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Delhi High Court

Case No: Writ Petition (C) No. 9614 of 2009

Indraparstha Gas Limited (CNG) Sharmil Sangh (Regd.)		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: July 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 33, 33A

Hon'ble Judges: S.N. Aggarwal, J

Bench: Single Bench

Advocate: A.K. Sakhuja, for the Appellant; Harvinder Singh and Atulesh, for respondents Nos. 3, 7 and 8, for the Respondent

Judgement

S.N. Aggarwal, J.

The petitioner M/s Indraparstha Gas Limited (CNG) Sharmil Sangh (Regd.) is stated to be a registered trade union of persons working at various CNG stations owned and operated by M/s Indraparstha Gas Limited (respondent No. 2 herein). The list of members of the petitioner union is annexed as Annexure ''B'' to the petition which contains names of 136 persons. The petitioner has filed this writ petition under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondent No. 2 and respondents No. 3 to 12 not to dismiss the members of the petitioner union as per list annexed as Annexure ''B'' from their employment till the disposal of IDs No 66/2003 & 99/2003. The petitioner union has also prayed for issuance of a writ of certiorari against the respondents quashing order of dismissal and/or action of changing of service conditions of its members till the disposal of IDs No 66/2003 & 99/2003.

2. Mr. Harvinder Singh learned Counsel appearing on behalf of respondent No. 2 has taken a preliminary objection to the maintainability of the present writ petition stating that the Court cannot grant blanket injunction order against any employer restraining it from taking disciplinary action against the delinquent workman in a case where some industrial dispute relating to general demands raised by the union is pending adjudication before the industrial adjudicator. It is submitted by learned Counsel appearing on behalf of respondent No. 2 that right of the workmen is adequately protected by Section 33 of the Industrial Disputes Act, 1947 which according to him contains a comprehensive procedure to be followed by the management in a case where some industrial dispute raised by the union is pending on the date it want to take some action against the delinquent workman.

3. Per contra, Mr. A.K. Sakhuja learned Counsel appearing on behalf of the petitioner contends that respondent No. 2 is not recognizing the members of the petitioner union as its employees and therefore, accordingly to him, the members of the petitioner union will have no protection as provided in Section 33 of the Industrial Disputes Act, 1947. Learned Counsel appearing on behalf of respondent No. 2 says that none of the members of the petitioner union is an employee of respondent No. 2 and according to him, all the members of the petitioner union are the contract labors employed at various CNG stations by respondents No. 3 to 12.

4. From the above submissions of the counsel for the parties, it appears that there is a dispute between them as to whether the members of the petitioner union are the employees of respondent No. 2 or they are employees of respondents No. 3 to 12 and this dispute is beyond the scope of prayers made by the petitioner in the present writ petition. It is not disputed that two industrial disputes, one for general demands and the second for regularization of the members of the petitioner union raised by the petitioner union, are pending adjudication before the industrial adjudicator vide IDs No 66/2003 & 99/2003. The members of the petitioner union who have raised an industrial dispute for their regularization will get adjudication of their dispute that they are the employees of respondent No. 2 in the dispute i.e. pending before the court below. In case the members of the petitioner union feel that they are the employees of respondent No. 2 and in case respondent No. 2 dispensed with the services of any one of them or changed their service conditions to their disadvantage during the pendency of their industrial dispute before the industrial adjudicator then they can make a complaint u/s 33(A) of the Industrial Disputes Act, 1947 before the industrial tribunal before whom their disputes relating to regularization and general demands are pending. In case the members of the petitioner union are not the employees of respondent No. 2 then the pendency of IDs No. 66/2003 & 99/2003 will have no bearing to a decision, if any, taken by respondents No. 3 to 12 relating to their service conditions because admittedly the members of the petitioner union have not raised the industrial dispute vide IDs No 66/2003 & 99/2003 against respondents No. 3 to 12. The members of the petitioner union cannot get a blanket injunction order against their employer whether

respondent No. 2 or respondents No. 3 to 12 as they have a remedy available to them to vindicate their grievances under the provisions of the Industrial Disputes Act, 1947.

5. For the foregoing reasons, I am of the view that this writ petition is not maintainable and is therefore dismissed as not maintainable. 6 Any observation made in this order shall not influence the adjudication pending before the Industrial Tribunal vide IDs No 66/2003 & 99/2003.