SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice A. P. Ravani and
the Hon'ble Mr. Justice N. N. Mathur.

ALEMBIC CHEMICAL WORKS CO. LTD. & ANR. v.
STATE OF GUJARAT & ANR.*

Constitution of India, 1950 — Art. 300 — Contract Labour (Regulation and Abolition) Act, 1970 (XXXVII of 1970) — Sec. 10 — The provision is not *ultra vires* the Constitution nor is the notification issued by the respondent under the section and concerning the petitioner invalid on the ground of failure to observe principles of natural justice.

As held by a Division Bench of this Court in the case of *South Gujarat Textile Processors Association & Ors. v. State of Gujarat & Ors.*, 1994(l) GLH 94, the provisions of Sec. 10 of the Act are constitutionally valid. As indicated in the aforesaid decision, it is not open to this Court to consider the question of Constitutional validity of this provision because the Hon'ble Supreme Court has upheld the Constitutional validity of the provisions of the entire Act. (Para 16)

In the notification it is not required to be stated that there was effective and meaningful consultation. When it is stated in the notification that the powers conferred under Sec. 10(1) of the Act is exercised after consultation with the said Contract Labour Advisory Board, it means that the consultation has been done as required under the law. This is the normal presumption. In this case no material is there on the record to indicate that what is stated in the notification is incorrect. No such averment in the petition has been pointed out to us. In the notification it is not necessary to state that there was effective and meaningful consultation. Once it is stated that there was consultation, it has to be presumed that it was consultation as required under the appropriate provisions of the Act. Hence, the contention is rejected as having no merit. (Para 4)

In the *case of South Gujarat Textile Processors Asso.* 1994(1) GLH 94, while exercising powers under Sec. 10(2) of the Act, Government acts in its quasi-legislative sphere. Thus the action taken by the Government is quasi-legislative in nature and not quasi-judicial or administrative. Therefore, while discharging quasi-legislative function, the Government is not required to afford an opportunity of being heard to the petitioner. (Para 6)

The law does not require that the notification should indicate the reasons why the Government exercised its power under Sec. 10(2) of the Act. (Para 7)

If one looks at the provisions of Sec. 10 of the Act it becomes evident that all that the section requires is that before exercising the powers under Sec. 10(2) of the Act, the Government should make consultation with the Central Board or the State Board as the case may be. Sub-section (2) of Sec. 10 of the Act requires that the appropriate Government "shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors". It cannot be said that the notification is defective on the ground that the notification does not indicate reasons why the same has been issued. (Para 8)

It is submitted that the constitution of the Board is not in accordance with law. (Para 9)

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*Decided on 4-5-1994. Special Civil Application No. 424 of 1984 for quashing a notification issued by the Respondent under Sec. 10 of the Contract Labour (Regulation and Abolition) Act, 1970.

If the aforesaid provisions with regard to constitution of the Board and procedure to be adopted by them have not been strictly complied with as contended, the decision of the Government culminating into notification under Sec. 10(2) of the Act would not be rendered illegal or void. (Para 11)

The learned Counsel for the petitioners submitted that the copy of the report of the Advisory Board should have been furnished to the petitioners before the Government took decision prohibiting the contract labour in the aforesaid processes/operations. The said contention has been negatived in *Spl. Civil Appln. No. 5568 of 1983.* (Para 12)

It was contended that in issuing the notification, the Government has adopted the policy of pick and choose and the petitioners' establishment has been treated with hostile discrimination. (Para 13)

Unless it is shown that exactly similar situated establishment is left out for extraneous consideration, it cannot be said that there is hostile discrimination. (Para 14)

South Gujarat Textile Processors Association v. State of Gujarat (l), Spl. C. A. No. 5568 of 1983 decided on 27-10-1993 by G.H.C. (2) and Spl. C. A. No. 5970 of 1983 decided on 1-11-1993 by G.H.C. (3), relied on.

M. B. Buch, for *K. S. Nanavati,* for the Respondent.
Y. M. Thakkar, A.G.P. for Respondent No. 1.
N. R. Sahani, for *M/s. N. J. Mehta Associates,* for Respondent No. 2.

RAVANI, J. Petitioner No. 1 is a public limited Company incorporated under the appropriate provisions of the Companies Act, 1956. Petitioner No. 2 is a shareholder thereof. The petitioners pray for declaration that the provisions of Sec. 10 of the Contract Labour (Regulation & Abolition) Act, 1970 (for short 'the Act') be declared as *ultra vires* the provisions of Arts. 14 and 19 of the Constitution of India. The petitioners also pray for quashing and setting aside the notification dated December 1, 1983 issued by the State Government of Gujarat under Sec. 10(2) of the Act. By this notification, employment of contract labour has been prohibited in following processes/operations in the petitioners' establishment as Alembic Chemicals Works, Vadodara with effect from 1-2-1984 :

1. Manufacturing of Boxes (chest) - packing.
2. General sweeping, cleaning including gardening.
3. Sorting.
4. Filtration Department (Mycellium).
5. Transporation of material (internal by truck/trailor trolly).
6. Material handling and sorting in godowns.

The petitioners have in the alternative prayed that the respondents be restrained from enforcing and/or implementing the impugned notification or taking any action pursuant to the said notification.

2. The learned Counsel for the petitioners submitted that before issuing notification, the apropriate Government, i.e., State Government of Gujarat has not made effective consultation with the Advisory Board. In his submission as provided under Sec. 10(l) of the Act, action under Sec. 10(2) could be taken only after consultation with the appropriate Board. Therefore, it is submitted that the impugned

(l) 1994 (l) GLH 94 (2) Spl.C.A. No. 5568 of 1983 decided on 27-10-1993 by G.H.C. (3) Spl.C.A. No. 5970 of 1983 decided on 1-11-1993 by G.H.C.

notification dated 1-12-1983 produced at Annexure 'B' to the petition is illegal and void.

3. The learned Counsel for the petitioners submits that reading the notification itself, there is nothing to indicate that there was effective and meaningful consultation. Therefore, it is submitted that it should be held that the consultation with the State Advisory Board was defective. There is no merit in the submission. In the notification, it is stated that after consultation with the State Contract Labour Advisory Board appointed under Sec. 4 of the Act and having regard to the conditions of work and benefits provided for the contract labour and other factors as enumerated in clauses (a) to (d) of sub-sec. (2) of Sec. 10 of the Act, the Government prohibits the contract labour in respect of processes/operations specified in column 3 of the notification. It may be noted that by the same notification, contract labour in different processes/operations have been prohibited in respect of 3 establishments, i.e., (l) the petitioner's establishment, Alembic Chemicals Works, Vadodara, (2) Paushak Limited, Vadodara and (3) Alembic Glass Industries, Vadodara. The other two establishments, i.e., Paushak Limited filed Special Civil Application No. 422 of 1984 while Alembic Glass Industries filed Special Civil Application No. 5579 of 1984 and prayed for similar reliefs. However, both the aforesaid petitions have been withdrawn on April 26, 1994.

4. In the notification it is not required to be stated that there was effective and meaningful consultation. When it is stated in the notification that the powers conferred under Sec. 10(1) of the Act is exercised after consultation with the said Contract Labour Advisory Board, it means that the consultation has been done as required under the law. This is the normal presumption. In this case no material is there on the record to indicate that what is stated in the notification is incorrect. No such averment in the petition has been pointed out to us. In the notification, it is not necessary to state that there was effective and meaningful consultation. Once it is stated that there was consultation, it has to be presumed that it was consultation as required under the appropriate provisions of the Act. Hence, the contention is rejected as having no merits.

5. It is contended that before issuing notification, the State Government and also the Advisory Board has not afforded an opportunity of being heard to the petitioners. According to the petitioners, the function discharged by the Government while exercising power under Sec. 10(2) of the Act is quasi-judicial in nature. It is further submitted that action of the Government would have civil consequences to the petitioners. Therefore, the Government was required to afford an opportunity of being heard to the petitioners before issuing the impugned notification. In para 31 of the petition, it is averred that the impugned notification has civil consequences inasmuch as it would be interfering with the working of the petitioner company and would also interfere with the present set up of smooth functioning and it would also have financial impact and affect the competitive capacity of the petitioners' establishment vis-a-vis other establishments in which the contract labour system is continued. Therefore, it is submitted that the impugned notification being in contravention of the principles of natural justice is illegal and void. In the affidavit-in-reply, it is submitted that the Advisory Board has given ample opportunity to

the concerned parties for representing their case before the Board. The Board has received written representations from the concerned parties on May 9, 1982, September 30, 1982, May 29, 1982, June 21, 1982 and February 3, 1983. It is also averred that the Advisory Board had given an opportunity to the concerned parties for leading evidence, examining witnesses and filing statements. It is also pointed out that meeting were held with the Board at the factory site of the employers and employees and the contract labourers on May 17, 1983, May 18, 1983 and on May 19, 1983. Therefore, it is submitted that the contention that the principles of natural justice are violated has no merits. In view of this state of record, the contention that the State Advisory Board has not afforded an opportunity of being heard cannot be believed.

6. However, the contention of the petitioners is that the State Government has not afforded an opportunity of being heard to the Petitioners. On the basis of the record, it has got to be inferred that the State Government has not afforded an opportunity of being heard to the petitioners before issuing the impugned notification. But, as held by this Court in the case of *South Gujarat Textile Processors Association v. State of Gujarat*, reported in 1994 (1) GLH 94, while exercising powers under Sec. 10(2) of the Act, Government acts in its quasi-legislative sphere. Thus, the action taken by the Government is quasi-legislative in nature and not quasi-judicial or administrative. Therefore, while discharging quasi-legislative function, the Government is not required to afford an opportunity of being heard to the petitioner. Similar view is taken by a Division Bench of this Court in *Special Civil Application No. 5568 of 1983, 5875 of 1983 and 281 of 1984 decided on October 27, 1993* and in *Special Civil Application No. 5970 of 1983 decided on November 1, 1993.* Learned Counsel for the petitioners has not pointed out anything from the aforesaid decisions which may persuade us to take a different view.

7. The learned Counsel for the petitioners submitted that in the notification no reasons are indicated as to why the Government has thought it fit to issue notification. In his submission, the notification in a non-speaking one. Therefore, it is required to be quashed and set aside. However, in support of this submission, no provisions of law or any binding decision is pointed out showing that the notification issued under the provisions of Sec. 10(2) of the Act should indicate the reasons why the same has been issued. Again on this point, there are no averments in the petitions. In the affidavit-in-rejoinder, this point is raised. Had the petitioners raised this point by making averments in the petition, the other side would have had an opportunity to reply to the same. In our opinion, the law does not require that the notification should indicate the reasons why the Government exercised its power under Sec. 10(2) of the Act. The relevant part of the notification reads as follows :

> "In exercise of the powers conferred by sub-sec. (1) of Sec. 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) the Government of Gujarat, after consultation with the State Contract Labour Advisory Board appointed under Sec. 4 of the said Act and having regard to the conditions of work and benefits provided for the contract labour and other facts as enumerated in clauses (a) to (d) of sub-sec. (2) of Sec. 10 of the Act, hereby prohibits the employment of contract labour in the establishments specified in column 2 of the Schedule appended hereto, in respect

of the processes/operations specified and shown against them in column 3 of the said Schedule with effect on and from 1-2-1984."

(The processes/operations have been mentioned hereinabove in para 1).

After the aforesaid recital, there is Schedule wherein the names of the establishments are written and the processes/operations in which the contract labour is prohibited are mentioned.

8. If one looks at the provisions of Sec. 10 of the Act it becomes evident that all that the section requires is that before exercising the powers under Sec. 10(2) of the Act, the Government should make consultation with the Central Board or the State Board as the case may be. Sub-sec. (2) of Sec. 10 of the Act requires that the appropriate Government "shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors". The other factors have been enumerated in clauses (a) to (d) by prefacing the expression "such as". The notification clearly says that the Government has made consultation with the Advisory Board. The notification also says that it has taken into consideration (1) the conditions of work and benefits provided for the contract labour, (2) and other factors enumerated in clauses (a) to (d) of sub-sec. (2) of Sec. 10 of the Act. Therefore, it cannot be said that the notification does not indicate reasons why the same has been issued. Even if one were to read the requirement of stating reasons in the notification, the said requirement is also fulfilled when it is stated in the notification that the Government has issued notification after consultation with the Advisory Board and that the Government has taken into consideration the conditions of work and benefits provided for the contract labour and other relevant factors enumerated in clauses (a) to (d) of sub-sec. (2) of Sec. 10 of the Act. Either way the contention raised by the learned Counsel for the petitioners cannot be accepted and the same is hereby rejected.

9. It is submitted that the constitution of the Board is not in accordance with law. In the submission of the learned Counsel for the petitioners, there should be representation of the specific industry on the Board. Similarly, there should be representation of specific contractor on the Board. It is further submitted that the constitution of the Board being illegal, no reliance could have been placed on the reports submitted by such illegally constituted Board. In paras 33.3 and 33.4 of the petition, the petitioners have referred to the Constitution of the Board. The following persons represented the employers and contractors on the Board :

1 Shri I. P. Shah, Managing Director, Tarun Mills, Ahmedabad.

2. Shri P. M. Jambekar, Factory Manager, Arvind Mills, Ahmedabad.

3. Shri N. H. Kotecha, partner of M/s. Halar Salt and Chemical Works, Jamnagar.

4. Shri J. B. Vohra, partner of K. S. Mehta, Contractors, Ahmedabad.

It is submitted that Shri I. P. Shah and Shri P. M. Jambekar were concerned with textile industry. They had no concern with pharmaceutical industry in which the petitioners' establishment is engaged. With regard to Shri Kotecha, it is submitted that he is a partner of an establishment which is engaged in manufacturing of salts, while Shri J. B. Vohra is doing contract labour work, but he is not connected with the labour contract work in the pharmaceutical industry. Therefore, it is submitted that the constitution of the Board is not in accordance with law.

10. In the affidavit-in-reply, it is submitted that Shri M.U. Shah, a retired Judge of this High Court was appointed as Chairman of the Board. The Commissioner of Labour, Gujarat State, Ahmedabad was an *ex-officio* member of the Board. Shri P. R. Jambekar, Shri I. P. Shah, Shri J. B. Vohra and Shri N. H. Kotecha were appointed as representatives of the industry and contractors. That Shri R. M. Shukla, Shri Bharatsinh Chudasma, Shri Sharad Desai and Shri A. U. Khaneria were appointed as representatives of the workmen. The Deputy Secretary to Government in the Irrigation Department was appointed as a representative of the Government. It is further submitted that before appointing the representatives of the industry and the workmen, the State Government had invited names of leading persons from industry and contractors and leading persons from labour unions through the Commissioner of Labour. In short, it is submitted that the constitution of the Board is not defective. There need not be representation on the Board specific industry- wise.

11. The aforesaid submission is made on behalf of the respondents on the basis of the provisions of Sec. 4 of the Act and Rule 3 of the Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972. This very contention was raised in *Special Civil Application No. 5568 of 1983 and other allied matters.* Therein, after referring to the relevant provisions of the Act and the Rules, it is held that representation on the Board of different interests should be there, but that does not mean that representation should be from a particular specified industry or establishment. It is further held that having regard to the scheme of the Act and the Rules, Advisory Board would be a permanent body. It is inconceivable that such Advisory Board should consist of representatives belonging to different establishments and different industries. In that case, there would be many fluctuating advisory boards which would not be consistent with the scheme of the Act. Moreover, the provisions of Sec. 4 and Rule 3 of the Rules are not mandatory. In para 15 of the judgment in *Spl.C.A. No. 5568 of 1983* it is observed as follows :

> "Therefore, having regard to the principles laid down by the Supreme Court and having regard to the object and scheme of the Act and the purposes for which the provisions of Sec. 4 and Sec. 10 of the Act have been enacted, it can never be said that the provisions of Sec. 4 of the Act and of Rule 3 of the rules are mandatory in character. In view of this position, even if the aforesaid provisions with regard to constitution of the Board and procedure to be adopted by them have not been strictly complied with as contended, the decision of the Government culminating into notification under Sec. 10(2) of the Act would not be rendered illegal or void."

We are in respectful agreement with the aforesaid conclusion arrived at by other Division Bench. Similar view is taken in *Special Civil Application No. 5970 of 1983 decided on November 1, 1993.* The learned Counsel for the petitioners has not pointed out any infirmity in the aforesaid judgments delivered by a Division Bench of this Court. No attempt is made to distinguish the aforesaid decisions.

12. The learned Counsel for the petitioners submitted that the copy of the report of the Advisory Board should have been furnished to the petitioners before the Government took decision prohibiting the contract labour in the aforesaid processes/ operations. It is submitted that other establishments had been furnished with a copy of the report while the petitioners have not been supplied with the copy of report.

However, it is not correct to say that the Government furnished the copy of the report to other establishments. Certain establishments had filed petitions in this Court in the year 1980. Therein, this Court directed the Government to furnish copy of the report without prejudice to the rights and contentions of the parties. Therefore, it cannot be said that the Government has acted in discriminatory manner. The contention that the petitioner establishment should have been furnished with the copy of the report was also raised in aforesaid petitions. (*S.C.A. No. 5568 of 1983 and other allied matters)*. The said contention has been negatived for the reasons stated in paras 28 to 34 of the judgment. In para 35 the conclusion is reached by the Court which reads as follows :

> "When the appropriate Government takes action under Sec.10 of the Act and issues notification prohibiting contract labour in certain establishments, it performs its duty in quasi-legislative sphere. Sec. 10 of the Act empowers the appropriate Government to prohibit employment of contract labour in any esablishment after consulting the Advisory Board and having regard to the factors mentioned in sub-Sec.(2) of Sec.10 of the Act. Upto the stage of formation of opinion by the Government necessitating abolition of contract labour system, it appears that everything is in preparatory stage. Till the receipt of the report of the Advisory Board and examination of the same, the concerned executive authorities take necessary action. When the stage of issuing notification reaches, the appropriate Government is not required to afford an opportunity of being heard to the concerned parties. This is so because the action is quasi-legislative if not strictly legislative. The notification that may be issued would ordinarily cover all similarly situated establishments. It may be in relation to a specific establishment and it may be in relation to several similarly situtated establishments. Thus, it could be specific as well as general. Its operation is not confined to a particular period. It will have operation in future also. In a given industry, if any other establishment is to commence its production or manufacturing activity after issuance of notification then such operation or activity would also be covered by the notification. At the most, one formal notification may be required to be issued covering that establishment which might have commenced prouction later on. Thus, when the Government performs its quasi-legislative function it is not necessary that opportunity of being heard be given to the party which may be affected thereby because this is not an administrative or quasi-judicial function. Therefore, we do not refer to the several decisions cited by the learned Counsel for the petitioners which lay down the principle that when the authority takes administrative or quasi-judicial action and such action affects or is likely to affect adversely any person, then such person should be afforded an opportunity of being heard."

For the same reasons, we hold that it was not necessary for the Government to furnish copy of the report of the Advisory Board to the petitioners.

13. It has contended that in issuing the notification, the Government has adopted the policy of pick and choose and the petitioners' establishment has been treated with hostile discrimination. In this connection, averments have been made in paras 29 and 30 of the petition. In the affidavit-in-reply filed by one Shri V. R. Rana, Deputy Secretary, Labour and Employment Department, it is stated that the Government has exercised the power in just and legal manner. In short, the allegations of discrimination and pick and choose have been denied in the affidavit-in-reply. It may be noted that the aforesaid affidavit-in-reply is filed in Special Civil Application No.422 of 1984. By affidavit dated March 21, 1994, it is submitted that

the affidavit filed in Special Civil Application No. 422 of 1984 be treated as part of this petition also.

14. The petitioner has tried to compare with two uncomparables, the public sector undertakings and the establishments in private sector. Both stand on different footings. They are class by themselves. However, as far as the prohibition of contract labour is concerned, the Government is required to have regard to the conditions of work and benefits provided for the contract labour in a particular establishment. Therefore, unless it is shown that exactly similarly situated establishment is left out for extraneous consideration, it cannot be said that there is hostile discrimination. No. such material is produced on record. Therefore, in our opinion, no case of discrimination is made out.

15. In support of the argument that hearing was required to be given by the Government, it is submitted that the impugned notification is in exercise of administrative or quasi-judicial functions. In the submission of the learned Counsel for the petitioners, notification is in relation to one specific establishment or at any rate it was in relation to three establishments. That by the said notification the disputes between the parties are settled. Therefore, it is submitted that the function exercised by the Government while issuing notification is judicial. Hence, it is submitted that hearing was necessary. As far as this argument is concerned, we have held that the function exercised by the Government is quasi-legislative and therefore, hearing is not necessary. As indicated hereinabove, nothing is pointed out to us to take a different view than what is taken by other Division Bench in the petition referred to hereinabove.

16. The petitioners prayed for declaration that the provisions of Sec.10 of the Contract Labour (Regulation and Abolition) Act, 1970 be declared as *ultra vires* Arts. 14 and 19 of the Constitution of India. However, with regard to this prayer, the petitioner submitted an application dated April 26, 1994 praying that the petitioners be permitted to delete the prayer contained in para 42 (a) of the petition which is in relation to constitutional validity of Sec. 10 of the Act. In para 2 of the said application, there are relevant averments which may be reproduced hereinbelow:

> "The petitioners submit that by way of the aforesaid petition the petitioners have sought a declaration from this Hon'ble Court to the effect that provisions of Sec. 10 of the Contract Labour (Regulation & Abolition) Act, 1970 be declared as *ultra vires* Arts.14 and 19 of the Constitution of India. The petitioners submit that due to subsequent development of law and more particularly in the light of the judgment delivered by this Hon'ble Court (Coram : A. P. Ravani & C. V. Jani, JJ.) in the matter of *South Gujarat Textile Processors Association & Ors. v. State of Gujarat & Ors.*, reported in 1994 (1) GLH 94, wherein this Hon'ble Court has upheld the constitutional validity of Sec.10 of the said Act, the petitioners crave leave to withdraw the challenge to the constitutional validity of Sec.10 of the said Act."

It may be noted here that as held by a Division Bench of this Court in the case of *South Gujarat Textile Processors Association & Ors. v. The State of Gujarat & Ors.*, 1994(1) GLH 94, the provisions of Sec. 10 of the Act are Constitutionally valid. As indicated in the aforesaid decision, it is not open to this Court to consider the question of Constitutional validity of this provision because the Hon'ble Supreme

Court has upheld the Constitutional validity of the provisions of the entire Act. For the same reasons, this prayer cannot be granted.

17. At this stage, reference may be made to the Civil Application No. 1159 of 1994 filed by the petitioner on April 26, 1994 by which amendment in the petition is prayed for. Be it noted that the petition was substantially heard on March 7, 1994. Thereafter, at the request of the learned Counsel appearing for the parties, the petition was adjourned because the record of the petition was not complete. On April 26, 1994 when the petition was called out, substantially the arguments of both the sides were over. Even so application is filed praying that the petitioner be permitted to delete prayer regarding challenge to the constitutional validity of Sec. 10 of the Act contained in para 42(a) of the petition.

18. The respondents have objected to the grant of prayer for amendment. On behalf of State Government of Gujarat, affidavit-in-reply is filed. It is rightly stated therein that the main petition was practically heard and thereafter this application is filed. It is further submitted that it is filed at a belated stage. It is also alleged that the application is filed for delaying the proceedings which are pending before this Court since the year 1984. Similarly, on behalf of respondent No. 2 Union, affidavit-in-reply is filed. Objection has been raised on the ground of delay and also on the ground that the amendment prayed for is not necessary for determining the real controversy raised in the petition. It is averred that in view of the High Court Rules 1993, if the amendment is allowed, the matter may become entertainable by learned single Judge. It is also alleged that the application is filed for oblique motives. On the aforesaid grounds, the application is opposed.

19. Order 6 Rule 17 of the C. P. Code which deals with amendment of pleadings, reads as follows :

> "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

In view of the aforesaid provision, while deciding the application for amendment all that is required to be seen is as to whether the amendment prayed for is necessary for determining the question in controversy. It is not even averred in the application that for determining the questions in controversy, the amendment prayed for is necessary. In our opinion also for deciding the questions in controversy, the amendment as prayed for is not necessary. Even without filing this application, the learned Counsel for the petitioner could have stated that in view of the decision of the Supreme Court and a decision of Division Bench of this Court, he does not press the relief.

20. The effect of the amendment prayed for is that the petitioner does not press the relief prayed for. It may be noted that as provided under Order 6 Rule 17, the Court has discretion to allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. In view of this provision, it would be proper to permit the petitioner not to press the prayer. If the petitioner is permitted not to press the prayer as regards the Constitutional validity of Sec. 10 of the Act, no prejudice whatsoever will be caused to the petitioners. The very purpose for which

the amendment application is made would be served if the petitioner is permitted not to press the prayer with regard to the Constitutional validity of Sec. 10 of the Act. At this stage, the learned Counsel for the petitioners states that the prayer of the petitioners is for deletion of the prayer 42(a) and he seeks the relief of amendment. It is true that this is the prayer made by the petitioner. As stated hereinabove, it is for the Court to allow the party to alter or amend his pleadings in such a manner and on such terms as may be just. In our opinion, if the petitioner is permitted not to press the relief in question, it would be just and proper. It is not shown that if the petitioner is permitted not to press the prayer any prejudice whatsoever would be caused to the petitioner.

21. It may be noted that allegations have been made in the affidavit- -in-reply and in the course of arguments that the application for amendment is filed with oblique motive. It is alleged that the intention of the petitioners is to prolong the litigation. Once the amendment application is granted, challenge to the vires of provisions of Sec.10 of the Act would not be on the petition and therefore, it may be possible for the petitioner to urge before the Court that the matter be placed before the learned single Judge taking up such matters. However, the learned Counsel for the petitioners has not indicated that there is any such purpose behind submitting the application for amendment. Since we are permitting the petitioners not to press the relief and since the petitioner has not been able to show any prejudice if this permission is granted, it is not necessary to go into the merits of the allegations made by the respondents. In view of the aforesaid discussion prayer with regard to the Constitutional validity of Sec.10 of the Act stands rejected also on the ground that the same has not been pressed.

22. No other contention is raised.

23. In the result, the petition is rejected. Rule discharged. Interim relief granted earlier stands vacated.

(ATP) *Rule discharged.*

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SUPREME COURT

Present : P. B. Sawant & N. P. Singh, JJ.

STATE OF GUJARAT v. GADHVI RAMBHAI NATHABHAI & ORS.*

Terrorist & Disruptive Activities (Prevention) Act, 1987 (XXVIII of 1987) — Secs. 20(8) & 20(9) — Power of granting bail — What should be the approach of the Court — Cannot weigh evidence as if it is a trial — It should consider the allegations made by the prosecution and see if the accused is not involved.

It is true that for the purpose of grant of bail, the framers of the Act require the Designated Court to be satisfied that there were reasonable grounds for believing that the accused concerned was not guilty of such offence but this power cannot be exercised for grant of bail in a manner which amounts virtually to an order of acquittal, giving benefit of doubt to the accused person after weighing the evidence collected during the investigation or produced before the Court. At that stage the Designated Court is expected

* Decided on 20-6-1994. Cri. Appeals Nos. 357, 358 of 1994 against the order passed by the Designated Court, Jamnagar in Criminal Misc. (Bail) Application No. 583 of 1993 on 4-9-1993.