HIGH COURT OF GUJARAT

SARABHAI M CHEMICALS LTD
Versus
RAJNIKANT V SHAH

Date of Decision: 22 April 2008

Citation: 2008 LawSuit(GUJ) 2137

Hon'ble Judges: H K Rathod

Eq. Citations: 2008 2 CLR 472, 2008 2 GLR 1475, 2008 2 GCD 1503, 2008 18 GHJ 112

Case Type: SPECIAL CIVIL APPLICATIO

Case No: 6164 OF 2008

Subject: Civil, Labour and Industrial

Editor's Note:
I P : 5, 6, 7, 9
Industrial Disputes Act, 1947 -Sec 10 -Civil Procedure Code, 1908 -Order 14 Rule 2(2) -Two references made to Labour Court -First Reference was in respect of closure of unit and second related to termination of service -Workman contended that he belonged to one particular unit but served in another unit -Labour Court dismissed application to decide the question as preliminary issue -Held, this being a disputed question of fact, Labour Court was justified in dismissing the application to decided the question as preliminary issue -Petition dismissed.

Acts Referred:
Code Of Civil Procedure, 1908 Or 14R 2(2)
Industrial Disputes Act, 1947 Sec 10

Final Decision: petition dismissed

Advocates: Kunal Nanavati, Nanavati Associates

Cases Cited in (+): 2

H. K. RATHOD, J.

[1] Heard learned Advocate Mr. Kunal Nanavati for Nanavati Associates for the petitioner.

[2] Through this petition under Art. 227 of the Constitution of India, petitioner is challenging the order below Exh. 13 Annexure 'A' page 15 dated 15-2-2008 passed by the Labour Court in Reference (L.V.C.) No. 1060 of 1998 wherein the Labour Court has dismissed the application Exh. 13 made by the petitioner before the Labour Court.

[3] Learned Advocate Mr. Nanavati for the petitioner submitted that the application has been made by the petitioner stating that the Reference (L.V.C.) No. 1060 of 1998 is bad in law on the preliminary issue and it has been contended that such contention was raised in written statement filed vide Exh. 7 and document vide Exh. 8 and the said contention is required to be decided first. According to the submission made by the learned Advocate Mr. Nanavati, application regarding maintainability of reference is relating to 547 employees. Detailed reply was filed vide Exh. 7. He submitted that the employee was dismissed as per order in award and not as per Company's decision and there is no question of industrial dispute. As per his submission, the industrial dispute is pending in Court No. 1, Industrial Court vide remand I.T. Ref. No. 102 of 1996. There is specific remand order and dispute is pending. He submitted that as per order of Parikh Saheb, Labour Court cannot decide whether the termination is legal or not. He also submitted that the Labour Court has no jurisdiction to scrutinize the order of Parikh Saheb. Employee had given application to join as necessary party in I.T. Reference No. 102 of 1996. It is produced at mark 14/2. The application is pending. If the name of the employee had not been included in total employees 547, then, the Court has power and order to reinstate him. The employee has produced his withdrawal purshis in Reference Case No. 102 of 1996 produced at mark 21/1. He submitted that there is no order passed below said application submitted by the concerned employee, and therefore, Labour Court has no jurisdiction to decide the dispute of termination and he cited certain decisions and submitted that the reference made by the employee concerned must have to be dismissed.

[4] I have considered the submissions made by the learned Advocate Mr. Kunal Nanavati for the petitioner before this Court. I have also perused the order passed by the Labour Court which is challenged before this Court by the petitioner.

[5] As per the case of the employee concerned, he was serving in Vitamin-C Tablet Plant whereas as per the case of the Company, employee concerned was serving in the fine chemical department, therefore, Labour Court has observed that there is most material dispute between the parties with regard to the department because the company was seeking permission of its fine chemical department and as per the case of the Company, employee has been given all the benefits pursuant to the award

passed by the Industrial Tribunal. According to the case of the employee, he was serving in Vitamin 'C Tablet Plant and he has no concern whatsoever with the fine chemical department, and therefore, Labour Court has observed that in view of the aforesaid disputed question of fact between the parties, it is requiring detailed evidence from both the parties and it should not have to be decided only on preliminary issue as per the application given by the employer before the Labour Court. Labour Court has considered the submissions made by both the learned Advocates and given reasons that the concerned employee was not surplus but his service was terminated because of the misconduct alleged against him, and therefore, separate reference against termination is to be adjudicated by the Labour Court independently and it has no connection with the pending reference being Reference No. 102 of 1996. Both the references are different and distinct, and therefore, ultimately, application filed by the petitioner below Exh. 13 has been rejected by the Labour Court. Relevant observations made by the Labour Court in Para 3 of order dated 15-2-2008 Annexure-A are quoted as under :

> "3. I have carefully gone through the evidence placed on record as well as rival contention of both the sides. As per the case of the Vitamin-C Tablet Plant whereas as per case of the Company, he was serving in the fine chemical department. There is most material dispute between the parties with regard to department, because Company has sought permission for closure of its fine chemical department, as per the case of the company, employee has been given all the benefits pursuant to the award passed by the I.T. Court. The case of the employee is that he was serving in Vitamin-C Tablet Plant, he has no concern whatsoever with the fine chemical department. Therefore, according to my view, this dispute is question of facts and when there is question of facts, then, it shall never be decided unless and until recording of evidence of parties. Further, if the employee was surplus employee in the fine chemical department, then, question does not arise to issue show-cause notice to him and initiate departmental inquiry. As per the case of the Company, his name was included in the list whereas as per the case of the employee and evidence placed on record, the list of the surplus employees who have rendered service in the fine chemical department were produced later on. At the time of passing the award by the I.T. Court, the list was not on the record, this fact divulged itself from the record. Further, the deposition of the employee had been recorded vide Exh. 12 in the year 2001 and his cross-examination was adjourned pursuant to the request of the learned Advocate for the Company. Thereafter, this application has been given. Further, the dispute involved in the case of I.T. Ref. 102 of 1996 remanded and in the case on hand, is quite different and distinct. There is no question to scrutinize the award passed by the I.T. Court and this contention on the part of the learned Advocate for the Company is apparently not tenable. The

dispute raised by the Company is not touching the root of the matter which is required to be decided without leading evidence of the parties. Further, the employee has given application to join him as party in I.T. Ref. 102 of 1996 which is pending. It does not mean that this Court has no jurisdiction to try and decide the dispute by and between the parties. Further, as and when the Asstt. Labour Commissioner has referred the dispute to this Court for adjudication, then, company is not satisfied with the same being bad in law, company ought to have preferred petition before the Hon'ble High Court against the order of referred matter to this Court for adjudication. The learned Advocate for the company has relied upon the citation of 1997 (1) GLR 93 Gujarat High Court and in the case of Chemical Labour Union v. Ambalal Sarabhai Enterprises & Anr. But looking to the facts of the citation and principles of maintainability therein, has no relevancy to the facts of the present case on hand and it is not applicable to the present case. Therefore, considering overall evidence placed on record, the dispute by and between the parties is required to be decided by leading an evidence and there is no substance in argument canvassed by the learned Advocate for the Company."

[6] Legal harassment made by the company to the workman which has been visualized by this Court is necessary to be noted. Reference No. 102 of 1996 is pertaining to closure of fine chemical department and Reference No. 1060 of 1998 filed by the workman is challenging termination before the Labour Court which was referred to by the appropriate Government for adjudication. After about nine years or some more period, application Exh. 13 has been made by the petitioner-Company that the Reference No. 1060 of 1998 is bad in law. Petitioner has not challenged the order of reference directly before this Court. If at all the petitioner-Company was aggrieved by the order of reference made by the appropriate Government, then, petitioner ought to have challenged the order of reference. At the time, when this reference against termination was made by the appropriate Government being Reference No. 1060 of 1998, original reference I.T. No. 102 of 1996 was pending before the Industrial Tribunal, Baroda. Merely raising contention in written statement that this reference is bad, then, it will be decided by the Labour Court finally but after 10 years, but all of a sudden, application Exh. 13 is moved which is going to suggest about some legal harassment caused by petitioner-Company to the concerned employee or to avoid final adjudication under the pretext of issue of termination raised by the workman. Such harassment is not permissible as per the law decided by the Apex Court in number of cases. Recently, in Special Civil Application No. 20826 of 2006 with Special Civil Application No. 20827 of 2006 decided by this Court on 19-3-2008 (Indian Petrochemicals Corpn. Ltd. v. General Secretary), similar question was examined and it has been observed by this Court as under :

"I have perused the order passed by Industrial Tribunal in both the references in respect to both the petitions, wherein, interim order is challenged by the petitioner. I have considered the submissions made by both the learned Advocates. Now, question is that whether it is must for the Tribunal to decide preliminary issue if it is raised by employer. The law on this subject is decided by Apex Court that normally, in an ordinary circumstances, preliminary issue cannot be examined by Tribunal, but same can be examined along with final adjudication. The reason given by Apex Court that if Industrial Tribunal decides preliminary issue, then, either party can challenge before higher forum and obtained the stay, which, ultimately, adjudication process had been stalled while obtaining the stay from higher forum, therefore, main purpose to have quick adjudication by the Tribunal is frustrated. The Tribunal is having the discretionary powers to decide that whether preliminary issue is to be decided or not or it can be decided along with final adjudication. In these both the petitions, vide Exh. 10 application and vide Exh. 67 application, the Tribunal has come to conclusion that such issue which has been raised by petitioner as a preliminary issue will be considered by Tribunal at the time of final adjudication. When such a discretionary power exercised by Tribunal, High Court cannot be interfered in writ proceedings. The view taken by Apex Court in case of National Council for Cement and Building Materials v. State of Haryana & Ors., reported in 1996 (2) LLJ 125. The relevant discussion of the aforesaid decision of Apex Court are made in Paras 11 to 16, therefore, the same are quoted as under :

11. Usually, whenever a reference comes up before the Industrial Tribunal, the Establishment, in order to delay the proceedings, raises the dispute whether it is an "industry" as defined in Sec. 2(j); or whether the dispute referred to it for adjudication is an "industrial dispute" within the scope of Sec. 2(k) and also whether the employees are "workmen" within the meaning of Sec. 2(s). A request is made with that these questions may be determined as preliminary issues so that if the decision on these questions are in the affimative, the Tribunal may proceed to deal with the real dispute on merit.

12. We, however, cannot shut our eyes to the appalling situation created by such preliminary issues which take long years to setde as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till the matter relating to the preliminary issue is finally disposed of.

13. This Court in Cooper Engineering Ltd. v. P. P. Mundhe, 1975 (2) LLJ 379, in order to obviate undue delay in the adjudication of the real dispute, observed that the Industrial Tribunal should decide the preliminary issues as also the main issues on merits all together so that there may not be any further litigation at the

interlocutory stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court.

14. Again in S. K. Verma v. Mahesh Chandra, 1983 (2) LLJ 429, this Court strongly disproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat the purpose of adjudication on merits.

15. In D. P. Maheshwari v. Delhi Administration, 1983 (2) LLJ 425 this Court speaking through O. Chinnappa Reddy, J. observed that the policy to decide the preliminary issue required a reversal in view of the "unhealthy and injudicious practices resorted to for unduly delaying the adjudication of industrial disputes for the resolution of which an informal forum and simple procedure were devised with avowed object of keeping them from the dilatory practices of Civil Courts". The Court observed that all issues whether preliminary or otherwise, should be decided together so as to rule out the possibility of any litigation at the interfered stage. To the same effect is the decision in workmen employed by Hindustan Lever Ltd. v. Hindustan Lever Ltd., 1984 LLC 1573.

16. The facts in the instant case indicate that the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits. It raised the question whether its activities constituted an "industry" within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issues framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as a preliminary issue, but subsequently, by change of mind, and we think rightly, it decided to hear the issue along with other issues on merits at a later stage of the proceedings. It was at this stage that the High Court was approached by the appellant with the grievance that Industrial Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decide to hear that issue along with other issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Art. 226 of the Constitution. The decision of the High Court is fully in consonance with the law laid down by this Court in its various decisions referred to above, and we do not see any occasion to interfere with the order passed by the High Court. The appeal is dismissed, but without any order as to costs."

The petitions have been filed by petitioners challenging the interlocutory order that preliminary issue where the Tribunal has rejected the applications vide Exh. 110 and vide Exh. 67 by order dated 1st August, 2006. In such petitions, whether High

Court should interfere or not is examined by this Court in case of Cadila Healthcare Limited v. Union of India & Ors., reported in 1998 (2) GLH 513. This Court has made the observations in Paras 9 and 11, which are quoted as under :

"9. This petition has been filed by the petitioner under Art. 226 of the Constitution of India. Speaking for the Division Bench of this Court, Mr. Justice K. G. Balakrishnan, in the case of Chhagan Ranchhod Kukava v. General Manager, Western Railway, Bombay & Anr., reported in 1998 (1) GLH 461, observed that an order passed by the Tribunal can be challenged under Arts. 226 or 227 of the Constitution of India only if there is a jurisdictional error or procedural error apparent on the face of the record. Under the impugned interlocutory order, the respondent No. 2 has decided that it is not the case where the opposition of the respondent No. 3 should be deemed to have been abandoned. So, the matter has not been decided finally. Only the action of respondent No. 2 taking on record of these proceedings, the evidence filed by respondent No. 3 has been held to be justified. That evidence has been taken on record by extending the period of filing evidence and the petitioner has been given opportunity to produce its evidence in support of its application. So, by this impugned order, the proceedings are not finally culminated in favour of the respondent No. 3. The matter has to be decided on merits. An interlocutory order is always subject to challenge after the proceedings in which it has been passed are finally terminated while challenging the final order passed by the authority before the appropriate forum. One of the cardinal principles of exercising extraordinary powers by this Court under Art. 226 of the Constitution is that even if the order impugned in the writ petition appears to be illegal, in case it does not result in failure of justice to the party concerned or in denial of any right of challenging the same, this Court will not interfere in the matter under Art. 226 of the Constitution of India. A reference in this respect may have to the two decisions of the Apex Court in the case of A. M. Allison v. B. L. Sen, reported in AIR 1958 SC 227 and in the case of Balvant Rai v. M. N. Nagrashna, reported in AIR 1960 SC 407. In the present case, if ultimately the matter is decided against the petitioner by the respondent No. 2, then while challenging the final order, the petitioner has all the rights to challenge this interlocutory order also, if it is worthy of challenge, before the appropriate forum available to challenge the final order. Normally, the matters are to be decided on merits by affording to the contesting parties all the opportunities to produce their evidence, but even if it is taken that the respondent No. 3 could not have been permitted to produce evidence in support of its notice of opposition, as what the petitioner contends, still the extension of time granted to respondent No. 3, for filing the evidence, by respondent No. 2 will not result in failure of justice as, as stated earlier, that order is always subject to challenge, but not at this stage. The petitioner has to wait for

adjudication of the matter as well as for final termination of proceedings. There are all possibilities that the petitioner may succeed in the case and in that eventuality, there may not be any necessity of challenging this order. This is another point which favours the view which I am taking that against an interlocutory order, normally, the petitions are not maintainable. It is not gainsay that the present problem with the Courts is of heavy pendency of the matters and if the petitions are entertained against interlocutory orders, which can always be challenged while challenging the final orders passed in the proceedings, it will be nothing but only an act of injury which the litigants are suffering on account of delay in disposal of their matters by the Courts. Moreover, nor it can be justified at this stage to challenge this order when it will not result in failure of justice to the petitioner. The petitioner will have all the opportunity to submit its evidence upon the application and still if it seeks that this order could not have been passed, it has all the rights to challenge the same at the appropriate stage, for which it has to wait till the matter is finally decided.

11. The matter is yet to be examined from another angle. From the scheme of the Act, 1958, it transpires that the application for registration of trade marks has to be disposed of expeditiously. Otherwise also, leaving apart the scheme of the Act aforesaid, whether it is a proceeding before the Civil Court or Criminal Court or before this Court or even before any quasi-judicial authority or administrative authority, the same has to be disposed of expeditiously. This object, as well in some of the cases the mandate of the statute, can only be achieved or attained where the Courts which are having powers of superintendence or extraordinary powers under Art. 226 of the Constitution of India, do not permit the parties to stall the final adjudication of the matter by questioning the decision of the authorities with regard to interlocutory matters when the matter if worthy, can be agitated even after final orders are passed. I consider it to be fruitful here to make reference to the decision of the Apex Court in the case of The Cooper Engineering Ltd. v. P. P. Mundhe, reported in AIR 1975 SC 1900. The Apex Court, in this case, held :

"10. In Management of Ritz Theatre (P.) Ltd. v. Its Workmen, AIR 1963 SC 295 this Court was required to deal with a rather ingenious argument. It was contended in that case by the workmen, in support of the Tribunal's decision that since the management at the very commencement of the trial before the Tribunal adduced evidence with regard to the merits of the case, it should be held that it had given up its claim to the propriety or validity of the domestic enquiry. While repelling this argument this Court made some significant observations :

"In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute.....

If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer : if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence."

The relevant observations made by Apex Court in case of S. K. Verma v. Mahesh Chandra & Anr., reported in 1983 (2) LLJ 429 in Para 2, which is quoted as under :

"2. There appear to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a Tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute, and the third that workman is no workman. It is a pity that when the Central Government, in all solemnity, referred an industrial dispute for adjudication a public sector corporation which is an instrumentality of the State, instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or victimization, etc. should attempt to evade decision on merits by raising such objection, and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication exercising no administrative control over them. The agents are not his subordinates. In fact, it is thus clear that the Development Officer, cannot by any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within the meaning of Sec. 2(s) of the Industrial Disputes Act."

The said aspect has been considered by Apex Court in case of D. P. Maheswari v. Delhi Administration & On., reported in 1983 (2) LLJ 425 : AIR 1984 SC 153 in Para

1, which is quoted as under :

"It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Art. 226 of the Constitution and to this Court under Art. 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise, industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of the jurisdiction under Art. 226 of the Constitution stop proceedings before Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill-afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions, must therefore, ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Art. 226 is supervisory, and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction, by special Tribunals at interlocutory stages and on preliminary issues."

It is necessary to note that industrial dispute raised by respondent-Union in the year 1998 and in one case, in the year 2002, even though, in both the cases, the

references are pending and legal fight is going on, in one case, more than six years and in another case, more than eight years. Still final adjudication on merits are awaited, which, ultimately, resulted into frustration because of the delay in mind of workmen working in the industry, which give a cause to the workman for industrial unrest and justify to disturb industrial peace, but for that, prima facie, workers are not responsible, but a conduct of employer is basically responsible. The said observations made by Apex Court in case of D. P. Maheswari (supra) and in case of S. K. Verma (supra) and National Council for Cement and Building Materials (supra) as relied upon by Industrial Tribunal and also this Court.

In light of the observations made by Apex Court and this Court as referred above, according to my opinion, Industrial Tribunal, Baroda has not committed any error while rejecting the application vide Exh. 110 and vide Exh. 67 which requires interference by this Court while exercising the powers under Art. 227 of the Constitution of India. In preliminary point, Tribunal cannot examine the facts. In both the references, petitioner has raised question of facts which cannot be answered by Tribunal while deciding preliminary issue. The Tribunal has rejected the application which is not having any adverse effect upon the petitioner or it will not adversely affected to any right of the petitioner because of rejection of applications by Tribunal. It is a discretionary powers with the Tribunal to consider such application of preliminary issue, and then, to take decision that whether it should have to be heard first or with final adjudication. The Tribunal has given cogent reason while rejecting the application. At the most, petitioner has to lead oral evidence to justify their defence on merits, but except that, right of the petitioner are not adversely affected because of rejection of the applications by Tribunal. I have gone through the orders passed in both the cases by the Tribunal, the Tribunal has applied its mind and followed the law laid down by the Apex Court and rightly rejected the applications which is not contrary to law."

[7] Only two categories of issues can be decided as preliminary issue namely jurisdiction of Court or bar of suit created by any law for the time-being in force. When the issue involved is a mixed question of law and facts, such issue cannot be determined as a preliminary issue. This aspect has been examined recently by the Division Bench of the Madras High Court in case of Rangaraj & Ors. v. P. R. Hemachandra Babu, reported in 2008 (2) MLJ 1031. Relevant observations made by the Division Bench of the Madras High Court in Paras 12, 13, 14, 15 and 16 are quoted as under :

"12. In the decision in S. S. Khanna v. F. J. Dillon, AIR 1964 SC 497, the Supreme Court held that the jurisdiction to try the issues of law apart from the issues of fact, may be exercised only where in the opinion of the Court that the whole suit may be

disposed of on the issue of law alone and the Code confer no jurisdiction upon the Court to try the suit on merely issues of law and facts i.e. mixed issues as preliminary issues, and normally, all the issues should be tried by the Court and that failure to do so may result in a lopsided trial of the suit.

13. In the decision in Ramdayal Umraomal v. Pannalal Jagannathji, AIR 1979 MP 153, a Full Bench of the Madhya Pradesh High Court was of the opinion that an issue relating to jurisdiction can be tried as a preliminary issue only if it can be disposed of without recording any evidence; where the issue relating to jurisdiction is mixed question of law and fact, requiring recording of evidence, the same cannot be tried as a preliminary issue.

14. This Court in the decision in M. Sadaksharavel v. State Bank of India, Coimbatore, 1995 (1) CTC 266, held that the plea of limitation is a mixed question of fact and law and not merely issue of law.

15. In Lajivora v. Srividya, AIR 2001 Mad. 376 : 2001 (2) MLJ 481, this Court held that only two categories of issues can be decided as preliminary issues, namely the jurisdiction of the Court or the bar of the suit created by any law for the time-being in force.

16. In the present case, as pointed out and noticed by the learned single Judge that the plaintiff has raised the question of fact and the issue involved is a mixed question of law and fact, we are in agreement with the learned single Judge that such issue cannot be determined as a preliminary issue, which can be determined at the time of trial along with the other issue."

[8] The Apex Court, after examining such issue, deprecated such practice adopted by the employer to stall further proceedings pending before the Labour Court and as per the decision of the Division Bench of the Madras High Court as referred to above, only two categories of issues can be decided as preliminary issues, namely the jurisdiction of the Court or the bar of the suit created by any law for the time-being in force. After ten years, all of a sudden, application Exh. 13 was pressed into service by the petitioner before the Labour Court to declare or to decide the preliminary issue that the Reference No. 1060 of 1998 is bad because workman is concerned in Reference No. 102 of 1996 and his service was not terminated because of misconduct, but he was terminated because of declaring him as surplus employee. What is the purpose behind to file such application after 10 years to have order which may be against the company but same can be challenged before the higher forum and to obtain stay and thus ultimate object of the company is to stall the proceedings which may be achieved if this Court stays further proceedings while entertaining the petition filed by the

petitioner-company. At this stage, learned Advocate Mr. Nanavati, for the petitioner submitted that the application Exh. 13 was filed by the petitioner in 2001 and not after ten years, but the question is that if the petitioner has filed application Exh. 13 in 2001, then, why petitioner waited for decision thereon till this date and why not insisted before the Labour Court in 2001 itself for deciding the said application? In reference of the year 1998, why petitioner waited to file such application Exh. 13 till 2001? What not filed such application immediately or why not challenged the order of reference itself in 1998 if at all it was aggrieved by such order of reference made by the appropriate Government? Learned Advocate Mr. Nanavati for the petitioner has not been able to answer all these questions asked by this Court.

[9] As regards the contention raised by the learned Advocate Mr. Kunal Nanavati that the dispute raised by the employee against the termination is bad in law and for that, application for preliminary issue was filed by the petitioner before the Labour Court, and therefore, Labour Court ought to have decided that aspect. But in fact, Labour Court is not having jurisdiction to decide whether the order of reference made by the appropriate Government is legal and valid or not, but Labour Court is having jurisdiction to decide the industrial dispute raised to it by the appropriate Government. Labour Court has no jurisdiction to travel beyond the terms of reference and even while having incidental powers also, validity of reference cannot be examined by the Labour Court as per the various decisions of the Apex Court and this Court. For that, it is the duty of the petitioner to challenge the order of reference before this Court at the relevant time when the reference was made in the year 1998. No doubt, application Exh. 13 was filed in the year 2001 and it remained pending for about seven years before the Labour Court. However, immediately in 1998, order of reference was not challenged by the petitioner before this Court nor such preliminary contention was not immediately raised before the Labour Court but raised in the year 2001 before the Labour Court. Said application remained pending before the Labour Court for about seven years and in view of such passage of time, such application seeking decision on preliminary issue becomes meaningless or infructuous by lapse of time. If the matter remains pending at the stage of preliminary issue for about more than eight years, then, when the main reference will be examined by the Labour Court for final adjudication. This disclosing the idea of the employer to avoid final outcome of the reference by one or the other reason while adopting dilatory tactics, and therefore, according to my opinion, Labour Court has rightly rejected the application Exh. 13.

[10] Considering the conduct on the part of the petitioner, apparently, there was an intention on the part of the petitioner to stall the proceedings by remaining silent on the application Exh. 13 and to have order and then to challenge the same before the higher forum and obtain interim relief against the further proceedings of reference

pending before the Labour Court. Such type of practice has been deprecated by the Apex Court in number of cases referred to above, and therefore, according to my opinion, when the question of disputed facts is arising, which is requiring evidence from both the parties to have decision whether the workman is having any concern with the pending Reference No. 102 of 1996 or not, whether the workman was an employee in fine chemical department or Vitamin-C Tablet Plant. All these are the questions which could be decided only on the basis of the oral and documentary evidence that may be produced by the parties before the Labour Court and such questions could not be decided as preliminary issue without having evidence thereon. Normally, final adjudication of the reference cannot be stalled by the either party by challenging interim order or order on preliminary issue before the higher forum and stall further proceedings of the Labour Court. Therefore, according to my opinion, Labour Court was right in examine the issue and has rightly come to the conclusion that the issue which was raised by the petitioner, looking to the evidence on record between the parties, is required to be decided by leading evidence. If preliminary issue is raised by either of the parties before the Labour Court, then, Labour Court can examine such issue at the time of final adjudication but Labour Court is not duty-bound to decide that preliminary issue when number of disputed questions of facts are raised in preliminary issue in application for preliminary issue and such issue can be decided along with the final adjudication of the reference. According to my opinion, Labour Court has not committed any error requiring interference of this Court in exercise of the powers under Art. 227 of the Constitution of India. Therefore, there is no substance in this petition and the same is required to be dismissed.

[11] In result, this petition is dismissed.