

**1994 (2) G. L. H. 92**  
**J. M. PANCHAL AND A. N. DIVECHA, JJ.**

Gujarat State Road Transport Corporation and Another ...Petitioners  
Versus  
Shri Mohanbhai Mithabhai Patel and Another ..Respondents

Special Civil Application No. 1105 of 1980

D/- 18-1-1992\*

\*Application praying to set aside the order rejecting the approval application of the petitioner-Corporation, etc.

**(A) Code of Civil Procedure, 1908 - O. 6 R. 15 - Pleadings - Verification of pleading - Defects in verification of the pleadings by the party are by and large irregularities and not fatal to the proceedings. [\(Para 3\)](#)**

**(B) Practice and Procedure - Industrial Disputes Act, 1947 - S. 33(2) - Industrial Disputes (Gujarat) Rules, 1966 - R. 63(3) - Petitioner Corporation's approval application under S. 33(2) of the Act was rejected by the Conciliation Officer as he found verification below it defective in view of R. 63 - Held that the authority was not justified in rejecting the application on that ground - The authority concerned may proceed in accordance with law only if it calls upon the party, to rectify such defects and the party does not do so within the time prescribed for the purpose - Such defects are in the nature of irregularities only, and not fatal - The underlying principle governing the rules of procedure relating to verifying the plaint contained in C.P.C., 1908 also govern the rules framed in that regard under the Industrial Disputes Act, 1947.**

Defects in verification of the pleadings of a party are by and large held to be irregularities. Such defects are not considered fatal to the application or the proceeding initiated thereby. [\(Para 3\)](#)

The underlying principle governing the rules of procedure relating to signing and verifying the plaint contained in the Code of Civil Procedure, 1908 should also govern the rules of procedure in that regard contained in the relevant Rules framed under the Act. By analogy, the aforesaid dicta of law pronounced by the Supreme Court and the Bombay High Court would on all fours be applicable in the present case. Respondent No.2 was not justified in rejecting the concerned approval application simply because some defects in verification of the application were found. It is not in dispute that respondent No.2 did not call upon the present petitioner to make good such defects in verification. We should like to clarify that, if the party being called

upon to rectify defects in verification does not do so within reasonable time, the concerned authority may proceed according to law only in such an eventuality. [\(Para 5\)](#)

**Cases Referred :**

1. Bhikhaji Keshao Joshi and another v. Brijlal Nandlal Biyani and Others A.I.R. 1955 S.C. 610 (Relied on) [\(Paras 3,5\)](#)
2. All India Reporter Ltd. v. Ramchandra Dhondo Datar - A.I.R. 1961 Bom.292 (Relied on) [\(Paras 4,5\)](#)

**Appearances :**

Shri M. B. Farooqui, Advocate for Shri K. S. Nanavati, Advocate for the petitioner [[@page92](#)]

Shri H. M. Mehta, Advocate for respondent No.1  
Respondent No.2 served.

**PER DIVECHA, J. :-**

**1.** Should defect in verification of the pleadings by a party prove fatal to the matter? This is the question arising in this petition under Article 226 of the Constitution of India questioning the correctness of the order passed by the Conciliation Officer rejecting approval Application No. 33 of 1978 made by the Petitioner under Section 33(2) of the Industrial Disputes Act, 1947 (the 'Act' for brief).

**2.** The facts giving rise to this petition move in a narrow compass. The respondent was an employee in the petitioner's establishment. He was dismissed from service on the charge of gross misconduct on his part. The order of his dismissal was passed after holding the enquiry proceedings against him. Since an industrial dispute was pending in conciliation before the Conciliation Officer in the office of the Assistant Labour Commissioner at Surat (who is impleaded as respondent No.2 in petition), an application was filed under Section 33(2) of the Act for approval of the action taken by the petitioner against the respondent dismissing him from service. A copy of the said application is annexed as Annexure A to this petition. It appears that respondent No.2 found the verification for the purpose of the application at Exh. A to be defective in view of the relevant provisions contained in Rule 63 of the rule framed under the Act. The approval application was thereupon rejected on mat ground by an order passed by respondent No. 2 at Annexure B is under challenge in this petition under Article 226 of the Constitution of India.

**3.** Defects in verification of the pleadings of a party are by and large held to be irregularities. Such defects are not considered fatal to the application or

the proceeding initiated thereby. In this connection a reference deserves to be made to the ruling of the Supreme Court in the case of *Bhikaji Keshao Joshi and Another v. Brijlal Nanlal Biyani* and others reported in A.I.R. 1965 Supreme Court at page 610. It has been held therein :

"Though there may be cases where the date of the pleading and the verification may be relevant and important, it would be a wrong exercise of discretionary power to dismiss an application on the sole ground of absence of date of verification. In such a case the applicants should normally be called upon to remove the lacuna by adding a supplementary verification indicating the date of the original verification and the reason for the earlier omission."

In view of this binding dictum of law pronounced by the Supreme Court in its aforesaid ruling, it is not necessary to refer to any other ruling on the point.

**4.** A reference may however be made to the Division Bench ruling of the Bombay High Court in the case of *All India Reporter Ltd., Bombay with Branch Office at Nagpur and Another v. Ramchandra Dhondo Datar* reported in A.I.R. 1961 Bombay at page 292. In that case the suit was instituted by two plaintiffs on 18th February 1949. Objections were taken by the defendant on the ground that the plaint was not properly signed or verified. The Trial Court held on 9th April 1951 that the plaint was not properly signed and verified on behalf of plaintiff No. 1 and ordered that the plaint should be properly signed and verified by someone authorised on behalf of plaintiff No. 1. In compliance with that order, the person signing as agent of plaintiff No. 1 again signed the plaint and again verified it on 24th April 1951 after filing a fresh power of attorney from plaintiff No. 1 executed on 18th April 1951. Against the order of the Trial Court of 9th April 1951, holding that the plaint was not properly signed and verified on behalf of plaintiff No. 1, a revisional application (Civil Revision Application No. 395 of 1951) was moved before the High Court of Bombay. It was decided on 18th January 1952 holding *[@page93]* that no question of jurisdiction was involved in the revisional application as the Trial Court undoubtedly had powers to ask the party to rectify a defect in regard to signing and verification of the plaint. The High Court observed that the Trial Court had not framed any issue on the point of limitation and therefore High Court did not decide the question of limitation in revision but left it open to the defendant to plead the bar of limitation. Accordingly the defendant pleaded the bar of limitation before the Trial Court and this contention was upheld by the Trial Court *inter alia* on the ground that the plaint was not properly presented with a defective pleading and it could be said to have been presented when defects were made good on 24th April 1951. It was found

that the cause of action for filing the suit accrued in favour of plaintiff on 19th February 1946. The suit was, therefore, held to have been barred by the Law of Limitation. The plaintiffs challenged this order of the Trial Court before the Bombay High Court. In that context the High Court of Bombay has held in Para 13 at page 296 :

"The question is whether the provisions contained in order 6 relating to signing, verification and presentation of the plaint relate merely to procedure or whether a plaint which does not strictly comply with the requirements of Order 6 would cease to be a valid plaint and would be a nullity because of such defects or irregularities. It is true that when a plaint is presented to the Court or to such officer as the Court appoints, it is open to the Court or to the officer to point out the defects or irregularities to the person presenting the suit and to require him to rectify the defects or irregularities. But can it be said that the defects or irregularities would make the presentation of the suit itself invalid although the plaint is admitted and particulars of the plaint are entered in a register of suits as provided by Order 4, Rule 2? In this connection it is necessary to note that Order 7, Rule 11, which refers to the rejection of a plaint, enumerates only four cases in which a plaint has to be rejected, but it does not enumerate any of the defects or irregularities referred to in Order 6, Rule 14, Order 6, Rule 15, or Order 6, Rule 2. It is clear from the provision contained in Order 6 that these rules relate only to procedure, and the better view would be to regard them as mere matters of procedure and to hold that if a plaint is not properly signed or verified but is admitted and entered in the register of suits it does not cease to be a plaint and the suit cannot be said not to have been instituted merely because of the existence of some defects or irregularities in the matter of signing and verification of the plaint."

In that view of the matter, the High Court held that the plaint could not have been said not to have been validly instituted simply because there were some defects in its signing and verifying at the time of its lodging. In the process, the High Court of Bombay has held that provisions regarding signing and verifying the plaint are procedural in nature and any defects in the signature or verification thereof would only be curable irregularities.

**5.** The aforesaid dicta of law are pronounced in view of the relevant provisions contained in the Code of Civil Procedure, 1908. The underlying principle governing the rules of procedure relating to signing and verifying the plaint contained in the Code of Civil Procedure, 1908 should also govern the rules of procedure in that regard contained in the relevant Rules framed under the Act. By analogy, the aforesaid dicta of law pronounced by the Supreme Court and the Bombay High Court would on all fours be applicable in the present case. Respondent No. 2 was not justified in rejecting the

concerned approval application simply because some defects in verification of the application were found. It is not in dispute that respondent No. 2 did not call upon the present petitioner to make good such defects in verification. We should like to clarify that, if the party being called upon to rectify defects in verification does not do so within the time prescribed by the concerned authority or within reasonable time, the concerned authority may proceed according to law only [*@page94*] in such an eventuality. We are told at the Bar on behalf of the petitioner that whatever defects are found in the application will be made good by and on behalf of the petitioner herein as early as possible when the case is taken up for hearing.

**6.** In view of the aforesaid discussion we are of the opinion that the impugned order passed by respondent No. 2 on 28th February 1979 rejecting approval application No. 33 of 1978 is illegal and invalid. It cannot be sustained in law.

**7.** In the result, this petition is accepted. The order passed by respondent No. 2 on 28th February 1979 rejecting approval application No. 33 of 1978 at Annexure B to this petition is hereby quashed and set aside. Respondent No. 2 is directed to restore the matter to file and give an opportunity to the application for making good the defects in verification of the application and to dispose it of according to law as expeditiously as possible, preferably by 30th June 1992. Rule is accordingly made absolute however with no order as to costs on the facts and in the circumstances of the case.

(NVA) Petition allowed.