



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION No.2546 OF 2025

1. Hindustan Petroleum Corporation Ltd.,
Hindustan Bhawan, 8, Soorji,
Vallabh Das Marg,
Post Box No.155, Mumbai – 400 001,
Through its Director,
Marketing/Executive Director L.P.G.

2. Hindustan Petroleum Corporation Ltd.
L.P.G. Bottling Plant, Khapri Railway Station,
Wardha Road, Nagpur – 441 108.
Through its Senior Regional Manager L.P.G.: PETITIONERS

...VERSUS...

Shri Vinod s/o. Anandrao Parate,
Aged about 60 years,
R/o. Plot No.57, West Balaji Nagar,
Behind Shiv Mandir,
Manewada Road, Nagpur- 440 027. : RESPONDENT

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Mr. R.B. Puranik, Senior Advocate assisted by Mr. N.W. Almelkar,
Advocate for Petitioners.

Mr. R.L. Khapre, Senior Advocate, assisted by Mr. R.G.
Kavimandan, Advocate for Respondent.

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CORAM : **PRAFULLA S. KHUBALKAR, J.**

RESERVED ON : **05th AUGUST, 2025.**

PRONOUNCEMENT ON : **19th AUGUST, 2025.**

JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. Heard

finally with the consent of the parties.

2. The petitioners have taken exception to the order dated 24.04.2025, passed by the Central Government Industrial Tribunal-cum-Labour Court at Nagpur in Reference Case No.CGIT/NGP/38/2013-14 by which the application filed by the petitioners seeking permission to lead secondary evidence came to be rejected.

3. The background facts leading to the filing of the instant petition are stated thus :

The respondent was employed at the petitioner No.1- Company in Clerical cadre and was working as Chief Administrative Assistant at its Khaprri L.P.G. Plant. On 11.05.2009 the respondent was charge-sheeted for certain charges of misconduct and the Management decided to conduct departmental enquiry against the respondent. The enquiry was concluded and the punishment of dismissal from service was imposed upon the petitioner. The respondent raised an industrial dispute under Section 2-A of the Industrial Disputes Act, 1947 and on failure of the conciliation proceedings, the reference was registered before the Central Government Industrial Tribunal (in short, 'CGIT'). The Tribunal found the departmental enquiry conducted against the respondent

to be fair and proper, however, by order dated 05.03.2020 the Tribunal held that the findings of the Enquiry Officer were not based on proper appreciation of evidence and the same were inferred to be perverse. The Tribunal, however, granted opportunity to the petitioners/Management to prove the misconduct before it. This order dated 05.03.2020 was subjected to challenge before this Court by separate Writ Petitions filed by the Management as well as the employee vide Writ Petition No.3944/2021 and Writ Petition No.2838/2020 challenging the same order, however, by common order dated 21.03.2022 both petitions were dismissed. Accordingly, during the course of proceedings before the Tribunal the petitioners/Management examined witnesses before the Tribunal to prove the misconduct and also filed affidavit dated 08.04.2025 of Shri Kamlesh Sheth as a witness on its behalf. On 08.04.2025 itself the petitioners/Management moved an application before the Tribunal for grant of permission to lead secondary evidence with respect to four documents on the ground that the documents were not available/traceable at their office. The respondent-employee did not file any reply to this application, however, strongly opposed the application at the time of hearing. By order dated 24.04.2025 the

Tribunal refused permission to the petitioners to lead secondary evidence and this order is subjected to challenge under this writ petition under Article 227 of the Constitution of India.

4. Mr. R.B. Puranik, learned Senior Advocate for the petitioners vehemently submitted that the petitioners/Management is empowered to prove the misconduct before the Tribunal and, therefore, the petitioners are entitled to lead all the available evidence to establish its case. He submitted that the Management had moved an application by invoking provisions of Sections 58 and 60 of the Bharatiya Sakshya Adhiniyam 2023 setting out precise reasons in the application. He submitted that the petitioners had filed on record before the Tribunal photocopies of four documents with respect to which permission to lead secondary evidence is prayed by stating that the originals of those documents could not become available. He submitted that the documents are not by way of surprise to the respondent-employee and leading of secondary evidence will not cause any prejudice to the respondent. He submitted that in view of the settled position of law related to secondary evidence with reference to Sections 58 and 60 of the Bharatiya Sakshya Adhiniyam 2023, the petitioners/Management is entitled to lead secondary evidence. He submitted that the Tribunal has failed to take into consideration the true purport of these

provisions and the impugned order is unsustainable in law.

5. In support of his submissions learned Senior Counsel for petitioners relied on judgments in the matter of (i) **Bipin Shantilal Panchal Vs. State of Gujarat and another**, (2001) 3 SCC 1, (ii) **Dhanpat Vs. Sheo Ram (deceased)** through legal representatives and others, (2020) 16 SCC 209 and the Judgment of this Court dated 22nd September, 2021, delivered in Writ Petition No.8442/2019. By inviting Court's attention to these case laws he submitted that the respondent is entitled to raise challenge to the admissibility of any documents at the stage of final hearing and, therefore, opposition to lead secondary evidence at this stage is unwarranted. He submitted that there is not even any requirement of filing an application for permission to lead secondary evidence and whenever the foundation to lead secondary evidence exists either in the plaint or in the evidence, the parties are entitled to lead secondary evidence. He, therefore, submitted that in the peculiar facts of this case when the Management had already filed on record photocopies of four documents, by categorically stating that the original documents are not available, the Tribunal ought to have entertained the application in the interest of justice.

6. Mr. R.L. Khapre, learned Senior Advocate for the respondent strongly opposed the petition and submitted that in

absence of any foundation in the pleadings or in the evidence the petitioners are not at all entitled to lead secondary evidence. By inviting Court's attention to the reasons mentioned in the application about non-availability of original documents, he submitted that this cannot constitute to be the necessary foundation for leading secondary evidence. He also submitted that four documents with respect to which the secondary evidence is sought to be led, are from the custody of the Management and the originals of these documents are necessary for proving its authenticity. He even opposed the petition by pointing out that the application dated 08.04.2025 submitted by the Management before the Tribunal is unsupported by any affidavit and, therefore, it deserved dismissal particularly when the Management has stated that the originals are not available.

7. The rival contentions thus fall for my consideration.

8. The controversy revolves around entitlement of the petitioners/Management to lead secondary evidence with respect to the four documents mentioned in the application. A perusal of the application dated 08.04.2025 filed by the petitioners shows that the reasons mentioned in the application is that '*the documents are not immediately available/traceable in the office of H.P.C.L.*' A perusal of the four documents mentioned in the application shows that the

documents are in the nature of leave applications submitted by an employee, statement given by a workman, letter addressed to the State Bank of India and JDE screenshots for cash receipts, as mentioned in the application. Thus, on perusal of description of these documents it becomes clear that the authenticity of these documents can be tested on actually considering the original documents bearing signatures, if any, of the concerned persons. In view of this, the original documents are expected to be in the custody of the Management and the reasons mentioned in the application stating that documents being 'not immediately available/ traceable' appears to be lacking genuineness.

9. For consideration of the matter, following provisions need further consideration. Section 58 of the Bharatiya Sakshya Adhiniyam 2023 mentions the categories of 'secondary evidence' specifying therein that amongst other documents, the copies made from the original by mechanical process which in themselves ensure the accuracy of the copy and copies compared with such copies, are included in the definition of secondary evidence. Further, Section 60 of the Adiniyam 2023 provides for cases in which secondary evidence relating to documents may be given and clause (c) provides that when the original has been destroyed or lost or

when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time. A perusal of these provisions clearly show that the secondary evidence can be permitted to be led if the party is able to establish that the case falls in any of the categories mentioned in these provisions. The position of law is fairly settled that for leading secondary evidence there has to be a foundation in the pleadings or in the evidence. This position of law is reflected even in the judgments relied upon by the petitioners, preferred above.

10. The crucial issue, therefore, is whether petitioners-Management has led sufficient foundation for leading secondary evidence with respect to the four documents mentioned in the application. The description of the documents mentioned in the application shows the documents are related to correspondence/letters by the employees and, therefore, for considering admissibility of these documents the original documents will be indispensable. The only reason mentioned in the application that the documents are not immediately available/traceable, in my opinion cannot constitute to be a foundation for leading secondary evidence. Although photocopies

of these documents are on record, there is no justification to establish that the original has been destroyed or lost or on account of reasons not arising from the default or neglect of the employer the originals cannot be produced in reasonable time. The petitioners have failed to make out any exceptional case. As such, I am of the considered view that there is no foundation in the pleadings or in the application for allowing the petitioners/Management to lead secondary evidence.

11. It is also crucial to note that only foundation sought to be led by the petitioners/Management for leading secondary evidence is in the application dated 08.04.2025 mentioning reasons that 'documents are not immediately available/traceable in the office of the HPCL'. Pertinently this crucial submission is not supported by any affidavit and the application appears to have been signed only by the counsel. As such, the petitioners' contention about absence of original documents only on the basis of bare statement in an application cannot be straightway accepted.

12. As regards the legal position, the propositions of law laid down in the Judgment relied upon by the petitioners are not disputed. It is fruitful to refer to a recent pronouncement of judgment of the Hon'ble Supreme Court in the matter of **Vijay Vs.**

Union of India, reported in (2023) 17 SCC 455 laying down principles relevant for examining admissibility of secondary evidence. Some of which are re-produced below :

34. *After perusing various judgments of this Court, we can deduce the following principles relevant for examining the admissibility of secondary evidence:*

34.1. *Law requires the best evidence to be given first, that is, primary evidence.*

34.2. *Section 63 of the Evidence Act provides a list of the kinds of documents that can be produced as secondary evidence, which is admissible only in the absence of primary evidence.*

34.3. *If the original document is available, it has to be produced and proved in the manner prescribed for primary evidence. So long as the best evidence is within the possession or can be produced or can be reached, no inferior proof could be given.*

34.4. *A party must endeavor to adduce primary evidence of the contents, and only in exceptional cases will secondary evidence be admissible. The exceptions are designed to provide relief when a party is genuinely unable to produce the original through no fault of that party.*

34.5. *When the non-availability of a document is sufficiently and properly explained, then the secondary evidence can be allowed.*

34.6. *Secondary evidence could be given when the party cannot produce the original document for any reason not arising from his default or neglect.*

34.7. *When the copies are*

produced in the absence of the original document, they become good secondary evidence. Still, there must be foundational evidence that the alleged copy is a true copy of the original.

34.8. Before producing secondary evidence of the contents of a document, the non-production of the original must be accounted for in a manner that can bring it within one or other of the cases provided for in the section.

34.9. Mere production and marking of a document as an exhibit by the Court cannot be held to be due proof of its contents. It has to be proved in accordance with the law.

35. A reading of Section 65(a) of the Evidence Act displays the following:

(a) Secondary evidence can be presented as a substitute when the original document/ primary evidence is in the possession of the opposing party or held by a third party;

(b) Such a person refuses to produce the document even after due notice; and

(c) It must be ensured that the alleged copy is a true copy of the original.”

13. In the backdrop of enunciation of the legal position, on careful consideration of the factual and legal aspects involved in this matter it is clear that the petitioners have failed to make out any exceptional case for enabling it to lead secondary evidence. The impugned order passed by the Tribunal is in consonance with

the position of law with respect to provisions of Section 58 of the Bharatiya Sakshya Adhiniyam 2023. I find no perversity in the impugned order. Therefore, no indulgence is required under Article 227 of the Constitution of India.

14. Writ Petition is dismissed. No order as to costs.

15. Rule stands discharged.

(PRAFULLA S. KHUBALKAR. J.)

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