CASE NO.:
Appeal (civil) 6179 of 2001

PETITIONER:
M/S.INDIAN PETROCHEMICALS CORPN. LTD.& ANR

Vs.

RESPONDENT:
SHRAMIK SENA

DATE OF JUDGMENT: 05/09/2001

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

WI T H
[I.A.NO.2 IN CIVIL APPEAL NO.892 OF 2001]

J U D G M E N T

Syed Shah Mohammed Quadri, J.

Leave is granted in S.L.P.(C) No.7680 of 2001.

This appeal is directed against the order of a Division Bench of the High Court of judicature at Bombay (for short, the High Court) in W.P. No.2020 of 2001 dated on April 16, 2001. The first appellant is Government of India Undertaking and the second appellant is its General Manager (P & A). The respondent is the union of the workmen of the first appellant.

This case has a checkered history. It started with filing of W.P. No.2206 of 1997 in the High Court by the workmen of the first appellant which ended with the judgment of this Court in Indian Petrochemicals Corporation Ltd. & Anr. Vs. Shramik Sena & Ors. [1999 (6) SCC 439]. In connection with the interpretation of the said judgment two writ petitions were filed. The second of which gave rise to C.A.No.892 of 2001 which was allowed by this Court on January 29, 2001. Purporting to give effect to the judgment of the High Court in Writ Petition No.2206 of 1997 and in terms of condition (e) therein the appellants intimated to 68 employees through a letter dated April 9, 2001 (which was subsequently corrected as April 10, 2001) that their services were retrenched enclosing a cheque for the amounts payable on retrenchment. The validity of the said letter was challenged by the respondent before the High Court in Writ Petition No.2020 of 2001 which was disposed of by the order impugned in this appeal.

The respondent filed I.A.No.2 of 2001 in C.A.No.892 of 2001, praying for clarification of the Judgment of this Court made in the said appeal on January 29, 2001.

Mr.T.R.Andhyarujina, the learned senior counsel appearing for the appellants, contended that the judgment of this Court dated January 29, 2001 required no clarification and that the High Court ought to have dismissed the writ petition as the retrenchment and payment of compensation were in accordance with condition (e)

contained in the order of the High Court which was confirmed by the Supreme Court.

Mr.K.K.Singhvi, the learned senior counsel appearing for the respondents, argued that the appellant having wrongly construed the judgment of this Court dated January 29, 2001, and without a valid retrenchment sent the retrenchment compensation which was, however, not received by the employees; the order being in violation of Section 25N of the Industrial Disputes Act, 1947 as well as the judgment of this Court dated January 29, 2001, the letter of retrenchment deserved to be quashed. He submitted that in view of the observation of the High Court that the right course for the writ petitioner (respondent herein) would be to approach the Apex Court to seek clarification of the said judgment, the respondent filed the application for clarification of the judgment.

The question that arises for consideration is : whether the impugned order of the High Court is sustainable in law.
We have perused the impugned order of the High Court. We are unable to appreciate the approach of the High Court. Even when it was faced with diametrically apposite interpretation of the judgment of this Court, it was expected of the High Court to decide the case (writ petition) on merit according to its own interpretation of the said judgment. Instead the High Court after referring to rival contentions of the parties, in para 3, observed thus:

In our view, the right course for the Petitioner will be to approach the Apex Court and to seek a clarification of the said order. Mr.Singhvi is agreeable to take necessary steps.

And having directed the appellants herein to take back the employees for a period of four months or until order is passed by this Court whichever is earlier, disposed of the writ petition.
While disposing of Writ Petition No.2206 of 1997 in the first round of litigation the High Court ordered absorption of the employees subject to conditions (a) to (e) referred to therein. On appeal to this Court the judgment of the High Court was affirmed in Indian Petrochemicals (supra). It was on the fulfillment of conditions (a) to (d) that the workmen were to be regularised. In the second round of litigation the question of interpretation of condition (e), inter alia, fell for consideration of this Court in Civil Appeal No.892 of 2001 and this Court held as follows :

A close reading of condition (e) discloses that it is in two parts. The first part provides for their re-employment in accordance with the provisions of I.D. Act as and when the management proposes to make fresh recruitment to the canteen staff. The second part directs payment of retrenchment compensation in accordance with law. To understand the import of these two parts, it will be necessary to bear in mind that the High Court imposed the aforementioned conditions for purposes of absorption of the workmen in the service of the management because though they were treated as the employees of the management under the Factories Act, they were purportedly working as the employees of the contractor. Now, in the context of the aforementioned findings recorded (that they are in fact the workmen of the management) and the direction issued by this Court for their regularisation in the service of management that both the parts of condition (e) have to be interpreted. It is difficult to assume that

while conferring the benefit of regularisation on the workmen, subject of course to the said conditions, this Court impliedly took away the rights available to the unabsorbed workmen under the I.D. Act. There is nothing in the judgment of this Court in the above-mentioned appeals, to suggest that the status of the workmen who remained unabsorbed for non-fulfillment of conditions (a) to (d) would be changed to that of retrenched employees. Equally there is nothing therein to infer that it directs their retrenchment in accordance with law. It is needless to point out that once it is held that they are the employees of the management, they can be retrenched only in accordance with the provisions of the I.D. Act.

The excerpt of the judgment, referred to above, is clear enough and does not require any clarification.

Mr. Singhvi submitted that the rights of the parties be decided by us. Inasmuch as no appeal is filed by the respondent against the impugned order, we are not inclined to go into the merit of the case. The direction, contained in para 8 of the impugned judgment of the High Court, to the appellants herein, to take back the employees listed at Exhibit A for a period of four months or until order is passed by the Supreme Court, whichever is earlier., was suspended by this Court on condition of the appellants paying last drawn salary to them pending further orders. In the view we have taken, we consider it just and proper to direct the appellants to continue to pay the last drawn salary to the concerned employees till the writ petition is decided by the High Court.

For the aforementioned reasons, we set aside the order of the High Court, under challenge, restore Writ Petition No.2020 of 2001 to the file of the High Court to decide the same on merit as expeditiously as possible preferably within two months, in the light of the order of the High Court in Writ Petition No.2206 of 1997, judgments of this court in Indian Petrochemicals Corp. (supra) and in C.A.No.892 of 2001 [Indian Petrochemicals Corp. Ltd. and Anr. Vs. Shramik Sena and Anr. (2001 (2) SCC 529)]

The appeal is accordingly disposed of. No. costs.

.....J.
(Syed Shah Mohammed Quadri)

.....J.
(S. N. Phukan)

September 05, 2001.

7