract workers without payment of legal dues.
17. According to them so called contractors or dealers are engaged by party No.1 in sham and bogus contract.
18. He also argued that no retrenchment compensation or nor any notice was given by the party No.1 before their illegal termination. So their termination is illegal and arbitrary. According to them, they are entitled to reinstatement with continuity of service and payment full back wages on and from 10.5.2012.
19. According to them, work done by these workmen was integral part of the industry concerned. According to them, defence taken by the management that

they are not regularized or absorbed is illegal and contrary to the law. For raising these arguments he relied on following case laws.

1. Hussainbhai, Calicuta V/s. Alath Factory Thezhilali union, reported in 1978 DGLS (Soft.) 174 SC [Paras – 2 – 7] and Secretary, Haryana State Electricity Board V/s. Suresh – reported in 1999 DGLS page 364 SC [Para-20].
 2. SAIL judgment reported in 2001 AIR 3537 SC as at para – 70 and 103.
 3. IPCL / Shramik Sena – Judgment reported in 1999 AIR 2577 SC.
 4. Hindalco Industries Ltd. V/s. AEW reported in 2008 AIR 1867 SC.
 5. W.B. Power Development Corpn. V/s. A.D. Chowdhury & Ors. Reported in 2005 II LLN 1020 Calcutta High Court (Division Bench) at para – 13/14.
 6. Bombay H.C. – UniKlinger Ltd. V/s. S.B. Kambale & Ors. reported in 2016 (3) AIR BOM R 31.
 7. M/s. Prabhat Engg. Ltd. V/s. Sarva Mazdoor Sangh – 2018 LLR Pg. 828 BHC at Paras – 4 / 6 & 8 / 9.
 8. Apex Court – Raj Kumar V/s. Director of Education & Ors reported in 2016 AIR 1855 SC as at para – 36.
20. On behalf of party No.1 i.e. management they file written argument by raising the following issues for decision and denied the argument raised by the union.

21. According to party No.1 contract executed between contractor / dealer is genuine and legal. All legal formalities is taken place before finalization of contractor / dealer. They are called adhoc dealers and before payment to them, they check PF receipts and ESIC payment but said document does not filed by the union.

22. According to party No.1, reference before this tribunal is misconceived and this reference have no merit. It is denied that contract between party No.1 and contractor / dealer is sham and bogus.

23. According to party No.1 adhoc contractor / dealer has its own identity and is registered employer under ESIC and PF Act. He also argued that there is no employer employee relation between party No.1 and disputed workers. It is also argued that union, party No.2 raised these issues before different forums i.e. police as well as RCC/Dy.CLC. So this reference is not maintainable i.e. they approached before MRTU & PULP and the same was proceeded. According to them contractor terminated the services of disputed workers. They are not entitled to any compensation u/s. 25F or any provisions of I.D. Act from first party. So they pray that this reference is liable to be dismissed and deserve to be answered in negative. They relied on following case laws.

1. Judgment of Hon'ble HC Bombay reported in 2016 2 CLR 805, between Airport Authority of India V/s. Indian Airport employees Union (Para 66071) and also judgment reported in 2006 III CLR 659 SC).
2. 2016 (3) CLR 1111 Gauhati H.C.

3. (2010 III CLR SC Steel Authority of India & 2004 3 SCC 514, Workmen of Nilgiri Co-op marketing Soc. Vs. State of Tamil Nadu SC Para 37).
 4. International Airport Authority of India V/s. International Air Cargo Workers Union AIR 2009 SC 3063 and also 2011 I LLN (1) 368 SC General Manager OSD) Bengal Nagpur Cotton Mill V/s. Bharat Lal and Anr.
 5. 2011 I LLN (1) 368 SC General Manager OSC) Bengal Nagpur Cotton Mill V/s. Bharat Lal and Anr.
 6. Steel Authority of India Ltd. V/s. Union of India & Ors. 2006 3 CLR 659 SC.
 7. 2002 III CLR 129 H.C. of Judicature at Bombay dated 1.2.02 – Jacob Chinannan V/s. Sudarshan Aluminium Inds. Ltd. Nashik & Anr.
 8. Chairman / Director & Anr. V/s. Shibha M. Dhose (Tribunal should confine to Reference) 2013 III CLR 842 H.C. Bombay (Nagpur Bench).
24. Now I want to see factual position.
25. On behalf of union they examined Mr. Mayur Ashish Shinde WW-1 and Mr. Raju Waman Jadhav WW-2 in support of statement of claim to prove the reference. On the contrary management examined Mr. Sijo Cyrize, MW-1 in support of their defence to negate the reference.

26. Now I want to see evidence on behalf of union.
27. Mr. Mayur Ashish Shinde in his evidence on affidavit support the fully version of statement of claim which is in English but in cross examination he admitted that he do not know English. According to him, his advance read out the document Ex.16 i.e. evidence on affidavit but in his cross examination he do not know the contents of complaint and contents of their evidence on affidavit in para 7 and 10. According to him he do not know the rules & regulation regarding the employment with party No.1. He also admitted that he was 10th fail and also admitted that he do not work on 11.5.12 and 10.5.12 in concerned petrol pump. He admitted that Anish Javeri Services and Guruprasad services were dealers in which they work. It means indirectly he admitted that they are contract labour.
28. WW-2 Raju Waman Jadhav admitted that his qualification is 9th Std. He also admitted that Anish Javeri Services and Guruprasad services who were at that time contractor / dealer. In para 12 he admitted that he did not file any appointment letter or termination letter and he do not apply for party No.1 for getting regularization or permanency in this company. According to him Anish Javeri Services was contractor who did not allow him to resume his duty.
29. WW-2 in his cross examination in para 13 admitted that he know rules & regulations of appointment of employee in party No.1 but on the contrary he also admitted that he do not know reservation policy, vacancy etc. According to him contractors were changed from time to time but workers remains same but they do not file any document to prove his stand or case.
30. On reading above evidence, it appears that out of 32 persons in dispute only 2 persons were examined without any document. Nobody examined on

behalf of union in support of their statement of claim or reference. No document was filed on behalf of union. On reading of statement of these workers it appears that they are entrusted persons and really have no knowledge regarding recruitment in party No.1 office. So it appears that it is not safe to rely on these evidences to come to any final conclusion. So I want to see the management evidence.

31. On behalf of management Mr. Sijo Cyrize, MW-1 examined as a representative of the company but he gave his statement on the basis of documents because he was not in employment in party No.1 during that disputed period. He admitted that he come in service since 2013. He also admitted that he do not file any record for registration in respect of service provider under contract labour. According to him disputed workers were employed to upkeep, cleanliness and housekeeping of outlet. He also admitted that party No.1 has to run petrol pump as per principle of COCO. He also admitted that Anish Javeri Services and Guruprasad services operate petrol pump with their representatives.

32. According to MW-1, Mr. Sijo Cyrize they gave training to contractor as per requirement. According to him Ex.15 document hand over to the contractor and one after other contractor in which pump and machines mentioned there. They signed as well as contractor. He do not give any training certificate to contractor employee because they are not conducting training of disputed employees. In this way his evidence remain un-impeachable so it appears to be reliable as part of statement based on documents. I feel he have no annuity between disputed workers and his evidence appears to be reliable.

33. Now I want to see legal position.
1. Hussainbhai, Calicut V/s. Alath Factory thezhilali Union Kozhikode – AIR (SC) 1410 : 1978 (4) SCC 257 in which it is held that “Where a worker or group of workers labours to produce goods immediate contractor.”
 2. Secretary HSEB V/s. Suresh – 1999 (3) SCC 601 : 1999 (3) Supreme 277 in which it is held that “It is also pertinent to note that nothing was brought on record to indicateeasily be pierced.”
 3. Indian Petrochemicals Corpn. Ltd. V/s. Shramik Sena – 1999 AIR (SC) 2577 in which it is held that “the initial appointments of these workmen are not in accordance withlabour welfare.”
 4. Hindalco Inds. Ltd. V/s. Association of Engineering Workers – 2008 AIR (SC) 1867 in which it is held that “the Industrial Court rightly concluded that the company has committed unfair labour practiceissued appropriate directions.”
 5. Airport Authority of India Chhatrapati Shivaji International Airport V/s. Indian Airport Employees’ Union Mumbai & Ors. – 2016 II CLR 805 – Bombay H.C. in which it is held that “Lack of registration and licences required under the Contract Labour (Regulation & Abolition) Act, 1970, cannot ipso facto lead to conclusion that contract is sham and bogus (Para 85).”
 6. Workmen of Nilgiri Coop. Mkt. Society Ltd. V/s. State of T.N. & ors. (2004) 3 SCC 514 in which it is held that “supervision and control

test is the prima facie test for determining the relationship.....The nature of business for the said purpose is also a relevant factor.”

7. International Airport Authority of India V/s. International Air Cargo Workers' Union & Anr. – AIR 2009 SC 3063 in which it is held that “merely a camouflage to deny employment benefits to the employees and that there is in fact a direct employment.....in short who has direction and control over the employees.”
 8. General Manager (OSD) Bengal Nagpur Cotton Mills Rajnandgaon V/s. Bharat Lal & Anr. – (2011) 1 SCC 635 in which it is held that “it was for employee to aver and prove that he was paid salary directly by principal employerthat would not make him employee of principal employer.”
 9. Steel Authority of India Ltd. V/s. Union of India & Ors. – 2006 III CLR 659 – in which it is held that “neither Labour Court.....could be determine question as to whether contract labour should be abolished or not, same being within exclusive domain of appropriate Government.....validity of appointment of contractor would itself be an issue as State must prima facie satisfy itself that there exists a dispute as to whether, workmen in fact are not employed by a contractor, but by management.”
34. On going through the above discussion I observed the following facts.
1. Management fails to prove that said contractor / dealer either licensee or contractor who employed disputed workers.

2. Management also fails to prove that they and contractor / dealer have licence under Contract Labour (Regulation & Abolition) Act, 1970.
3. It is correct to say that workers / union approached to the police or Labour court to redress their initial problems not for substantial demand which is raised in this reference.
4. On perusal of the evidence, it appears that union examined only 2 witness excluding 30. So they fails to prove that service rendered by the workers are in perennial nature.
5. Union also fails to prove that their exists employer-employee relation between management party No.1 and them i.e. employee because I also observed that in absence of registration under section 9 or 10 of the Contract Labour (Regulation & Abolition) Act, 1970 is not ipso-facto prove that contract executed between contractor / dealer and management is sham and bogus.
6. I also observed that in this reference Anish Zaveri Services are also party but they are ex-parte in this proceeding and other contractors / dealers is not made party who appointed disputed workers. So this fact remain unproved who appointed the workers or who terminated the workers.
7. Hon'ble Supreme Court in case of Steel Authority of India Ltd. V/s. Union of India & Ors. – 2006 III CLR 659 held that “neither Labour Court.....could be determine question as to whether contract

labour should be abolished or not, same being within exclusive domain of appropriate Government.....validity of appointment of contractor would itself be an issue as State must prima facie satisfy itself that there exists a dispute as to whether, workmen in fact are not employed by a contractor, but by management.” In this way my humble opinion is that subject of regularization of worker wholly depend on the appropriate government.

8. It is also appears that workmen did not pay any compensation either u/s.25 or under any law for time being in force by the contractor or management. This reference is pending from 22.4.13 and time also consumed in conciliation proceeding. According to union disputed workers are working from 2002 to 2012. Management fails to prove that they are engaged in beneficial employment. Management witness MW-1 also admitted in para 13 that concerned worker was engaged by direct agreement between IOCL party No.1 and service provider and said petrol pump is continuously run without any weekly off.

35. Hon'ble Supreme Court in case laws – Anaikar Oriental (Arabic) Higher Secondary School V/s. A. Haroon, 2016, SCC Online Mad 10638 and Workmen Rastriya Colliery Mazdoor Sangh V/s. Coking Coal Ltd. (2016) 9 SCC 431 give a principle of Golden handshake instead of back wages. In these cases Hon'ble Supreme Court held that “on facts particularly R-1 having lost confidence of management (appellants), order of reinstatement with back wages substituted by directing appellants to pay Rs.50 lakhs in three instalments, as compensation to R-1”

36. On going above discussion with touch stone of above case laws, I observe that dispute workers did not entitled to regularization in service because so many years lapse from termination and it is duty of the management and appropriate government to decide this matter on merit. I also observed that union fails to prove that there exist any employer-employee relation between management party No.1 and them. So in my humble opinion they are entitled to Rs.2 lakhs as an lumpsum compensation of each worker. In case of any death or casualty their heirs are also entitled in place of disputed workers for lumpsum compensation.

37. Parties are directed to pay these compensation within 2 months from passing the order. If contractor fails to pay these compensation, party no.1 is directed to pay these compensation to workers directly and they have right to recover these compensation with interest from contractor / dealer as per law. Workers are also entitled @ 6% per annum in default of payment. They also fails to prove that their termination from the services is illegal. I found that termination order is legal, just and proper. They are not entitled to any further relief.

38. Hence order.

ORDER

- 1. The demand of Maharashtra Rajaya Kamgar Sangh (INTUC), Mumbai over the issue of illegal termination of shri Mayur Shinde and 31 other employees (As per Exhibit-I) were employed at Top**

**Gear Indian Oil, COCO-II, Mumbai
for reinstatement and
regularization of their services in
the establishment of IOCL, is
legal, just & proper.**

- 2. Workmen are entitled to Rs.2
lakhs as lumpsum compensation
of suffering as well as u/s. 25 of
I.D. Act.**
- 3. They are not entitled to any
further relief.**

Date: 17.08.2021

Sd/-
(SHYAM. S. GARG)
Presiding Officer/Link Officer
CGIT-2, Mumbai