
(2012) 09 DEL CK 0507

In the Delhi High Court

Case No : Writ Petition (C) 13739 of 2005

Indian Oil Corporation Ltd.

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 136 FLR 1043 : (2013) 1 LLN 466 : (2013) LLR 115

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : V.N. Koura and Mrs. P.K. Benipal, for the Appellant; Ravinder Agarwal, Advocate for UOI/R-1, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bhasin, J.—This writ petition under Articles 226 and 227 of the Constitution of India was filed by the petitioner, Indian Oil Corporation Ltd. ("IOC" in short) against the order dated 25th April, 2005 passed by the Central Government Industrial Tribunal-cum-Labour Court (in short "CGIT") directing the IOC and the contractors, through whom respondents 3-33 herein had been employed for doing different jobs at the guest houses of the IOC in Delhi, to maintain status quo in respect of the services of these workmen during the pendency of the reference proceedings before CGIT in respect of the industrial dispute raised by them regarding their non-regularization by the IOC. The IOC has guest houses in Delhi to for its officers coming to Delhi from outside on tours. For catering and other services at the guest houses the IOC has been availing of the services of different contractors who have been providing workers for performing various jobs. Though the contractors have been changing but the workers provided by one contractor had been retained by the successor contractors from time to time. Those workers, who are respondents 3-33 herein, raised an industrial dispute claiming that they were in fact the employees of the IOC but only in order to deprive them of their legal dues they were being shown as the employees of the

contractors who were being given contracts from time to time for providing catering and caretaking services at the guest houses. A reference with the following term of reference was made to the CGIT by the appropriate Government on 11.2.2003 in respect of the said demand of the workmen:-

Whether the action of the management of I.O.C.L., New Delhi in not regularizing the services of the concerned 33 workmen from the date of his initial appointment is just, fair and legal? If not what relief the concerned workmen are entitled to and which date?.

2. The claim of the workmen that they were the employees of IOC was refuted by the management of IOC and its stand was that they were the contractors' employees.

3. Apprehending that their services might be terminated by way of non-renewal of the contracts with the contractors by the management of IOC, during the pendency of the reference proceedings before the CGIT the respondents 3-33 herein filed an application before the CGIT for an interim relief so that their employment remained intact during the pendency of the proceedings in respect of their demand for the regularization of their services by the petitioner.

4. The CGIT vide its order dated 25th April, 2005 allowed the interim relief application filed by the respondents no. 3-33 and directed maintenance of status quo by the petitioner herein as well as the contractors concerned, in respect of their employment during the pendency of the reference proceedings. The relevant para of that order of CGIT is re-produced below:-

It is an admitted fact that the above said 33 workmen at the aforesaid guest houses having been working for sufficiently long time for providing facilities to the employees of the respondent management under different contractors. The contractors have been changing but the workmen remain the same. The work of providing facilities to the employees of the respondent is of perennial and of permanent nature. Hence it would serve interest of justice if their services are discontinued dispensed with without any rhyme and reasons. I am of the opinion that their services should be continued till the disposal of the reference in the interest of justice. It is, therefore, ordered that the status quo is granted in respect of the services of the workmen and that their services be not discontinued by the management respondent and the contractors are restrained from terminating services of the claimant workmen and changing their service conditions till the final decision of the reference.

5. Feeling aggrieved by this order of the CGIT the IOC filed the present writ petition.

6. Mr. V.N. Koura, the Learned Counsel appearing on behalf of the petitioner-Corporation, mainly argued that the CGIT has no power to pass an order of interim injunction like the one which has been passed by it in the present case and, therefore, that order cannot be sustained at all being without jurisdiction.

7. Though respondents 3-33 were being represented in this matter on a number of dates but suddenly their representation stopped and, therefore, arguments were heard only from the side of the petitioner.

8. In the opinion of this Court this writ petition deserves to be allowed since the impugned order of the CGIT cannot be sustained in view of the fact that this Court has already held in two decisions that the industrial court has no power to grant interim injunction during the pendency of adjudication proceedings in respect of any industrial dispute. A Single Judge Bench of this Court had vide judgment dated 17.11.2006 in W.P. (Civil) No. 16649/2004, "Airport Authority of India Vs. Pyare Lal and Ors." had while considering a similar kind of challenge against the order of CGIT granting an interim relief in the nature of injunction in favour of the employees who had also been employed through contractors had held as under:-

12. The consistent judicial view that appears from these judgments is that although an Industrial Tribunal/Labour Court can in certain situations pass an interim award, it has no jurisdiction to pass an order of injunction of the nature which a civil court can pass under the provisions of Order 39 of the CPC.

13. It requires to be noted that in the case of Hotel Imperial (supra) the Supreme Court distinguished between interim relief and interim award. Interim award is interim determination of any question relating to the reference whereas interim relief was a relief granted under the power conferred on the Tribunal u/s 10(4) of the Act with respect to the matters incidental to the points of dispute for adjudication. The respondents asked for the relief of prevention of breach of a statutory provision. The same could not have been asked for either by way of an interim award or by way of an interim relief because such a question was neither a part of the question to be adjudicated upon nor incidental to the main question which was whether the petitioners were entitled to be regularized in the service of the petitioner. The respondents asked for a relief which, as discussed above, the CGIT did not have any power to grant under any provision of Section 33 of the Act. Even if the respondents seek protection under the Supreme Court's opinion in the Imperial Hotel's case, their prayer has to be turned down because the prayer of the respondents was not in the nature of an interim relief or interim award when seen in the light of the terms of reference, extracted in the first paragraph of this judgment.

14. The injunction order, a mandatory one, passed by the CGIT has virtually granted the final relief to the respondents inasmuch as the respondents have been secured in the service of the petitioner despite the petitioner's plea that it was not at all the employer of the respondents. In the Hotel Imperial's case the Supreme Court specifically said:

Ordinarily interim relief should not be the whole relief that the workman should get if they succeeded finally.

In fact the Supreme Court did not uphold the interim order in the Hotel Imperial

case. It passed a fresh order only for half of the salary as against full salary awarded by the Tribunal.

15. In the present case the respondents have been put in the service of the petitioner and they have also been enjoying the salary and other perks of being servants of the petitioner. Further this has been done without any kind of adjudication on merit even examining the relative pleas of the parties. In my opinion, the impugned order cannot be sustained....

9. This decision has subsequently been followed by another Single Judge Bench of this Court in C.M.(Main) No. 815 of 2007. This is what was held in paras no. 6 & 7 of the said judgment dated 16th February, 2010:-

6. Though none of the counsels referred to the same, but I find that a single judge of this Court in Airport Authority of India Vs. Pyare Lal and Others in near identical facts held that such interim relief cannot be granted. In that case also the workmen were seeking regularization of their service with the Airport Authority from the date of their joining of service and which dispute had been referred to the CGIT and the workmen had sought interim relief restraining Airport Authority from removing the workmen from their services. The CGIT had granted an order of status quo. this Court after considering the several judgments of the various courts reached at a conclusion that the consistent judicial view is that although an Industrial Tribunal/Labour Court can in certain situations pass an interim award, it has no jurisdiction to pass an order of injunction of the nature which a civil court can pass under provisions of Order 39 of the CPC. It was further held that the interim injunction granted by the CGIT virtually granted the final relief to the workmen inasmuch as the workmen had been secured in the service of Airport Authority despite its plea that it was not at all the employer of the said workmen. this Court had accordingly allowed the writ petition and quashed the interim order of status quo granted by the CGIT.

7. Judicial propriety binds me to the aforesaid view. Even if I was to hold an opinion different therefrom, the reference to a Larger Bench of this Court would not be necessary since the question is already pending adjudication before the Supreme Court.

10. In view of the fact this Court has already decided this controversy regarding the power of the industrial adjudicator to pass interim orders of injunction and it having been held that no such power is vested in the industrial adjudicators the impugned order passed by the CGIT in the case in hand has to be set aside. This petition is accordingly allowed and the impugned order of CGIT set aside but it is made clear that nothing observed in the present judgment shall influence the CGIT whenever it shall be deciding the industrial dispute pending adjudication before it finally regarding the demand of the workmen for the regularization of their services by the Indian Oil Corporation Ltd.