7. The learned Assistant Government Pleader Shri Shah referred to a judgment in a case *Premchand Gordhandas Valla v. The Rajpipla Nagrik Sahakari Bank Ltd. & Anr.* reported in 20 G.L.R. at page 389. There the question was a question under sec. 6(iv) (j) of the Bombay Court Fees Act. It was decided that "Susceptible", means "capable of taking, receiving". Therefore, "susceptible of monetary evaluation" means "capable of admitting of monetary evaluation". We may only say that an award pas sed by the Registrar's Nominees under the Gujarat Co-operative Societies Act is itself a decree capable of being executed and the words used in sec. 6(iv)(j) are entirely different then the words used in Article 7 of Schedule I of the Bombay Court-fees Act, 1959.

8. We may also refer to a case *Anne Venkatasubba Rao v. Anne Bhujangayya and Another* reported in A. I. R 1946 Madras at page 104 where it is observed that a fiscal legislation like the Court-fees Act must be strictly construed and where there is any doubt, the benefit of it should be given to the tax-payer. Here the question is whether an application to set aside an award is an application which directly brings about the result which is a substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. We are of the opinion that these are the consequences which may or may not follow. Under these circumstances the case would not be covered by Article 7 of Schedule I of the Bombay Court-fees Act, 1959 and, therefore, *ad valorem* court-fees would not be required to be paid.

9. The result would be that the Revision Application is required to be allowed and the order passed by the Civil Judge (S.D.), Bharuch dated 12-9-1978 in Miscellaneous Civil Application No. 30 of 1975 is set aside.

10. Rule is accordingly made absolute with no order as to costs.

Application allowed.

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SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice S. H. Sheth.

GUJARAT STATE ROAD TRANSPORT CORPORATION, AHMEDABAD

v. ISMAILKHAN ANVARKHAN PATHAN & ANR.*

Industrial Disputes Act (XIV of 1947)-Sec. 33(2) (b)-Industrial Disputes (Gujarat) Rules, 1966-Rule 63(3)-Rules laying down details to be filled in an application under sec. 33(2)(b)-Omission to specify place of verification is curable irregularity-If order of discharge is annexed mere omission to state material facts in Col. 6 of the form loses its significance and it is not material irregularity-Notice stating that one month's pay is given -Non-mention thereof in application is also technical irregularity-Became of some technical error justice should not suffer.

In an application to the Conciliation Officer under sec. 33(2)(b) of the Industrial Disputes Act, the provisions of Rule 63(3) of the Industrial Disputes (Gujarat) Rules, 1966 are to be complied with. The rules lay down certain provisions. The

*Decided on 19-12-1980. Spl. C.A. No. 1669 of 1979 (with Spl. C.A. Nos. 1914, 1926, 1982, 1983, 2052 to 2101 and 3304 to 3323 of 1979) under Art. 226 of the Constitution of India praying to issue an appropriate writ etc. quashing & setting aside the impugned order dt. 28-2-79 passed by the settlement Officer, Surat in No. MMK/-A.A. 45/78/2876 etc. etc.

Corporation, it was contended, did not comply with the following conditions : (1) The Corporation had not stated in each of the applications the place where the application for approval was verified; (2) the Corporation had not stated in the body of each of the applications material facts of the case and the order of which it sought approval from the Conciliation officer; and (3) the Corporation had not stated in the relevant paragraph the date on which wages were paid to the concerned workman.

Held : (I) omission on the part of an employer to state the place of verification is a curable irregularity. Omission to specify the place of verification does not render the applications void or not maintainable. (Para 7)

(2) Once the Conciliation Officer has before him an order of which approval is sought, mere omission on the part of the employer to state material facts in column 6 loses significance. What is the matter of significance is that the Conciliation Officer must have before him material facts of the case and the action of which his approval is sought. Once these facts are before the Conciliation Officer, either, in the shape of statement of facts in column 6 of the application or in the form of a separate order annexed to the application or sent to the Conciliation Officer, there is no material irregularity which vitiates the application made by an employer under sec. 33(2)(b) of the Act, because he can apply his mind to the order. (Para 8)

(3) The requirement to state the date of payment appears to be material, because the law requires an employer under sec. 33(2)(b) to pay one month's wages simultaneously with the passing of the order of dismissal against the workman concerned. However, in the instant case the concerned workman was paid wages for one month on the date on which order of dismissal was made against him and on that very day the application for approval was made to the Conciliation Officer under sec. 33(2)(b) of the Act. (Para 9)

All the technical legal requirements of law are intended to foster justice. Substantial justice cannot be allowed to fail merely because some technical error has been committed. (Para 9)

K. S. Nanavati, for the Petitioner.

J. U. Mehta, Asstt. Govt. Pleader instructed by *M. I. Hava* of *M/s. Bhaishanker Kanga and Girdliarlal,* for Respondent No. 2.

V. B. Patel, with *Kanubhai M. Patel* for *Vijay V. Patel* for Respondent No. 1.

S. H. SHETH, J. This group of 75 petitions raises common questions of law. All these petitions hava been filed by the Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") in which they challenge, the rejection of the applications made by them to the Conciliation Officer for granting approval to the orders of dismissal which the Corporation had passed against their employees.

2. The facts in Special Civil Application No. 1669 of 1979 are similar to the facts of the case in other petitions. We, therefore, state in this judgment facts of the case in Special Civil Application No. 1669 of 1979. On May 24, 1977 respondent No. 1 (hereinafter referred to as "the respondent-workman") was driving a bus of the Corporation, it met with an accident as a result of which a pedestrian was killed. There spondent workman gave false information to the Corporation in order to save himself. Later on, however, ;correct facts became known to the Corporation. The Corporation, therefore, issued a charge-sheet to the respondent-workman who gave a written reply to it. On September 19, 1977, the

respondent workman tendered oral explanation to the Corporation. Thereafter a departmental enquiry was held against the respondent-workman and the enquiry officer made his report. He found him guilty of the charges which were levelled against him.

3. On May 12, 1978 a second notice was issued to the respondent-workman to show cause why he should not be dismissed from service. The respondent-workman replied to the said notice. On July 28, 1978 the respondent-workman was dismissed from service. At that time Con ciliation proceedings between the Corporation's workmen including the respondent-workman in respect of some other disputes had been pending' before the Conciliation Officer. Therefore, the Corporation made an application to the Conciliation Officer under sec. 33(2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") for obtaining approval to the action of dismissal which the Corporation had taken against the respondent-workman. The Conciliation Officer rejected the application made to him by the Corporation on the ground that the provisions of Rule 63(3) of the Industrial Disputes (Gujarat) Rules, 1966 (hereinafter referred to as "the Rules") were not complied with. Similar orders made in all the 75 cases are challenged in as many petitions before us. There.. is no dispute about what was not complied with by the Corporation; (1) the Corporation had not stated in each of the applications the place where the application for approval was verified; (2) the Corporation had not stated in the body of each of the applications material facts of the case and the order of which it sought approval from the Conciliation Officer and (3) the Corporation had not stated in the relevant paragraph the date on which wages were paid to the concerned workman.

4. Mr. Nanavaty has contended before us that the failure to comply, if any, by the Corporation, with these legal requirements was not such as to render the applications void and liable to be rejected *in limine.*

5. In order to examine the connection which Mr. Nanavati has raised, it is necessary to turn to sec. 33(2)(b) of the Act. It provides as under:

> "33. (2). During the pendency of any such proceedings in respect of any industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or where there are no such standing orders in accordance with the provisions of the contract whether express or implied between him and the workman :
>
> ... ...
>
> (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman :
>
> Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

6. The applications which the Corporation made to the Conciliation Officer were made in compliance with the proviso to sub-sec. (2) of sec. 33 of the Act. Under sec. 38(1) and (2) (g), Rules have been made in this behalf by the Government of Gujarat. Rule 63(3) is material for the present purpose. It provides as follows:

> "63. (3). Every application under sub-rule (I) or sub-rule (2) shall be verified at the foot by the employer making it or by some other person proved to the satisfaction of the Conciliation Officer, Board, Labour Court or Tribunal to be acquainted with the facts of the case."

Sub-rule (5) of Rule 63 provides as follows:

> "The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified."

Now, the applications in these cases were made in Form No. XVIII. That form has been prescribed under sub-rule (2) of Rule 63 of the Rules which reads :

> "An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (3) of sec. 33 shall present an application in Form XVIII in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties."

7. There is no doubt or dispute about the fact that all the 75 applications which the Corporation made to the Conciliation Officer were verified. However, they did not state the place where they were verified. In our opinion, omission on the part of an employer to state the place of verification is a curable irregularity. Having lacked at the scheme of the Rules we are of the opinion that it is not a matter of any grave significance. Omission to specify the place of verification does not render the applications void or not maintainable. Nothing has been shown to us on behalf of the employees as well as on behalf of the Conciliation Officer all of whom are represented before us that the omission on the part of an employer to specify the place of verification renders an application void and that, therefore, it is liable to be rejected in limine. We are, therefore, of the opinion that since it is a curable irregularity, it was the duty of the Conciliation Officer to call upon the Corporation to specify the place of verification with the object of bringing the applications in order. He could not have summarily rejected the applications on that ground.

8. We have seen the applications which the Corporation made to the Conciliation Officer. Column 6 in the prescribed form requires an employer to state material facts of the case and the action taken by it of which it seeks approval from the Conciliation Officer. There is no doubt or dispute about the fact that the Corporation did not state material facts of the case in that column, but merely stated the name of the workman against whom action was sought to be taken and his address. It appears to us that the Corporation attached to all those applications orders of dismissal of which they sought approval from the Conciliation Officer. If an order of dismissal is annexed to the application or sent to the Conciliation Officer immediately after the application is made, it can certainly be read as apart of the application itself. Therefore, once the Conciliation Officer has before him an order of which approval is sought, mere omission on the part of the employer to state material facts in column 6 loses significance. What is the matter of significance is that the Conciliation Officer must have before him material facts of

the case and the action of which his approval is sought. If they are not before him, then certainly the application which an employer makes cannot be entertained and is liable to be rejected *in limine*. However, once those facts are before the Conciliation Officer, either in the shape of statement of facts in column 6 of the application or in the form of a separate order annexed to the application or sent to the Conciliation Officer, there is no material irregularity which vitiates the application made by an employer under sec. 33 (2) (b) of the Act because he can apply his mind to the order. It was, therefore, the duty of the Conciliation Officer to examine in each case whether the application made to him was accompanied by a copy of the order of which approval was sought or whether the copy of such an order was immediately sent to him. In so far as he did not do it, he was in error in rejecting the applications made by the Corporation.

9. The third contention which has been raised is that in order to comply with the provisions of sec. 33 (2) (b) of the Act, it was necessary for the Corporation to state the date on which wages for one month were paid to the concerned workmen. The date, we are told, is required to be stated in sub-column 3 of column 6 of the application. The requirement to stale the date of payment appears to us to be material because the law requires an employer under sec. 33 (2) (b) to pay one month's wages simultaneously with the passing of the order of dismissal against the workman concerned. There is no doubt or dispute about the fact that in sub-column (3) of column 6 though the Corporation stated that the concerned workman was paid wages for one month, it did not state the date of such payment. However, we find on the scrutiny of the record that all the applications were made by the Corporation to the Conciliation Officer on the date on which orders of dismissal were passed by it and in all these applications which were made on the same day, the Corporation stated that they had paid to the concerned workman wages for one month. The combined effect of these facts is that the concerned workman was paid wages for one month on the date on which order of dismissal was made against him and on that very day the application for approval was made to the Conciliation Officer under sec. 33 (2) (b) of the Act. It was necessary for the Conciliation Officer to scrutinize the facts and to come to a correct conclusion. It is necessary to note that all the technical legal requirements of law are intended to foster justice. Substantial justice cannot be allowed to fail merely because some technical error has been committed.

10. In the view which we have taken, the impugned orders in all these petitions deserve to be quashed. We, therefore, allow all the petitions, quash and set aside the orders impugned in all these petitions and direct the Conciliation Officer to decide all the applications afresh in light of the following directions :

(1) He shall consider on merits all the applications which were accompanied by orders of dismissal made against the respective workmen or in which orders of dismissal were immediately sent to him.

He shall record his decision in all these applications on merits in accordance with law.

(2) He shall dismiss all those applications which were not accompanied by the orders of dismissal or in the context of which orders of dismissal were not immediately sent to him. In all such cases, it shall not be necessary for him to decide the applications on merits.

11. Rule is made absolute to the aforesaid extent with no order as to costs in each of the petitions.

Petition allowed.

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CIVIL APPELLATE

Before the Hon'ble Mr. Justice D. H. Shukla.

SAVARKUNDLA NAGARPALIKA v. MANINAGAR NIVAS NIRMAN SAHKARI MANDLI LTD.*

Gujarat Municipalities Act (XXXVI of 1962)-Sec. 253-Nagarpalika rejecting application on the ground that the society had no claim to the land-This ground de hors the provisions of the Act-Therefore statutory notice under sec. 253 not necessary before filing the suit-As the decision of the Nagarpalika to hold auction of the land of other party void ab initio suit against Nagarpalika was not incompetent for want of statutory notice.

It would have been quite a different matter if the Nagarpalika had rejected the respondent's application on the ground based upon the rules or regulations governing the construction of the building, but it is quite a different matter when the Nagarpalika refused permission on the ground that the respondent society had no claim to it whatever. In other words, the ground on which the Nagarpalika did not accord its sanction to the permission sought for construction of the house on the disputed land was *de hors* the provisions of the Gujarat Municipalities Act, 1963, and it was not in pursuance or execution or intended execution of it. Therefore, it cannot be said that the suit was incompetent without statutory notice given as required by sec. 253 of the Gujarat Municipalities Act. (Para 12)

It is difficult to hold that the Nagarpalika's decision to hold auction of the concerned plots had any legal basis, in as much as it could not hold public auction of the land which was leased out to the respondent society and which was in possession of the society. It cannot be considered to be the function of the Municipality to hold public auction of lands belonging to other persons. The decision of the Nagarpalika was, therefore, *ab initio* void and illegal, and therefore, the suit cannot be held to be incompetent for the want of a statutory notice. (Para 13)

Transfer of Property Act (IV of 1882)-Sec. 53A-Land already taken possession of by the society-Construction made over several plots-Land alleged to be leased by the Nagarpalika but no registered deed passed-As the two conditions necessary under sec. 53A satisfied transferor debarred from intervening with any right in respect of the property of which possession

*Decided on 19/20-1-1981. Second Appeal No. 2 of 1978 (with S.A. No 3 of 1978) against the decision of the Asstt. Judge, Bhavnagar in Reg. C. A. Nos. 99 and 107 of 1974 from the decision of the Civil Judge (J. D.) Savarkundla in Reg. C. S. Nos. 24 and 3 of 1973.

(Only a part of the judgment approved for reporting is published.)