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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.2721 OF 2020

Bharat Petroleum Corporation Ltd. ... Petitioner
V/s.
Petroleum Workmen's Union & Ors. ...Respondents.

Mr.R.S. Pai @ Anand Pai, Sanjay Udeshi, Akshay Udeshi, Kaushik Udeshi i/b Sanjay Undeshi & Co. for the Petitioner.

Sanjay Singhavi, Senior Advocate i/b Rahul Kamerkar for Respondent No.1 to 5.

CORAM : **K.K.TATED &
N.R. BORKAR, JJ.**

DATE : **4 SEPTEMBER, 2020.
(Through Video Conferencing)**

P.C. :

1] Heard learned counsel for the parties.

2] The Petitioner is a Public Limited Company, registered under the Companies Act, 1956. The Petitioner is engaged in the business of refinery of crude oil.

3] Respondent Nos.1 to 4 are trade union representing workmen in the refinery of the Petitioner and Respondent No.5 is trade union representing workmen in marketing region.

4] Respondent Nos.1 to 4 have served separate strike notices dated 19 August 2020 informing the Petitioner that they have decided to go on strike from 7.45 a.m. on 7 September 2020 to 7.45 a.m. on 9 September 2020. Similarly, Respondent No.5 has served strike notice dated 19 August 2020 informing the Petitioner that they have decided to go on strike from 6.00 a.m. on 7 September 2020 to 6.00 a.m. on 9 September,2020.

5] On receipt of strike notices, Petitioner requested Respondent No.6 vide its letters dated 20 August 2020 and 25 August, 2020 to initiate the conciliation and pursuant to it, Petitioner received replies to the said letters from Respondent No.6 admitting the disputes in conciliation. It is stated that in the conciliation proceedings held on 28 August, 2020 the conciliation officer advised respective unions not to proceed on strike on 7 September, 2020 and 8 September, 2020. However, inspite of it respondents have not withdrawn strike notices.

6] The learned Advocate for the Petitioner submits that, Respondent Nos.1 to 5 represent large section of employees

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employed in workmen category in the refinery of the Petitioner and any strike as indicated by Respondent Nos.1 to 5 will adversely affect the operation in the refinery of the Petitioner. It is submitted that the service conditions of the employees employed in the refinery of the Petitioner are governed by the terms and conditions in the settlement respectively dated 31 May 2013 and 9 January, 2014. It is submitted that strike notices given by Respondent Nos.1 to 5 are in violation of the terms of the said settlement. It is further submitted that Respondent Nos.1 to 5 threatened to proceed on illegal and unjustified strike during the pendency of conciliation proceeding in respect of strike notices in violation of the provisions of Section 22 of the Industrial Disputes Act (for short "the Act"). It is submitted that the proposed strike by Respondent Nos.1 to 5 thus needs to be declared as illegal and unjustified and they need to be enjoined from proceeding on the strike..

7] On the other hand, learned counsel for Respondent Nos. 1 to 5 submitted that the present Writ Petition is not maintainable as there is alternate remedy to proceed against the employees who resort to illegal strike such as by prosecuting

them under Section 26 of the Act. It is further submitted that Section 22 of the Act creates no obligation in favour of the Petitioner which can be enforced by way of Writ Petition. It is further submitted that where the dispute involves recognition, observance or enforcement of any of the rights or obligation created by the Industrial Disputes Act, the only remedy is to approach the forum created by the said Act.

8] In support of submissions learned counsel for the respondents has placed reliance on the Judgment of this Court reported in 2001(2) Mh.L.J. 312, in the matter of ***Bharat Petroleum corporation vs. Petroleum Employees Union***, wherein it is held that the obligations of workmen or Trade Union contemplated by section 22 are obligations in rem, enforceable by the society at large. The only manner in which the statute contemplates their enforcement is indicated in section 26 of the Act which prescribes a penalty for any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under the Act.

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9] We have considered the submissions. Suffice it to say that similar contentions which are sought to be raised on behalf of the respondent Nos.1 to 5 were raised before this Court in the Judgment reported in 2011 (III) CLR 187 and in 2001 (III) CLR 806 between the very same parties and this Court repelled the said contentions.

10] Admittedly, conciliation proceeding is pending. Section 22 of the Act prohibits going on strike by Union/employees during the pendency of conciliation proceedings.

11] Considering the above facts and circumstances, following order is passed :

a] Rule.

b] Interim relief in terms of prayer clause (c) which reads thus :

“(c) Pending the hearing and final disposal of the Petition, this Hon’ble Court be pleased to restrain Respondent Nos. 1 to 5, its office bearers and members, affiliates, from resorting to/commencing/continuing any strike including go slow, abstaining from work, work to rule or any other agitation activities on any day by the workmen as threatened in the said impugned

strike notices dated 19th August, 2020 being Exhibits "B1" to "B5" hereto, or disrupting the day-to-day activities of the Petitioner in any manner whatsoever;"

c] The Petitioner is permitted to communicate this order to the following Police Stations for necessary action including other Police Station, if any.

i] RCF Police Station, Chembur, Vashi Naka, New Mumbai.

ii] MRA Marg Police Station, Palton Road Mumbai.

iii] R.A. Kidwai Marg Police Station, Mumbai.

iv] Cuffe Parade Police Station, Mumbai.

v] Wadala Police Station, Mumbai.

d] The learned counsel Mr. Kamerkar waives services for Respondent Nos. 1 to 5.

e] Hearing of this Petition is expedited.

f] This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on a digitally signed copy of this order.

[N.R.BORKAR, J]

[K.K.TATED, J]