

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, AHMEDABAD**

Present - Sunil Kumar Singh - I,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Date: 02<sup>nd</sup> November, 2023

**Complaint (CGITA) No. : 12/2019**

1. Shri Virambhai Chelabhai
2. Shri Maganbhai Ramanbhai Gohil
3. Shri Baldevbhai Vaghubhai Desai
4. Shri Dudhsingh Bhojsingh Gehlot
5. Shri Lallubhai Khumabhai Rabari
6. Shri Suresh P. Parmar
7. Shri Rajubhai Prabhatbhai Desai
8. Shri Naresh Haribhai Vaghela
9. Shri Motibhai Lallubhai Desai
10. Shri Ashaji Galaji Thakor
11. Shri Chelaji Dahyaji Thakor
12. Shri Thakor Khodaji Babuji
13. Shri Thakor Dashrathbhai
14. Shri Siddhraj
15. Shri Thakor Rameshbhai
16. Shri Imran
17. Shri Kamlesh Makwana (Tenkar),

All C/o Glorious Petroleum Mazdoor Sangh,

A/3, Priyadarshini Society,  
Near New Railway Colony, Sabarmati,  
Ahmedabad – 380019

- Complainants / Workmen / Drivers

V

1. The Executive Director – Asset Manager,  
ONGC Ltd., 5<sup>th</sup> Floor, Avani Bhavan, Chandkheda,  
Ahmedabad – 380005.
2. The Incharge Transport,  
Transport Section, ONGC Ltd., Sabarmati,  
Ahmedabad.
3. M/s Jaydev B. Barot,  
Near Mehsana Dudh Sagar Dairy,  
Mehsana.
4. M/s Devendra Transport,  
A/3, H.B. Commercial Centre, Near Vishat Petrol Pump,  
Chandkheda, Ahmedabad.
5. M/s George Enterprise,  
106, Gayatri Complex, Near Bridge, Sabarmati,  
Ahmedabad.
6. M/s Janak Transport,  
Near Nagalpur Cross Road, Mehsana Highway,  
Mehsana (Gujarat).
7. M/s Sun Travels,  
Petrol Pump, Palavasna Circle, Rampura Road, Near ONGC,

Mehsana.

8. M/s Vinod Transport,  
Pramukh Swami Avenue, Near Star Line, RTO Road,  
Mehsana Highway, Mehsana.
9. M/s Shree Nagrani (Narayani) Transport,  
A/2, H.B. Commercial Centre, Near Vishat Petrol Pump,  
Chandkheda, Ahmedabad.
10. M/s B.L. Chaudhary,  
A/3, Shivam Bungalows, Near Deep Bhumi Flat, Janta Nagar,  
Chandkheda, Ahmedabad.
11. M/s Jay Ambe Bus Service,  
Varun Dhavan Bungalows-2, Behind SIMS Hospital,  
Science City, Sola, Ahmedabad.
12. M/s Dilip Jani Transport,  
Umiya Shopping Centre, Near Rajkamal Petrol Pump,  
Mehsana.
13. M/s Honey Transport,  
107, Sangath Complex, Near Stadium, Motera Road,  
Sabarmati, Ahmedabad.
14. M/s M.V. Desai,  
A/3, H.B. Commercial Centre, Near Vishat Petrol Pump,  
Chandkheda, Ahmedabad.
15. M/s Mann Transport,  
A/3, H.B. Commercial Centre, Near Vishat Petrol Pump,  
Chandkheda, Ahmedabad.

- Opponents / Employers

Adv. for the Complainants No.'s 2,3,5,6,8,9,10,11,12,13,16 & 17

Adv for Complainant No.'s 1,4,7,14,15	-	Ms. Amita S. Shah
	-	None
Adv. for the Opponents No.'s 1 & 2	-	Shri K. V. Gadhia & Shri M. K. Patel
Adv. for the Opponents No. 3	-	Shri Chintan Gohel
Adv. for the Opponent No. 4, 5, 9, 11, 14 & 15	-	Shri Vikram Mashar
Adv. for the Opponent No. 6, 7, 8, 10, 12 & 13	-	None

### **AWARD**

1. This complaint has been filed u/s 33 (A) of Industrial Disputes Act, 1947, against the O.P. / employers for changing the condition of service of complainants / drivers by oral termination dated 20.03.2019 during the pendency of the industrial dispute raised by 102 drivers including present complainants in respect of fixing the wages and grant of benefits under ONGC's 'fair wage policy' vide Reference (CGITA) No. 103/2018.
2. The brief facts state that the complainants were working continuously as drivers of the opposite company through different contractors for more than last 10 years, lastly through the present ones. They worked for more than 240 days in each and every calendar year. The complainants were not given their salary / wages as per settlement dated 29.03.2012, which was arrived at between ONGC, contractual workmen and union before CLC (C), Ajmer. Complainants along with other co-workers raised industrial dispute through their union i.e. 'Glorious Petroleum Mazdoor Sangh' against O.P. No. 1 & 2 / ONGC and contractors before the Deputy / Assistant Commissioner (Central) of Labour, where no settlement was arrived at during the process of conciliation leading to the submission of failure report to the Ministry of Labour, New Delhi. The dispute was

scheduled and referred by the Central Government vide order dated 29.10.2018 for adjudication to this Tribunal and the same was registered as Reference (CGITA) No. 103/2018.

Schedule under Reference

“1. Whether the demand of General Secretary, Glorious Petroleum Mazdoor Sangh, Ahmedabad against the Executive Director – Asset Manager, ONGC Ltd., Ahmedabad and others to fix the wages and grant benefit under ONGC’s Fair Wage Policy as per the order dated 29.03.2012 (copy enclosed) of Deputy C.L.C (C) to 102 contractual workers (List enclosed) is legal, fair and justified?

If yes, what reliefs the workmen are entitled to and from which date?

What other directions, if any, are necessary in the matter?”

“2. Whether the demand no. 5 (tender agreement should be followed) of General Secretary, Glorious Petroleum Mazdoor Sangh, Ahmedabad against the Executive Director – Asset Manager of ONGC Ltd., Ahmedabad and others, is proper and justified? If yes, what directions are necessary in the matter? What relief the workmen are entitled to?”

Aforesaid reference was fixed for hearing on 07.03.2019 and was adjourned to 09.05.2019. Opponents / employers got annoyed and changed the condition of service of complainants by terminating them orally from 20.03.2019 without any notice / terminal benefits / departmental enquiry, contrary to the company’s policy / condition under settlement of continuing the engagement of drivers from contractor to contractor every after three years. The oral termination was made without obtaining any approval from this Tribunal violating the mandatory provisions of Section 33 of Industrial Disputes Act. The complainants have prayed to set aside their oral termination and reinstate them with back wages and continuity of service. All the complainants except complainant no. 4 / Shri Dudhsingh Bhojsingh

Gehlot, have filed their affidavits Ex. 2 to 17 in support of the complaint respectively.

3. It is pertinent to mention at this stage that before the filing of written statement on behalf of O.P. No. 1&2 / ONGC, my Ld. predecessor passed an order dated 04.07.2019, reinstating the complainants with back wages from the date of termination. The opposite party no. 1 & 2 / ONGC moved an application before this Tribunal on 08.07.2019 with a prayer to set aside the order dated 04.07.2019 and to grant them an opportunity to file written statement. The same was rejected vide order dated 08.07.2019. The order dated 04.07.2019 passed by this Tribunal was challenged by the first party / employer no. 1&2 / ONGC before the Hon'ble Gujarat High Court in R/Special Civil Application No. 16153 of 2019 (converted from SCA/30105/2019 dated 23.09.2019). Hon'ble Gujarat High Court, vide order dated 18.11.2019, directed the parties to approach this Tribunal and granted time to O.P. No. 1&2 / ONGC to file written statement in a stipulated period further directing the Tribunal to decide the matter in a time bound period.
4. The matter was proceeded afresh accordingly. Out of total 17 original complainants / drivers, only complainant no. 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 16 and 17 turned up and contested, hereinafter be called as 'contesting complainants'. Complainant no. 1, 4, 7, 14 and 15 did not turn up for contesting their cause.
5. The contesting opposite party no.'s 1, 2, 4, 9, 11, 14 and 15 have submitted their written statements but contesting opposite party no.'s 3 & 5 have not submitted their written statements, though participated in the proceedings. Opposite party no.'s 6, 7, 8, 10, 12 and 13 have neither turned up nor submitted their written statements despite

sufficient service vide order dated 26.06.2023. The matter was accordingly directed to be proceeded on merits.

6. The first party / O.P. no. 1&2 / ONGC has submitted its written statement at Ex. 56 denying the averment of the complainants that they were working with ONGC for more than 10 years. They have denied to have terminated the complainants on 20.03.2019. ONGC has further denied to have changed the service conditions of the complainants. It is further pleaded by the ONGC that because of expiry of contract due to efflux of time, the contractors have withdrawn the vehicles along with their drivers hired by ONGC. The complainants are not the employees of ONGC but of contractors. The composite settlement dated 18.07.2012 is not applicable in case of contract for hire of vehicles along with drivers because contracts were not for the deployment of labour but for hire of vehicles. There is no master and servant relationship between the ONGC and the complainants. The question for taking permission and approval as alleged, does not arise. ONGC does not make any payment to such drivers employed by the contractors. It is further stated that all contracts for hiring the services of light vehicles are finalized for a period of three years through the process of open tender / competitive bidding. The drivers of hired vehicles are engaged by different contractors to provide the service of vehicles under 'service contract' and not covered under the 'job contract'. It is stated that neither the complainants / drivers nor their said union 'Glorious Petroleum Mazdoor Sangh' were parties to the settlement dated 18.07.2012. The drivers are not entitled to get benefit of settlement dated 18.07.2012.
7. The opposite party no. 4 / M/s Devendra Transport (Travels) has filed its written statement at Ex. 38. The opposite party no. 14 / M/s M. V. Desai

has filed its written statement at Ex. 41. The opposite party no. 15 / M/s Mann Transport (Travels) has filed its written statement at Ex. 42 on the similar footings. All these three contractors have denied the averment of the complainants in general denying that the complainants were working since last more than 10 years as alleged. They have further denied to have terminated the services of the complainants orally on 20.03.2019. They have further submitted that they entered into the contract with the ONGC for hiring about 16 vehicles in February 2016 for three years till February 2019. ONGC gave an extension for further one month hence their service contracts expired on 20.03.2019. They have further stated that they were awarded new contracts by the ONGC from 20.03.2019 for another three years. They were initially informed by ONGC vide letter dated 18.03.2019 that the interim relief granted by CGIT, Ahmedabad under Reference No. 21/2016 was not in existence. In absence of any clarification for the absorption of concerned workmen, concerned drivers were offered job but the offer was not acceptable to them according to the terms and conditions of new contract. They have denied to have contravened any service condition as provided under Section 33 of Industrial Disputes Act, 1947. Further praying to dismiss the complaint.

8. The opposite party no. 9 / M/s Shree Nagrani (Narayani) Transport has filed its written statement at Ex. 39. The opposite party no. 11 / M/s Jay Ambe Bus Service has filed written statement at Ex. 40. These two contractors have filed their written statements on the similar footings with those of opposite party no.'s 4, 14 and 15 except that these two contractors have denied to have renewed their contracts after 20.03.2019. They have similarly stated that they have neither



terminated the services of concerned complainants / drivers nor have received any new contract after the expiry of old contract on 20.03.2019.

9. The complainants have filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Serialim of Document	Type / Remarks
1	Memorandum of Settlement arrived under Section 12 (3) of the Industrial Disputes Act, 1947	18.07.2012	Ex. 19 / 1	Xerox
2	Bid document for hiring the services of 94 Jeep Taxies for three years for Ahmedabad Assest, issued by ONGC, Ahmedabad	Nil	Ex. 19 / 2	Xerox
3	Letter by DGM – Head Logistics, ONGC, Ahmedabad to 20 contractors on the subject 'Confirmation regarding CGIT protected drivers'	18.10.2018	Ex. 19 / 3	Xerox
4	A Letter written by DGM – Head Logistics, ONGC, Ahmedabad to 03 contractors on the subject 'Deployment of Jeep Taxies'	18.03.2019	Ex. 19 / 4	Xerox
5	A letter to the Police Inspector, Chandkheda Police Station, Ahmedabad by the opposite parties – 03 contractors	20.03.2019	Ex. 19 / 5	Xerox
6	Letter from Chief GM (HR) – Head HR – ER, ONGC Ltd., Ahmedabad Asset to GM (Log.) Head Logistics, ONGC Ltd., Ahmedabad Asset	27.05.2019	Ex. 47 / 1	Xerox
7	List of 17 drivers whose services were terminated pending Reference (CGITA) No. 103/2018 instituted for 102 drivers.	Nil	Ex. 47 / 2	Xerox
8	Bid Document for hiring the services of 94 nos. Jeep Taxies General Shift Duty (With AC and GPS) for a period of three years for Ahmedabad Asset	15.10.2018	Ex. 100 / 1	Xerox

9	Notification of Award by ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar	31.01.2019	Ex. 105	Xerox
10	Letter from Chief Manager (Lgts), ONGC Ltd., Ahmedabad Asset to M/s Vinod Transport Co., Mehsana	13.03.2012	Ex. 106	Xerox
11	Memorandum of Settlement arrived at u/s 12 (3) of Industrial Disputes Act, 1947	18.07.2012	Ex. 107	Xerox
12	Duty / Entry pass of Shri Naresh H. Vaghela issued by M/s Devendra Travels	Nil	Ex. 122 / 1	Xerox
13	Duty / Entry pass of Shri Imran Malik issued by GEOS Enterprise	Nil	Annexed with Ex. 122	Xerox
14	Wage slip of Shri Naresh Haribhai Vaghela from M/s Devendra Travels for the m/o April 2016, May 2016 and June 2016	Nil	Ex. 122 / 2	Xerox
15	Log Book Issue Certificate of Shri Khodaji Babuji Thakor from GEOS Enterprise	Nil	Ex. 122 / 3	Xerox
16	Log Book Issue Certificate of Shri Nareshbhai Vaghela from Devendra Travels	Nil	Ex. 122 / 4	Xerox

10.All 12 contesting complainants have examined only Shri Nareshbhai Haribhai Vaghela (complainant no. 8) at Ex. 119 on behalf of them all.

11.The opposite parties / employers have filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Serialim of Document	Type / Remarks
1	Letter from M/s Devendra Travels to the I/c – (MM), ONGC Ltd., Ahmedabad	29.01.2019	Ex. 43 / 1	Xerox
2	Letter from M/s Devendra Travels to the I/c – (MM), ONGC Ltd., Ahmedabad	31.01.2019	Ex. 43 / 2	Xerox
3	Letter from M/s Devendra Travels to the I/c	04.02.2019	Ex. 43 / 3	Xerox

	– (MM), ONGC Ltd., Ahmedabad			
4	Letter from M/s Devendra Travels to the I/c – (MM), ONGC Ltd., Ahmedabad	07.02.2019	Ex. 43 / 4	Xerox
5	Letter from M/s Devendra Travels to the Head - I/c – (MM), ONGC Ltd., Ahmedabad	14.02.2019	Ex. 43 / 5	Xerox
6	Letter from M/s Devendra Travels to the Head - I/c – (MM), ONGC Ltd., Ahmedabad	14.03.2019	Ex. 43 / 6	Xerox
7	Letter from ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar, M/s Mann Travels, Ankleshwar and M/s M.V. Desai, Mehsana	18.03.2019	Ex. 43 / 7	Xerox
8	Letter from M/s Devendra Travels to the Head MM, ONGC Ltd., Ahmedabad	19.03.2019	Ex. 43 / 8	Xerox
9	Letter from M/s M.V. Desai to the Head - I/c – (MM), ONGC Ltd., Ahmedabad	13.03.2019	Ex. 44 / 1	Xerox
10	Letter from ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar, M/s Mann Travels, Ankleshwar and M/s M.V. Desai, Mehsana	18.03.2019	Ex. 44 / 2	Xerox (Replica of Ex. 43/7)
11	Letter from M/s Mann Travels to the Head - I/c – (MM), ONGC Ltd., Ahmedabad	08.03.2019	Ex. 45 / 1	Xerox
12	Letter from ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar, M/s Mann Travels, Ankleshwar and M/s M.V. Desai, Mehsana	18.03.2019	Ex. 45 / 2	Xerox (Replica of Ex. 43/7)
13	Letter from GM – Head Logistics, ONGC Ltd., Ahmedabad Asset to GM-I/c HR-ER, ONGC, Ahmedabad Asset	10.06.2019	Ex. 48 / 1	Xerox
14	Letter from GM – Head Logistics, ONGC Ltd., Ahmedabad Asset to M/s Devendra Travels, Ankleshwar, M/s Mann Travels, Ankleshwar and M/s M.V. Desai, Mehsana	10.06.2019	Ex. 48 / 2	Xerox
15	Letter from GM – Head Logistics, ONGC Ltd.,	24.06.2019	Ex. 48 / 3	Xerox

	Ahmedabad Asset to GM-I/c HR-ER, ONGC, Ahmedabad Asset			
16	Letter from M/s Devendra Travels to the Head Logistics, ONGC Ltd., Ahmedabad	19.06.2019	Ex. 50 / 1	Xerox
17	Contract agreement between M/s Mann Travels and ONGC for the period from 2019 to 2022	Nil	Ex. 108	Xerox
18	Scope of work / Contract and General Conditions of the Contract	Nil	Ex. 109	Xerox
19	Notification of award from GM – Head MM, ONGC Ltd., Ahmedabad to M/s Mann Travels, Ankleshwar	05.02.2019	Ex. 110	Xerox
20	Contract agreement between M/s Devendra Travels and ONGC for the period from 2019 to 2022	Nil	Ex. 111	Xerox
21	Scope of work / Contract and General Conditions of the Contract	Nil	Ex. 112	Xerox
22	Notification of award from GM – Head MM, ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar	31.01.2019	Ex. 113	Xerox
23	Contract agreement between M/s M. V. Desai and ONGC for the period from 2019 to 2022	Nil	Ex. 114	Xerox
24	Scope of work / Contract and General Conditions of the Contract	Nil	Ex. 115	Xerox
25	Notification of award from GM – Head MM, ONGC Ltd., Ahmedabad to M/s M. V. Desai, Mehsana	05.02.2019	Ex. 116	Xerox
26	Fair Wage Policy – 2015 in Logistics Contracts	10.11.2015	Ex. 120 /1	Xerox

12.The first party / employer no. 1&2 / ONGC has not adduced any oral evidence. The first party / employer – contractor / opposite party no. 4

has examined Shri Harishchandra K. Karade at Ex. 124. Opposite party no. 5 has examined Shri Jitendra Solanki at Ex. 130. Opposite party no. 9 has examined Shri Mukeshkumar Kantibhai Bharvad at Ex. 125. Opposite party no. 11 has examined Shri Vinodbhai Govindbhai Patel at Ex. 126. Opposite party no. 14 has examined Shri Maljibhai Vastabhai Desai at Ex. 127. Opposite party no. 15 has examined Shri Rameshbhai Maljibhai Desai at Ex. 128.

13.I have perused the records and heard Ld. Counsel Ms. Amita Shah, advocate for the contesting complainants no. 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 16 and 17 in the light of her written arguments at Ex. 133, Shri K. V. Gadhia and Shri M. H. Patel, advocates for first party / employer no. 1 & 2 / ONGC in light of their written arguments at Ex. 134, Shri Chintan Gohel, advocate for opposite party no. 3 and Shri Vikram Mashar, advocate for opposite party no. 4, 5, 9, 11, 14 and 15 in addition to his written arguments at Ex. 136.

14.The main points for consideration under this complaint are as under.

- I. Whether the complainants / drivers have worked for 240 days or more in continuity during each calendar year preceding their said oral termination dated 20.03.2019? If yes, who is the employer of the complainants?
- II. Whether the act of the complainant's employer of not renewing the contract or not giving duty to the complainants / drivers after the expiry of contract period, be regarded as change in conditions of services within the meaning of Section 33 (1) (a) of the Industrial Disputes Act, 1947?

15.First Point under consideration is as to whether the complainants / drivers have worked for 240 days or more in continuity during each

calendar year preceding their said oral termination dated 20.03.2019? If yes, who is the employer of the complainants?

16. Ms. Amita Shah, Adv. for contesting complainants, has argued that the complainants were working with the opponents no. 1&2 / ONGC company for more than 10 years continuously as full time drivers at Ahmedabad region through their concerned contractors. The complainants / drivers worked for more than 240 days in each and every calendar year. The employer / ONGC has not discharged his onus to produce the 'log books' which could show the attendance of the drivers. She has referred The Superintending Engineer TWAD Board & anr. V M. Natesan etc., 2019 LLR 743 SC and Director, Fisheries Terminal Division V Bhikubhai Meghajibhai Chavda, AIR 2010 SC 123, wherein Hon'ble Supreme Court has observed that, once it has come in evidence that the workman has completed 240 days of service in preceding year, then the initial burden is shifted on the employer to rebut the oral evidence of the workman by producing relevant oral and documentary evidence. She has further emphasized that the O. P. No. 1&2 / ONGC is duty bound as principle employer to pay wages in case the contractor fails to pay wages to his workmen and recover the amount so paid from the contractor and to perform other duties prescribed u/s 21 of Contract Labour (Regulation & Abolition) Act, 1970. It has been argued that the employer / ONGC and contractors have changed the condition of service of the complainants / drivers by the said oral termination dated 20.03.2019 despite pendency of Reference No. 103/2018 without obtaining permission or approval from the Tribunal and have violated the provisions of Section 33 of Industrial Disputes Act, 1947. Prayed to

set aside the said order and reinstate the complainants with back wages and continuity in service.

17.Ld. Counsels for the O. P.s have jointly argued that complainants have not specifically stated as to for what duration they worked with which contractor. The single testimony of complainant no. 8 in respect of 240 days work done by all the complainants in the current year preceding the said oral termination dated 20.03.2019, cannot be accepted. It has been argued that the contract came to an end by efflux of time and the complainants have not been terminated by opposite parties / employers / contractors, hence, the question of taking permission / approval from the Tribunal does not arise as no change in any condition of service has been affected. Prayed to dismiss the complaint.

18.It is true that the complainants have not specifically pleaded in their consolidated complaint as to for what duration and through which contractor, they worked with O.P. No. 1&2 / ONGC. It is not disputed by O.P. No. 1&2 / ONGC and the contesting contractors that the complainants were working as drivers with ONGC through their contractors. The complainant no. 8 / Shri Nareshbhai Haribhai Vaghela in his examination-in-chief submitted through an affidavit Ex. 119, has stated for himself and other contesting complainants that he along with his colleagues was working continuously since the year 2010, through contractors with O.P. No. 1&2 / ONGC. He has not named any contractor with whom he was working for what duration except stating that contractors were changed by ONGC after every three years. The sole witness, in his cross-examination conducted by O.P. No. 1&2 / ONGC, has specifically named O.P. No. 4 / M/s Devendra Transport (Travels) with whom he was working and has denied to have worked with O.P.

No. 9 / M/s Shree Narayani Contractors, O.P. No. 11 / Jay Ambe Bus Service, O.P. No. 14 / M/s M. V. Desai and O.P. No. 15 / M/s Mann Transports (Travels). He has further admitted in his cross-examination conducted by O.P. No. 4, 5, 9, 11, 14 & 15 that the contract between ONGC and between service provider contractors was for limited period.

19.A bare perusal of the settlement dated 18.07.2012 shows that the management of O.P. No. 1&2 / ONGC agreed to extend certain benefits recorded in the minutes of the proceedings dated illegible (perhaps dated 29.03.2012) before the Conciliation Officer / Dy. CLC, Ajmer, subject to the further necessary approval of the ONGC management. Subsequently, a final settlement dated 18.07.2012 was arrived u/s 12 (3) of Industrial Disputes Act, 1947 amongst contractors of the employee's various unions and ONGC. According to the terms under Para 1 of the Settlement, it was agreed as under -

“.....whenever contractor of ONGC changes, list of contract workers engaged by previous contractor will be provided to the new contractor so that same contract worker can be engaged. The contract workers who were engaged as on 24.06.2008 and continued to be engaged till date and also those who were engaged on 01.01.2011 and have continued till date will only be eligible to be included in the list.....”

20.The Para 7 of the Terms of Settlement dated 18.07.2012 reads as under -  
 “..... these benefits to contract workers shall be extended through concerned contractor w.e.f. 01.04.2012 and this settlement will remain in force for a period of five years from the date of signature or till minimum wages for oil sector are notified by Central Government by including in the schedule employment for oil mines, whichever is earlier.....”

21.Accordingly, only those workers were to be included in the list to be handed over to the next contractor for their engagement who were engaged on 24.06.2008 and were continued till date i.e. date of



settlement i.e. 18.07.2012. The other category of workers who were engaged on 01.01.2011 and were continuing till the date of settlement, were also made eligible to be included in the list for their further engagement with the new contractor. Now it is to be seen as to whether the complainants were engaged on the either of the two cut off dates as provided in the settlement. Complainants have neither specified the date of their engagement in complaint nor in the only deposition of complainant no. 8 / Shri Nareshbhai Haribhai Vaghela. The complainants have mentioned in Para 1 of their complaint that they were working with the opposite companies for more than 10 years at Ahmedabad region which suggest that they were working w.e.f. 03.04.2008. However, the complainant no. 8 / Shri Nareshbhai Haribhai Vaghela in his deposition at Ex. 119 has in Para 4 of his examination-in-chief, stated that the complainants were continuously working since the year 2010 which negates the averment based aforesaid suggestive conclusion. According to complainants own deposition, their working from the first cut off date i.e. from 24.06.2008 is not substantiated. Even if the part of deposition of the complainant no. 8 is accepted to be true, the said benefit under settlement was made to remain in force only for a period of five years or till the minimum wages for oil sector were notified by Central Government by including in the schedule employment for oil mines, whichever was earlier. So in any case, the settlement was workable maximum till 17.07.2017. Complainants have pleaded that the said oral termination having been effected from 20.03.2019 i.e. after the cut off period mentioned in the settlement. The complainants, therefore, could not claim the benefit of settlement dated 18.07.2012 on the date of their said oral termination in the year 2019. This apart,

neither complainants / drivers nor their union i.e. Glorious Petroleum Mazdoor Sangh, Ahmedabad was the party to the settlement dated 18.07.2012.

22.The O.P. No. 1&2 / ONGC has filed copy of notification of the award for the period of three years after March 2019 awarded to O.P. No. 4 / M/s Devendra Transport (Travels) vide Ex. 105, awarded to O.P. No. 14 / M/s M.V. Desai vide Ex. 114 and awarded to O.P. No. 15 / M/s Mann Travels vide Ex. 110. Contesting complainants have filed through list Ex. 122, photocopy of duty / entry pass of complainant no. 8 / Shri Nareshbhai H. Vaghela for the duration of 21.01.2015 to 30.04.2015 and from 14.05.2015 to 13.11.2015 issued by O.P. No. 4 / M/s Devendra Transport (Travels) and duty / entry pass of complainant no. 16 / Shri Imran on which the duration, though illegible but seems to be something like 16.11.2015 to 24.02.2018 issued by some Geos Enterprise, wage slips of complainant no. 8 / Shri Nareshbhai H. Vaghela from April 2016 to June 2016 issued by O.P. No. 4 / M/s Devendra Transports (Travels), log book of complainant no. 12 / Shri Khodaji B. Thakor for the month of March 2019 issued by some Geos Enterprise and log book of complainant no. 8 / Shri Nareshbhai Vaghela for the month of April 2016 issued by O.P. No. 4 / M/s Devendra Transports (Travels).

23.It is pertinent to mention that despite court's order, O.P. No. 1&2 / ONGC has not produced the logbooks of the concerned drivers, which could reflect the exact attendance period of the complainants / drivers on duty. Hence, an adverse inference can certainly be drawn against the O.P. No. 1&2 / ONGC to this extent. In view of the averment in the complaint and deposition of complainant no. 8 stating that the complainants worked for more than 240 days in each calendar year,

deserves to be accepted. It is accordingly held that the complainants / drivers worked for 240 days or more in the calendar year preceding their said oral termination dated 20.03.2019.

24. According to the complainants' own version, they have presented themselves to be working with the O.P. No. 1&2 / ONGC through their respective contractors. Complainant no. 8 / Shri Nareshbhai Haribhai Vaghela in his cross-examination conducted by O.P. No. 1&2 / ONGC at Ex. 119, has clearly stated that contractors used to pay his salary. The vehicle driven by him belonged to the contractor. He did not have any I-card issued by ONGC. He has further stated that his PF etc. was deducted by his contractor only. The liability of O.P. No. 1&2 / ONGC to ensure payment of wages to the workmen / drivers was only in case of default of payment of wages by the contractors to their workmen / drivers. However, the connected CGIT case Reference (CGITA) No. 103/2018 dated 29.10.2018 is w.r.t. the adjudication in respect of the legality and justification of the demand in respect of wage fixation and benefits under ONGC's fare wage policy as per order dated 29.03.2012 passed by Dy. CLC (C) in respect of 102 contractual listed workmen and not for non-payment of existing wages to the drivers. In view of law laid down by Hon'ble Supreme Court in Kirloskar Brothers Limited V Ramcharan and ors., Civil Appeal Nos. 8446-8447/2022, Judgement dated 05.12.2022, the complainants have not alleged that the contracts of aforesaid descriptions between the principal employer ONGC and the aforesaid three contractors were sham, bogus or camouflage to deny employment benefits to the complainants / drivers and in view of undisputed fact that the salary was paid by the contractors and their PF dues was also deducted by the contractors only. In fact the complainants

/ drivers were wholly in the disciplinary control of their respective contractors. It is accordingly held that the complainants were the employees of their respective contractors only. The first point is decided accordingly.

25. The second point of determination under consideration is as to whether the act of the complainant's employer of not renewing the contract or not giving duty to the complainants / drivers after the expiry of contract period, be regarded as change in conditions of services within the meaning of Section 33 (1) (a) of the Industrial Disputes Act, 1947?

26. Much emphasis has also been given by the complainant's Ld. Counsel on Para 9 of the bid / tender document in respect of hiring the vehicles, which lays a condition of continuity of engagement of drivers to be engaged by the new contractors also. In view of this argument raised by the complainant, I have examined the bid document filed on behalf of the complainants as Ex. 100 / 1. Relevant Para 9 of the bid document reads as under –

“9.0 Continuation of Court Protected Drivers.

The contractor may note that some of the drivers deployed on the existing 94 nos. of jeep taxi for general shift duty by existing contractors are been given interim relief by CGIT vide CGIT ref 21 of 2016 and their services may not be terminated even after expiry of existing contract. The services of these drivers are required to be continued in the next contracts finalised through this tender and engagement of such drivers under new contract is subject to the continuation of interim relief order in CGIT Ref 21 of 2016. All such drivers will be employees of the contractors and they are required to discharge their duties as per the relevant clauses of the contract and provide the services of vehicles as per the terms & conditions of the contract. However, tentative 49 such workers are court protected workers who need to be continued in the contracts to be finalised against this tender. The list of such drivers will be made available to the contractors by the

Logistics section after issuance of NOA and before mobilisation of vehicles under this tender.”

27. The aforesaid clause at Para 9 of the bid tender closing / opening dated 15.10.2018 goes to show that only the services of those drivers who were awarded interim relief in CGIT Reference No. 21/2016, were required to be continued in next contract and the engagement of such drivers under the new contract was subject to the continuation of referred interim relief. It has been informed by the office that present complainants were not the parties in CGIT Reference No. 21/2016. It is pertinent to mention at this place that my predecessor / Ld. Presiding Officer also made reference of existing interim relief while passing order on 04.07.2019. Hon'ble Gujarat High Court vide order dated 18.11.2019 passed in R/SCA No. 16153/2019 has also made observation that this was a factual matrix error. No such interim relief / any direction for continuity of service of the workmen in case the contractor is changed, was ever issued by this Tribunal in the connected CGIT Reference No. 103/2018 on the basis of which, this complaint has been filed. It is worth mentioning that the Ld. Predecessor has also based his award on the letter dated 27.05.2019 (as an enclosure to Ex. 47) written by the officers of the O.P. No. 1 & 2 / ONGC interse wherein the sender – Chief GM (HR) has expressed his opinion to his colleague GM (Log.), Head Logistics, ONGC, Ahmedabad Asset that he is of the considered view that Section 33 (2) has been contravened by terminating services of 47 contractual drivers. The recipient colleague GM, Head Logistics, Sabarmati Complex, ONGC Ahmedabad Asset replied back to the sender colleague vide letter dated 10.06.2019 at an enclosure to Ex. 47, informing that the clause in respect of court protected drivers vide CGIT

Reference No. 21/2016 was already inserted in the tender and further the interim relief was not extended beyond 24.11.2016 in CGIT Reference No. 21/2016 and such drivers were no more court protected and the concerned contractors were informed vide letter dated 18.03.2019 accordingly. The same letter dated 18.03.2019 which is also filed as an annexure to list Ex. 45 and addressed to O.P. No. 4, O.P. No. 14 and O.P. No. 15, is on record. That apart, the present complainants / drivers are not the parties in the list of 241 workmen in CGIT Reference No. 21/2016. As far as the breach of Rule 33 (2) of Industrial Disputes Act, 1947 is concerned, it shall be dealt in the next part of my discussion. It is abundantly clear that the clause 9 in the bid document was clearly a rider to inform the contractors that the deployment of their drivers was subject to the interim order of CGIT passed in Reference No. 21/2016 which had nothing to do with this complaint's connected CGIT Reference No. 103/2018.

28. The conduct of the ONGC / contractors can be ascertained on the basis of various correspondences made between the contractors and ONGC and the depositions of both the parties on record. O.P. No. 4 / contractor vide his letter dated 29.01.2019 at Ex. 43/1, letter dated 31.01.2019 at Ex. 43/2, letter dated 07.02.2019 at Ex. 43/4, letter dated 14.03.2019 at Ex. 43/6 and letter dated 19.03.2019 at Ex. 43/8 and O.P. No. 14 vide his letter dated 13.03.2019 at Ex. 44/1 and O.P. No. 15 vide his letter dated 08.03.2019 at Ex. 45/1, have sought directions from the ONGC in respect of engagement of the concerned drivers in view of the new contract commencing from March 2019. ONGC vide letter dated 18.03.2019 at Ex. 43/7 categorically informed all these contractors that the interim order passed in CGIT Reference No. 21/2016 did no more exist but

pending in the Tribunal. Shri Harishchandra K. Karade, witness for O.P. No. 4 deposed vide Ex. 124, Shri Maljibhai Vastabhai Desai, witness of O.P. No. 14 deposed vide Ex. 127 and Shri Rameshbhai Maljibhai Desai, witness of O.P. No. 15 deposed vide Ex. 128, have stated in accordance with their written statements that they are still ready to engage the concerned drivers at Ankleshwar as they have no contract at Ahmedabad. However, complainants' sole witness / complainant no. 8 / Shri Nareshbhai Haribhai Vaghela stated in his cross-examination that he is not willing to work at the place different than the present one. Though, the offer of these contractors's witnesses seems to be an offer for the duration after the year 2022 as the three years contract would have expired if counted from the year 2019 and aforesaid witnesses have deposed in the year 2023. Shri Mukeshkumar Kantibhai Bharvad, witness of O.P. 9 deposed vide Ex. 125 and Shri Vinodbhai Govindbhai Patel, witness of O.P. No. 11 deposed vide Ex. 126, have stated that the complainants were not their employees. Complainants's sole witness Shri Nareshbhai Haribhai Vaghela has also stated that he has not worked with these contractors. The analysis of the aforesaid documents and the depositions of the contractors's witnesses goes to show that they were always bonafide in their conduct in respect of taking decision to engage drivers on their hired vehicles before the commencement of their new contract in the year 2019. The argument of Ld. Counsel for the contesting complainants does not stand accordingly.

29. The law on the consequence of change in the condition of service within the meaning of Section 33 of the Industrial Disputes Act, 1947, is settled and no more res-integra. Section 33 of Industrial Disputes Act, 1947 reads as under:

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall, -

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any



action against any protected workman concerned in such dispute -

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation - For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one percent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a] labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.]

30. The five judges constitution bench of Hon'ble Supreme Court in Jaipur Zilla Sahakari Bhoomi Vikas Bank Limited V Ram Gopal Sharma and ors., (2002) 2 SC C 244, has settled the law. The brief facts of the instant case were : the workman was dismissed from service holding him guilty after enquiry by order dated 23.12.1974. Since an industrial dispute was pending at that time, in view of provisions contained in Section 33 (2) (b), the employer approached the Industrial Tribunal at Chandigarh before which the industrial dispute was pending for approval of action taken. However the application was dismissed as withdrawn on 04.09.1976, then the workman demanded full wages from the employer from the date of his suspension till the date of demand contending that the action of the employer dismissing him from service was not approved by the Tribunal. The background of this case can be understood from Paras 2 and 3, which read as under -

"2. Finding conflict of views expressed by benches of three learned judges of this Court on the question, the reference is made.

3. The two Benches consisting of three learned Judges in (1) Strawboard Manufacturing Co. v. Gobind [1962 Supp. (3) SCR 618] and (2) Tata Iron & Steel Co. Ltd. v. S.N. Modak [1965 (3) SCR 411] have taken the view that if the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short 'the Act'), the order of dismissal becomes ineffective from the date it was passed and, therefore, the employee becomes entitled to wages from the date of dismissal to the date of disapproval of the application. Another Bench of three learned Judges in Punjab Beverages Pvt. Ltd., Chandigarh v. Suresh Chand & Anr. [1978 (3) SCR 370] has expressed the contrary view that non-approval of the order of dismissal or failure to make application under Section

33(2)(b) would not render the order of dismissal inoperative; failure to apply for approval under Section 33(2)(b) would only render the employer liable to punishment under Section 31 of the Act and the remedy of the employee is either by way of a complaint under Section 33A or by way of a reference under Section 10(1)(d) of the Act. It may be stated here itself that there was no reference in this decision to the two earlier decisions aforementioned.”

Constitution bench of Hon'ble Supreme Court held that the requirement of proviso to Section 33 (2) (b) of Industrial Disputes Act, 1947 is mandatory. Failure to make applications for approval of the orders of discharge or dismissal or withdrawal of such applications after making it, renders the order of discharge or dismissal void and inoperative. Hon'ble Supreme Court overruled Punjab Beverages (P) Limited V Suresh Chand, (1978) 2 SC C 144 (FB – 3 judges bench), which took contrary view that the remedy of the employee in such a case lay in Sections 31, 33 (a) and 10 (1) (d) of Industrial Disputes Act holding that the failure to make applications under Section 33 (2) (b) would not render the order of dismissal inoperative.

31. According to the ratio of constitution bench of Hon'ble Supreme Court of India, if the approval is not obtained under Section 33 (1) (b) or (2) (b) of Industrial Disputes Act, the order of termination shall become ineffective. It is no doubt that this proviso is a shield against 'victimization' and 'unfair labour practice', mandating employer to pay one month wages and an application to be made before the Tribunal for approval of action taken by him. It is undisputed fact that neither one month pay has been paid nor any approval of this Tribunal was obtained by the employer in the present case in hand.

32. Hon'ble Madras High Court in K. N. Asokan V Presiding Officer, Labour Court, Coimbatore and anr., 2010 LLR 976 (Mad), has held that the termination of the workman in reorganisation of work in the establishment will neither be construed as dismissal or discharge from service nor any alteration in conditions of service. Hon'ble Madras High Court has referred Jaipur Zilla Sahakari Bhoomi Vikas Bank Limited V Ram Gopal Sharma and ors., (2002) SC C 244 and reiterated its ratio as stated above. Hon'ble Madras High Court has referred Para 9 of the judgement of Hon'ble Supreme Court in L. Robert D'Souza V Executive Engineer, Southern Railway, AIR 1982 SC 854, which reads as under –

“9. It was obligatory upon the employer, who wants to retrench the workmen to give notice as contemplated by clause (a) of Section 25F. When a workman is retrenched, it cannot be said that change in his conditions of service is effected. The conditions of service are set out in Fourth Schedule. No item in Fourth Schedule covers the case of retrenchment. In fact, retrenchment is specifically covered by Item 10 of the Third Schedule. Now, if retrenchment which connotes termination of service, cannot constitute change in conditions of service in respect of any item mentioned in Fourth Schedule, Section 9A would not be attracted. In order to attract. 9A the employer must be desirous of effecting a change in conditions of service in respect of any matter specified in Fourth Schedule. If the change proposed does not cover any matter in Fourth Schedule. Section 9A is not attracted and no notice is necessary. (see *Workmen of Sur Iron & Steel Co. (P) Ltd. v. Sur Iron & Steel Company (P) Ltd.* (1971) 1 Lab LJ 570 (SC); *Tata Iron & Steel Company Ltd. v. Workmen*, (1973) 1 SCR 594: AIR 1972 SC 1917: (1972) Lab IC 1128; *Assam Match Co. Ltd. v. Bijoy Lal Sen*, (1974) 1 SCR 116: AIR 1973 SC 2155: 1973 Lab IC 1158. Thus if Section 9A is not attracted the question of seeking exemption from it in the case falling under the proviso would hardly arise. Therefore, neither Section 9A nor the proviso is attracted in this case. The basic fallacy in the submission is that notice of change contemplated by Section 9A and notice for a valid retrenchment under Section 25F are two different aspects of notice, one having no correlation with the other. It is, therefore, futile to urge that even if termination of the service of

the petitioner constitutes retrenchment it would nevertheless be valid because the notice contemplated by Section 25F would be dispensed with in view of the provision contained in Section 9A, proviso (b). That apart, it is an indisputable position that none of the other pre-conditions to a valid retrenchment have been complied with in this case because the very letter of termination of service shows that services were deemed to have been terminated from a back date which clearly indicates no notice being given, no compensation being paid and no notice being given to the prescribed authority. Therefore, termination of service, being retrenchment, for failure of comply with Section 25F, would be void ab initio.”

33. Hon'ble Delhi High Court in BA Security Agents Employees Union V Regional Labour Commissioner and ors., 2010 LLR 1083 (Del), has held that Section 33 of the Industrial Disputes Act providing for approval of dismissal from service of a workman by the authority before whom the industrial dispute is pending will not be attracted for the discharge of concerned workmen who were appointed on contract basis. The relevant Paras 7 to 11 read as under –

“7. This writ petition was taken up for hearing first on 2nd March, 2010. On a bare reading of the language of Section 33, it was put to the counsel for the petitioner as to how, when the dispute itself raised was as to the right to regularization, could section 33 prohibit the employer from terminating the employment of the employees even before being directed to regularize? Would it not amount to granting relief to the workmen before decision on the same by the Labour Court? It was further felt that when the employment is contractual with the contract coming to an end shortly after the dispute is raised, how could the act of the employer of not renewing the contract or not giving duty to the workmen after the expiry of the contract period be regarded as altering the conditions of services within the meaning of Section 33(1)(a) or discharge or dismissal owing to misconduct within the meaning of Section 33(1)(b) of the Act. Both counsels had attempted to canvas their respective cases on the basis of the bare language of the Section. However, being

unsatisfied, this Court called upon them to examine as to how the courts have dealt with the said provision.

8. The counsel for the petitioner on the next day i.e. 3rd March, 2010 contended that the question is no longer res integra and has been considered by a Division Bench of the Orissa High Court in *Orissa Oil India Mazdoor Union Vs. Union of India* MANU/OR/0082/1989. In that case also the employment was temporary, terminable at any time without assigning any reason and for a fixed time spell; dispute of regularization was raised on 28th February, 1989 and in accordance with the contract, termination effected on 21st March, 1989. A writ petition was filed with a prayer for declaring the termination to be illegal and for a direction to the employer to regularize their services. The termination was assailed on the ground that during pendency of conciliation proceedings, it was not open to the employer to pass any order of termination. Reliance was placed also on Section 33(1) of the Act. The Division bench of the Orissa High Court held that Section 33 (1) places a complete ban on the alteration to the prejudice of the workman concerned, of any conditions of service applicable to him without express permission in writing of the authority dealing with the pending proceeding. The argument that appointment being for a fixed time spell, Section 33 has no application was held to be without any substance. It was held that there was no exception provided in Section 33 in respect of time-spell employments and therefore the action of the employer in terminating the workmen concerned was held to be not sustainable and quashed and the workmen were directed to be treated to be continuing in service and being entitled to all service entitlements.

9. The counsel for the petitioner also invited attention to *Lokmat Newspapers Pvt. Ltd. v. Shankarprasad*, 1999 LLR 849 (SC): (1999) 6 SCC 275: 1999 Lab IC 2826 to contend that once the conciliation proceedings had been initiated, Section 33(1) comes into play and on *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma* (2002) 2 SCC 244: 2002 Lab IC 513: 2002 LLR 237 (SC), to contend that Section 33(1) is mandatory in nature. It is contended that the respondent no.1, without giving any reason has failed to lodge a complaint of the offences committed by the respondents 2 to 5.

10. However, my research finds this Court to have taken a view contrary to that of the Orissa High Court. Recently a Single Judge of this Court in *Jai Pal Singh Vs. Delhi Development Authority* MANU/DE/1718/2009 negated the argument of non compliance of

Section 33(1) of the Act in the case of a Security Guard employed by the DDA on contract basis for a period of six months at a fixed salary with the period of employment coming to end on 30th April, 1991; the union, of which the said workman was a member, before that day filed a writ petition and in which the DDA was directed to maintain status quo; the writ petition was dismissed on 6th January, 1993 and the DDA dispensed with the services of the workman in terms of contract of employment w.e.f. 3rd March, 1993. Notwithstanding the pendency of an industrial dispute regarding regularization of contractual employees of DDA on that date, it was held that DDA was not required to obtain the permission of the authority before which the dispute was pending. In holding so, the Single Judge relied upon the judgment dated 6th January, 1993 of the Division Bench of this Court in CW(P) 1305/1991 titled Delhi Pradesh Rajdhani Mazdoor Union (Regd.) v. DDA. I have called for a copy of the said unreported judgment of the Division Bench. In that case also the DDA had employed the members of the petitioner union as security guards on a term contract and the union had moved the Industrial Tribunal for regularization of their services. The union by way of the writ petition sought a direction from this Court that the services of its members be not terminated during the pendency of the dispute before the Industrial Tribunal as they were protected under Section 33 of the Act. The Division Bench of this Court held that the DDA in terminating the services in terms of the contract had not in any manner varied the terms of service of the members of the petitioner union in that case and therefore there was no question of seeking any express permission in writing of the authority before which the proceedings were pending, because the services got extinguished by efflux of time on the expiry of their contract. It was further held that if the DDA had tried to terminate the services before the contract was over then the workmen would have been protected under Section 33. It was further held that the question of regularization was already pending before the Labour Court.

11. The aforesaid dicta of the Division Bench of this court is fully applicable to the facts of the present case also.”

34. The very substance and the legal point involved in the present case is similar to the legal point involved before the single bench of Hon'ble Delhi High Court in B.A. Security (supra) and before the division bench of

Hon'ble Delhi High Court in Delhi Pradesh Rajdhani Mazdoor Union (supra). On the basis of aforesaid discussion, it has been concluded that the subjective condition made in the bid / tender became infructuous due to non-existence of interim order passed in Reference (CGITA) No. 21/2016. The complainants / drivers or their union 'Glorious Petroleum Mazdoor Sangh' were neither the parties to the aforesaid Reference (CGITA) No. 21/2016 nor were they parties to the settlement dated 18.07.2012, which too was limited only to five years, ending on 17.07.2017. The services of the complainants / drivers got extinguished by efflux of time on the expiry of their relevant contracts on 20.03.2019 or so. If the opposite parties / contractors had tried to terminate the services of the complainants before the contract was over, then the complainants would have been protected under Section 33 of Industrial Disputes Act. The act of the complainants' employer of not renewing the contract or not giving duty to the complainants / drivers after the expiry of contract period, can not be regarded as change in conditions of services within the meaning of Section 33 of the Industrial Disputes Act, 1947. The second point is accordingly decided in negative against the complainants. The complaint stands dismissed.

35.The award is passed accordingly.

Let two copies of the Award be sent to the appropriate Government for the needful and for publication.

(Sunil Kumar Singh-I)  
Presiding Officer  
CGIT-cum-Labour Court  
Ahmedabad