

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE AMIT RAWAL

Friday, the 25<sup>th</sup> day of March 2022 / 4th Chaithra, 1944  
WP(C) NO. 10271 OF 2022(H)

**PETITIONER:**

BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY, AMBALAMUGAL,  
COCHIN 682 302, REPRESENTED BY ITS CHIEF GENERAL MANAGER IN -CHARGE  
(HR) SHRI KURIAN P ALAPATT

**RESPONDENTS:**

1. COCHIN REFINERIES EMPLOYEES' ASSOCIATION (CREA), AMBALAMUGAL, ERNAKULAM, PIN 682 302 REPRESENTED BY ITS GENERAL SECRETARY SRI PRAVEEN KUMAR P
2. COCHIN REFINERIES WORKERS ASSOCIATION (CRWA), VPP1/427, AMBALAMUGAL, ERNAKULAM, PIN 682 302, REPRESENTED BY ITS GENERAL SECRETARY SRI AJI M G
3. GENERAL AND CONSTRUCTION WORKERS' UNION (CITU) AMBALAMUGAL, ERNAKULAM DISTRICT, KERALA, PIN 682 302, REPRESENTED BY ITS SECRETARY SRI N.K GEORGE
4. COCHIN REFINERIES GENERAL WORKERS CONGRESS (INTUC), AMBALAMUGAL, ERNAKULAM (DISTRICT), KERALA, PIN 682 302, REPRESENTED BY ITS PRESIDENT SRI PAULSON P PETER
5. KERALA PETROLEUM AND GAS WORKERS UNION (CITU), EMS MANDIRAM, KALABHAVAN ROAD, ERNAKULAM NORTH, KOCHI 18, REPRESENTED BY STATE GENERAL SECRETARY SRI P.K ANILKUMAR
6. REGIONAL LABOUR COMMISSIONER (CENTRAL), OLIMUGAL, KAKKANAD, ERNAKULAM DISTRICT PIN 682 030

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim order restraining Respondents 1 to 5 unions and its members from resorting to strike from 7.00 AM on 28-03-2022 to 7.00 AM on 30-03-2022, or any other day proposed by the unions as stated in Exhibits P2, P3, P4, P5 & P6 strike notices or on any other day, in contravention of S.22 of the Industrial Disputes Act, pending disposal of the Writ Petition(Civil).

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/s.P.BENNY THOMAS, D.PREM KAMATH, TOM THOMAS (KAKKUZHIYIL), ABEL TOM BENNY, JYOTHISH KRISHNA, JAIKRISHNAN.M.PISHARODI Advocates for the petitioners, SMT. KRISHNA Advocate for R6(B/0) the court passed the following:

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Dated this the 25<sup>th</sup> day of March, 2022**ORDER**

Petitioner, Bharat Petroleum Corporation Limited is a Central Government Company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of refining and marketing of petroleum products. It is having a 15.5 MMTPA refinery at Ambalamugal in Kochi, 12 MMTPA Refinery in Mumbai and also having an installation at Ernakulam, LPG Bottling plants at Kochi and Thiruvananthapuram Depot at Kannur and Lubes C&F Agency at Kochi. Besides that, it has Aviation Fueling Stations at Cochin, Trivandrum, Calicut and Kannur Airports. It supplies LPG cylinders to over 24 lakhs consumers in the State of Kerala. The appropriate Government considering the public interest, notified the industry as a Public Utility Service as defined under Section 2(n) of the Industrial Disputes Act vide notification dated 25.2.2022, Ext.P1. The same reads as under:

*2.(n) 'public utility service' means-*

*(i) any railway service or any transport service for the carriage of passengers or goods by air; (ia) any service in, or in connection with the working of, any major port or dock;] (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein*

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*depends; (iii) any postal, telegraph or telephone service; (iv) any industry which supplies power, light or water to the public; (v) any system of public conservancy or sanitation; (vi) any industry specified in the 4 First Schedule] which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification. Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension.*

2. Respondent Nos.1 to 5 are the Trade Unions representing the workmen employed/engaged in the Petitioner's Refinery at Ambalamugal and have issued strike notices dated 9.3.2022, 11.3.2022, 14.3.2022 and 15.3.2022 Exts.P2 to P6, respectively informing that they are going on strike from 7.00 A.M on 28.3.2022 to 7.00 A.M on 30.3.2022 in support of the decision of the National Convention of Workers, organized jointly by the Central Trade Unions and Independent National Federations/Associations held at Jantar-Mantar, New Delhi on 11.11.2021, against the various issues related to decisions made by the Government of India.

3. Learned counsel for the petitioner submits that on receipt of the aforementioned strike notices, which were also endorsed to the labour officer, a conciliation proceeding as evident from the notices Exts.P7 to P11 dated 22.3.2022 have also been received by the concerned General Manager of the

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petitioner and in view of the provisions of Section 22 of the Industrial disputes Act, 1947, the strikes and lock-outs in respect of a public utility service are prohibited during the pendency of any conciliation proceedings. The apprehension of the petitioner is that since it a public utility service, owing to the strike notice given by the trade unions, the functioning of petitioner's various units would be seriously impacted and the intervention of this Court is being sought under Article 226 of the Constitution of India. He further referred that in all the conciliation notices issued by the conciliation officer, Section 22(1), 22(2) and 33 of the Industrial Disputes Act have been referred but the trade unions would not adhere to such direction of the labour officer and therefore it had become imperative for the Corporation to invoke the extraordinary jurisdiction of this Court.

4. In a similar circumstance, when the call for strike was given in the year 2020 and 2021, this Court had interdicted such type of notices as per the orders Exts.P12 to P15.

5. Issue notice before admission. Smt.Krishna takes notice for R6. Notice by speed post to R1 to R5.

6. Section 22(1)(d) of the Industrial Disputes Act reads thus:

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*22. Prohibition of strikes and lock-outs*

*1.d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.*

7. From the perusal of the aforementioned, it is evident that in case of pendency of any conciliation proceedings before a conciliation officer, which are concededly pending in view of the strike notices Ext.P2 to P6 and conciliation officer has already issued notices Exts.P7 to P11, respectively, there has to be a provision of a strike. The apprehension expressed by the petitioner cannot go unnoticed from the notice of this Court while exercising the power of judicial review as there is likelihood that all the Unions who had already issued a notice may despite having been notified by the conciliation officer, of the provisions referred to above, may not go on a strike, which would hamper and impede the smooth functioning and working of the petitioner.

Considering the attenuating circumstances, I issue an interim direction, restraining the respondent Nos.1 to 5 from going on strike as per their call given in the strike notices, Exts.P2 to P7 ie., from 7.00 A.M on 28.3.2022 to 7.00 A.M on 30.3.2022.

sd/-

sab

**AMIT RAWAL, JUDGE**

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**APPENDIX OF WP(C) 10271/2022**

- Exhibit P1** TRUE COPY OF THE NOTIFICATION NO. S.O 856(E) DATED 25-02-2022 ISSUED BY MINISTRY OF LABOUR AND EMPLOYMENT
- Exhibit P2** TRUE COPY OF THE STRIKE NOTICE DATED 14-03-2022 SUBMITTED BY 1ST RESPONDENT UNION
- Exhibit P3** TRUE COPY OF THE STRIKE NOTICE DATED 11-03-2022 SUBMITTED BY 2ND RESPONDENT UNION
- Exhibit P4** TRUE COPY OF THE STRIKE NOTICE DATED 11-03-2022 SUBMITTED BY 3RD RESPONDENT UNION
- Exhibit P5** TRUE COPY OF THE STRIKE NOTICE DATED 15-03-2022 SUBMITTED BY 4TH RESPONDENT UNION
- Exhibit P6** TRUE COPY OF THE STRIKE NOTICE DATED 09-03-2022 SUBMITTED BY 5TH RESPONDENT UNION
- Exhibit P7** TRUE COPY OF THE NOTICES OF CONCILIATION DATED 16-03-2022 ALONG WITH THE MINUTES OF CONCILIATION MEETING HELD ON 22-03-2022
- Exhibit P8** TRUE COPY OF THE NOTICES OF CONCILIATION DATED 16-03-2022 ALONG WITH THE MINUTES OF CONCILIATION MEETING HELD ON 22-03-2022
- Exhibit P9** TRUE COPY OF THE NOTICES OF CONCILIATION DATED 16-03-2022 ALONG WITH THE MINUTES OF CONCILIATION MEETING HELD ON 22-03-2022
- Exhibit P10** TRUE COPY OF THE NOTICES OF CONCILIATION DATED 16-03-2022 ALONG WITH THE MINUTES OF CONCILIATION MEETING HELD ON 22-03-2022
- Exhibit P11** TRUE COPY OF THE NOTICES OF CONCILIATION DATED 16-03-2022 ALONG WITH THE MINUTES OF CONCILIATION MEETING HELD ON 22-03-2022
- Exhibit P12** TRUE COPY OF THE INTERIM ORDER DATED 26-08-2020 IN WP(C) NO. 17862 OF 2020 OF THIS HON'BLE COURT
- Exhibit P13** TRUE COPY OF THE INTERIM ORDER DATED 04-09-2020 IN WP(C) NO. 18225 OF 2020 OF THIS HON'BLE COURT
- Exhibit P14** TRUE COPY OF THE INTERIM ORDER DATED 09-09-2021 IN WP(C) NO. 18535 OF 2021 OF THIS HON'BLE COURT
- Exhibit P15** TRUE COPY OF THE INTERIM ORDER DATED 24-11-2020 IN WP(C) NO. 25721 OF 2020 OF THIS HON'BLE COURT