HIGH COURT OF GUJARAT

INDIAN PETROCHEMICALS CORPO LTD
Versus
GENERAL SECRETRY

Date of Decision: 19 March 2008

Citation: 2008 LawSuit(Guj) 2591

Hon'ble Judges: H K Rathod

Eq. Citations: 2008 5 GLR 3998, 2008 3 GLH 382, 2009 1 LLJ 873, 2009 121 FLR 792, 2008 2 GCD 1593

Case Type: Special Civil Application

Case No: 20826, 20827 of 2006

Subject: Constitution, Labour and Industrial

Acts Referred:
Constitution Of India Art 136, Art 227, Art 226

Final Decision: Petition dismissed

Advocates: K H Baxi, Nanavati Associates

Cases Referred in (+): 8

H. K. Rathod, J.

[1] Heard learned advocate Mr. Joshi for Nanavati Associates appearing on behalf of petitioners and learned advocate Mr. K.H. Baxi appearing on behalf of respondents.

[2] Both the matters are on the stage of admission.

[3] In Special Civil Application No. 20826 of 2006, petitioner has challenged the order passed by Industrial Tribunal, Baroda in Reference (IT) No. 92 of 2002 vide Exh. 110 dated 1st August 2006. The Industrial Tribunal, Baroda has rejected the application submitted by petitioner vide Exh.110.

[4] In Special Civil Application No. 20827 of 2006, petitioner has challenged similar kind of application given in different Reference (IT) No. 255 of 1998 vide Exh.67 which

was rejected on the same date i.e. 1st August 2006.

[5] Learned advocate Mr. Joshi raised contention that petitioner is engaged in manufacturing of petrochemicals employing around 6000 permanent workmen and their services are being governed by way of periodical settlements arrived at with the recognised union. The miscellaneous job of work are being taken by engaging various contractors who employ their respective workmen. The contractor's employees raised industrial disputes against the petitioner through the respondent Union inter alia, demanding that they should be treated as permanent workmen of the petitioner and should be given the wages and other benefits being given to permanent workmen employed by the petitioner. The terms of reference in both the cases are placed on record by the petitioner.

[6] Learned advocate Mr. Joshi submitted that in light of this background, one application was made by petitioner with a prayer to Industrial Tribunal to decide the preliminary point that contractor, who was engaged by petitioner, has terminated the services of concerned workmen and contractor has also paid their dues to the concerned workmen. Therefore, question of regularising the service of such employee does not arise and reference becomes infructuous qua petitioners. The complaint filed by the workmen is pending where the termination was challenged by the concerned employee. Therefore, according to petitioner, so long, complaint under Section 33A is not finally decided against the petitioner, the present reference is become infructuous and same may be set aside against the petitioner. Therefore, request was made by the petitioner before the Industrial Tribunal that aforesaid contention raised by petitioner that against the IPCL, now, in light of the termination, order passed by the contractor against the concerned employee, this reference is not to be maintainable against the petitioner and which related to the validity of the reference, therefore, before deciding the merits, this application may be decided as a preliminary issue. Learned Advocate Shri Baxi has vehemently opposed the submissions of Mr.Joshi and supported the orders passed by the Tribunal in both the cases.

[7] The reply submitted by respondent Union and thereafter, matter was heard by Industrial Tribunal. Ultimately, Industrial Tribunal, after considering the submissions made by both the learned advocates, come to conclusion that once the reference is made to the Industrial Tribunal for adjudication, then, so long, reference is not decided on merits. The Industrial Tribunal cannot quash and set aside the reference against the petitioner. The question of reinstatement of concerned employee may not arise, but, it is a duty of the Tribunal to consider the merits as to whether company is a real employer or not or as to whether contractor is real employer or not and as to whether contract labor system which is carried out by petitioner is sham or bogus or not and as to whether labour contract is genuine or not. Therefore, Tribunal has come to

conclusion that if this question is to be examined by Tribunal if it is decided on preliminary issue which will amounts to doing injustice to the concerned employees, but, same can be examined on merits by the Tribunal as and when evidence is recorded by the Tribunal from both the parties. The Industrial Tribunal has considered the decision of Apex Court in case of D.P. Maheswari v. Delhi Administration and Ors. The Tribunal has also relied upon one decision of Bombay High Court, for Tribunal must have to examine the merits in such kind of dispute whether any relation is established between petitioner and concerned employee as an employer and employee and whether contract of labour is sham or bogus or not who is the real employer is required detail evidence, thereafter, on merits, Tribunal can examine the dispute, but, such question cannot be decided on preliminary issue without evidence and merely services of concerned employees terminated by contractor, the present reference cannot be considered to be infructuous qua petitioner. Therefore, that application has been rejected by Industrial Tribunal. The Tribunal has given detailed reason in support of its conclusion.

[8] 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.110 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 and Ors.. The relevant discussion of the aforesaid decision of Apex Court are made in Para 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 Section 2(j); or whether the dispute referred to it for

adjudication is an Industrial dispute within the scope of Section 2(k) and also whether the employees are 'workmen' within the meaning of Section 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 affirmative, 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 settle 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 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 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 1 SCC 728.

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 Dispute 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 Article 226 of the Constitution. The decision of the High Court is fully inconsonance 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.

[9] 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 and Ors., 1998 2 GLH 513. This Court has made the observations in Para 9 and 11, which are quoted as under:

9. This petition has been filed by the petitioner under Article 226 of the Constitution of India. Speaking for the Division Bench of this Court, Mr.Justice K.G.Balakrishnan, in the case of Chhagan Ranchod Kukava v. General Manager, Western Railway, Bombay and Anr., 1998 1 GLH 461, observed that an order passed by the Tribunal can be challenged under Articles 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 extra ordinary powers by this Court under Article 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 Article 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, 1957 AIR(SC) 227 and in the case of Balvant Rai v. M.N. Nagrashna, 1959 2 LLJ 837. 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 right 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 feels that this order could not have been passed, it has all the right 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 extra ordinary powers under Article 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, 1975 2 LLJ 379. The Apex Court, in this case, held:

10. In Management of Ritz Theater (P) Ltd. v. Its Workmen, 1962 2 LLJ 498 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.

[10] The relevant observations made by Apex Court in case of S.K. Verma v. Mahesh Chandra and Anr., 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, refers 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 oftentimes to the High Court and to the Supreme Court, wasting public time and money. We expect public section 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 be any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within the meaning of Secsion. 2(s) of the Industrial Dispute Act.

[11] The said aspect has been considered by Apex Court in case of D.P. Maheswari v. Delhi Administration and Ors. 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 Article 226 of the Constitution and to this Court under Article 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 Article 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. Article 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 journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 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.

[12] 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 workmen 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 and in case of S.K. Verma and National Council for Cement and Building Materials as relied upon by Industrial Tribunal and also this Court.

[13] 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 Article 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.

[14] Therefore, according to my opinion, the view taken by Tribunal is perfectly justified looking to the facts which are on record and factual aspect cannot be examined by Tribunal on preliminary issue, otherwise, either party will put in an adverse situation. Therefore, according to my opinion, Tribunal has perfectly justified in rejecting the applications and followed the law laid down by the Apex Court, and for that, Tribunal has not committed any error which requires interference by this Court while exercising the power under Article 227 of the Constitution of India.

[15] Hence, there is no substance in the present petitions. Accordingly, both the petitions are dismissed with no order as to costs.