
(1993) 11 GUJ CK 0012
In the Gujarat High Court

Case No : Special Civil Application No's. 8627, 8628 and 8632 of 1988

Echjay Industries (P) Ltd.

APPELLANT

Vs

M. Shivubha and Others

RESPONDENT

Date of Decision : 08-11-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11, 11A, 33, 33(2)

Citation : (1994) 2 GLR 1234 : (1994) 2 LLJ 1234

Hon'ble Judges : C.V. Jani, J;A.P. Ravane, J

Bench : Division Bench

Judgement

1. The only question which arises in these three petitions under Arts. 226 and 227 of the constitution of India filed by the Industrial Company is whether the Labour court had committed an error of law or jurisdiction by committing procedural irregularity in calling upon the employer to produce documentary and oral evidence in three reference cases relating to dismissal of the three workmen. The petitioner in all the three petitions is the same. Originally thirty-three references were made to the Labour court, Rajkot, u/s 10 of the Industrial Disputes Act relating to dismissal of thirty-three workmen, but thirty disputes came to be settled or disposed of in accordance with law.

2(a) The workman Mahavirsinh Shivubha was a gardener in the garden department of the petitioner's factory and his services were terminated with effect from 25.1.1982, hence the dispute was referred to the Labour Court in Reference (LC) No. 958 of 1984.

2(b) The workman Raghu Arjan who was serving as Turner in machine shop of the petitioner's factory. His services were terminated on 21.1.1982 and the industrial dispute was referred to the Labour Court in Reference (LC) No. 961 of 1984.

2(c) The workman S. R., Bhatt was serving as Supervisor in Tool Room Department of the petitioner's factory; has services were terminated on

21.1.1982; so the industrial dispute was referred to the Labour Court in Reference (LC) No. 982 of 1984.

3. On application presented by the petitioner employer to dismiss the reference cases on the ground of non-prosecution and persistent absence of the workmen, the Labour Court passed orders for also closing the right of the workmen to lead evidence and calling upon the employer to produce necessary documentary and oral evidence. These three identical orders have been challenged by the petitioner-employer in Special Civil Applications Nos. 8627, 8628 and 8632 of 1988 respectively.

4. The following is the factual background as emerging from the averments made in the petition :

There was partial strike in the factory from 13-7-1980 to 23-8-1980. The Government banned the strike and referred certain demands of workmen to the Industrial Tribunal. The Tribunal rejected all the demands and held that the strike was illegal. The strike was accompanied by violence. So, the petitioner appointed certain practising Advocates as inquiry officers, and after departmental inquiry, the workmen were found to be guilty of serious misconduct and they were ordered to be dismissed in six groups on different dates. As Reference No. 502 of 1982 was pending the employer made application to the Industrial Tribunal for approval u/s 33(2)(b) of the Industrial Disputes Act. The Industrial Tribunal granted approval. thereafter, on 20-6-1984 the workmen raised disputes as to whether they should be reinstated in service with backwages, which came to be referred individually to the Labour Court, Rajkot, by Assistant Commissioner of Labour. It appears that as notices of hearing were not served on the employer, the Labour Court passed an ex parte order on 18-9-1985, which was later on set aside by the same labour judge. The order of the labour judge was challenged by the workmen by filing Special Civil Application No. 6531 of 1986. The High Court dismissed the petition and directed the Labour court to dispose of the references expeditiously and preferably within six months.

5. The workmen filed their statements of demands and the petitioner company filed its written statement. As stated in the petition, the proceedings were adjourned to 7.7.1988, 28-7-1988 and 25-8-1988. As the concerned workman did not remain present on these dates, the Advocate for the petitioner-Company submitted an application on 25-8-1988 to dismiss the references. The matters were adjourned to 12-9-1988. Again the petitioner's Advocate submitted application for dismissing references, but as the workmen were not present the matters were adjourned to 29-9-1988 and then to 10-10-1988. On 10-10-1988, the representatives of the workmen submitted application Annexure "E" in reference No. 956 of 1984 contending the company must prove the departmental inquiries and the workmen must be reinstated with wages immediately.

6. The Labour Court was of the view that conclusion of a reference of industrial dispute must be by an award and not by a summary order of dismissal for non-

prosecution or default. The Labour Court relied on certain judgments on this point and particularly Rule 26 of the Industrial Disputes (Gujarat) Rules, 1966, and passed an order for closing the right of the workmen to lead evidence and also called upon the employer to produce documentary and oral evidence. This is the order which is brought under challenge in these three petitions on the ground that the Labour Court had no jurisdiction to call upon the employer to produce his evidence, if the workman who has to prove illegality of termination, remains absent and does not lead any evidence.

7. Mr. V. B. Patel initially made two-fold submission :

(i) That the petitioner had already produced his evidence regarding disciplinary inquiry against the workmen in proceedings for approval u/s 33(2)(b) of the Industrial Disputes Act, and the tribunal had approved the termination orders, and so the Labour Court had no jurisdiction to call upon the employer to produce the same evidence in the reference, particularly when the workmen did not choose to lead their evidence :

(ii) Since the burden of proof lies on the workman to prove that termination order is illegal and his right to lead evidence is closed, the only proper order that could have been passed by the Labour Court was to dismiss the references and not to call upon the employer to produce his evidence. He submitted that the Labour Court had not followed the requisite procedure of raising necessary issues after written statements had been filed, and therefore, the order calling upon the employer to produce evidence was required to be quashed. Mr. Patel drew our attention to the provisions of the Industrial disputes Act and the relevant rules contained in the Industrial Disputes (Gujarat) Rules, 1966, and relied on certain reported judgments which we shall deal with at length.

8. Mr. H. M. Mehta, learned counsel appearing for respondent workmen in Special Civil Application No. 8632 of 1988 on the other hand submitted that the order of approval u/s 33(2)(b) of the Industrial Disputes Act was not conclusive and it is always open for the workmen to show that inquiry was not held according to law or that the orders of punishment were unduly harsh. He also submitted that strict provisions of the CPC and the evidence Act were not applicable. In reality, the relevant Gujarat rules gave full powers to the Labour Court to follow a procedure which it thinks fit and to call for evidence or to examine any person at any stage of the proceedings. He submitted that since the dispute regarding validity of the termination order had been referred by the appropriate authority to the Labour Court for adjudication, the question of burden of proof would not be relevant and the Labour Court will have jurisdiction to pass appropriate orders in order to decide the dispute. Mr. Mehta also relied upon certain judgments which will be adverted to hereafter.

9. Before consideration of the various judgments cited by Mr. V. B. Patel, appearing for the petitioner, it would be more appropriate to refer to the various statutory provisions and rules relating to reference and decisions of industrial

dispute.

(i) Preamble to the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") shows that it was enacted to make provision for the investigation and settlement of industrial disputes and for certain other purposes. The machinery of Labour and Industrial Court has been set up in Chapters III & IV of the Act and this Court and tribunals have to discharge their judicial and quasi-judicial powers with the aforesaid object in view mainly for investigating and settling industrial dispute.

(ii) Section 10 in chapter III of the Act provides for reference of industrial dispute to the Labour Court or to the Industrial Tribunal, as the case may be, by the appropriate Government. It is to be borne in mind that a reference is made by the appropriate Government for decision of the Court or Tribunal, though at the instance of workman or workmen in most of the cases. The Court or Tribunal is, therefore, expected to adjudicate upon the dispute on merits.

(iii) Section 11 in Chapter IV of the Act provides that subject to any Rules made in this behalf, the Labour Court or the tribunal has to follow such procedure as it "may think fit. " Though the Court or tribunal, manned generally by judicially trained hands, is not expected to follow any procedure whimsically or arbitrarily by the throwing at winds the general principles of natural justice, they are not bound by the strict provisions of the Code of Civil Procedure. Eventhough they had powers of a Civil Court to enforce attendance of any person and examine him on oath, to compel the production of documents and material objects and to issue commissions for examination of witnesses. In Section 11A, it is provided that where an industrial dispute has been referred to a Labour Court or Tribunal and the Court or Tribunal as the case may be is satisfied in the course of the adjudication proceedings that the order of discharge or dismissal was not justified it may set aside such order and give appropriate relief to the workman. The object of adjudication proceedings is, therefore, to arrive at a certain satisfaction and for arriving at such satisfaction the Court or Tribunal can pass necessary procedural orders.

10. Section 37 of the Act empower the appropriate Government to make rules for the purpose of giving effect to the aforesaid provision of the Act. In exercise of this power, the Government has made Industrial Disputes (Gujarat) Rules, 1966.

(i) Rule 17 empowers a Board, Court, Labour Court, Tribunal or Arbitrator :

"to accept, admit or call for evidence at any stage of the proceedings before it, or him and in such manner as it or he may think fit. "

Thus, the Labour Court or Tribunal has power to call for evidence at any stage of proceedings in order to arrive at the necessary satisfaction of decision of an industrial dispute, and such power cannot be arrested by technical considerations.

(ii) Rule 26, on which the Counsel for the petitioner relied, provide -

if without sufficient cause being shown any party to a proceeding before a Board, Court, Labour Court, Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex parte. "

This will give a discretion to proceed ex parte. In the present case at least Labour Court did proceed ex parte and closed evidence of the workmen. Thus, reliance placed on Rule 26 is not of much use to the petitioner.

(iii) Rule 28 gives the following powers to the Labour Court and Tribunals :

"In addition to the powers conferred by the Act, Boards, courts, Labour Courts, Tribunals shall have the same powers as are vested in civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :

- (a) discovery and inspection,
- (b) granting adjournments,
- (c) evidence on affidavits,

and the Board, Court, Labour Court or Tribunal may summon and examine suo motu any person whose evidence appears to it to be material, and shall be deemed to be a Civil Court within the meaning of Secs. 480 and 482 of the Code of Criminal Procedure, 1898."

It was submitted on behalf of the petitioner employer that the Labour Court should have followed the procedure laid down in Order 9, Rule 8 and Order 18 Rules 1 and 2 of the CPC for passing appropriate orders in case a party remains absent. First of all the adjudication proceeding under industrial law is not strictly bound by all the procedural restraints of the Code of Civil Procedure. Moreover, the powers of Civil Court in respect of the three procedural categories are conferred under Rule 28 but they are in addition to the powers conferred by the Act. Section 11 clearly empowers the Labour Court or the Tribunal to follow such procedure as it may think fit.

11. We may now advert to the first submission by Mr. V. B. Patel for the petitioner. According to him the Labour Court had no jurisdiction to call upon the employer to produce evidence which he had already produced in the proceeding for approval u/s 33(2)(b) of the Act. According to Mr. Patel, if the workman remains absent and does not produce any evidence to show that the inquiry and the order of his dismissal are bad, the only course open for the Labour Court is to dismiss the reference, in view of the approval granted by the Tribunal u/s 33(2)(b) of the Act, since it is no longer necessary to examine the record of inquiry which had already been examined by the Tribunal. It is settled law that inquiry u/s 33(2)(b) is confined only to the question as to whether a prima facie case has been made out and permission granted u/s 33(2) would not bar the examination of the question of validity of the order of dismissal u/s 10 of I. D. Act.

12. The second submission of Mr. Patel is that the instant case before the Labour

Court was a case of no evidence, since the workman on whom the burden of proof lies to prove the alleged illegality of the termination order failed to produce any evidence and so the Labour Court ought not to have called upon the employer to produce his evidence. Unfortunately, the petitioner has not produced any copy of the statement of claim nor its written statement. The representative of the workmen submitted in writing on September 12, 1988, that he did not want to make any further submission. He, therefore, relied on the statement of claim and the evidence which was actually in possession of the employer. The Labour Court, therefore, directed the employer to produce his evidence in order to satisfy itself whether the order of termination was proper. Regarding the absence of the workmen in most of the cases, the Labour Court factually found that they might have gone back to reside in their native State and/or they might have obtained alternative employment. The Labour Court, therefore, decided to adjudicate the dispute in respect of the workmen who were available on the basis of the evidence in possession of the employer. It cannot, therefore, be said at this stage that the Labour Court has made any award in absence of any evidence since the Labour Court has still to make the award, and no final order has been passed so far. The question of making award which is bad on the ground of "no evidence" does not, therefore, arise.

13. Now, we consider the judgments cited by Mr. Patel on behalf of the petitioner.

(i) In *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, the Supreme Court has referred to statutory provision of the Industrial Disputes Act and the Rules and held that the power to adjudicate on industrial dispute implies duty to adjudicate in accordance with the provisions of the Act, i.e. according to law. This duty is summarised by the Supreme Court in Para 27 as follows :

"The adjudication of the dispute has to be in accordance with evidence legally adduced and the parties have a right to be heard and being represented by a legal practitioner. Right to examine and cross-examine witnesses has been given to the parties and finally they address the Tribunal when evidence is closed. The whole procedure adopted by the Act and the Rules is modelled on the Code of Civil Procedure."

This adjudicatory process led the Supreme Court to hold that Industrial Tribunal has all the necessary attributes of Court of Justice and they may rightly be described as quasi-judicial bodies, Mr. Patel particularly emphasised the fact that the Supreme Court quashed the award of the Tribunal on the ground that it was based on no evidence whatsoever. The Supreme Court found on facts that the allegations of victimization were neither supported by an affidavit nor by any evidence and the award was based on no evidence whatsoever. Thus, according to the Supreme Court, the procedure adopted by the Tribunal was against the principles of natural justice in as much as the Tribunal proceeded only on the basis of statement of cases by the parties. In the present case not only the statements of cases are on the record but the evidence produced by the

employer in compliance with the Labour Court's order would also be the basis for making award. Even if no evidence is produced by the employer the Labour Court would be able to pass appropriate orders. The question of application of the principles stated in supreme Court Judgment, therefore, does not arise at this stage at least.

(ii) In J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur, , the Supreme Court observed after examining the relevant provisions of the Industrial Disputes Act and U. P. State Industrial Tribunal's Standing Orders, 1951, that :

"Though these Tribunals are not bound by all the technicalities of Civil Courts, they must nevertheless follow the same general pattern. It was held that once a reference is made by the Government, the Tribunal has to take the pleadings of the parties in writing and to draw up issues. Then it would take evidence, hear arguments and finally pronounce its "judgment" in the open Court."

The only object of requiring pleadings and drawing issues is to ascertain real dispute between the parties and to narrow the area of conflict. The Supreme Court, therefore, observed that it was not open to the Tribunals to fly off at a tangent and disregarding the pleadings to reach any conclusions that they think are just and proper. In the present case no such standing orders have been pointed out or placed on record nor the Labour Court has disregarded the pleadings which are very much on record and which would certainly be taken into consideration at the time of making the award. If the observations of the Supreme Court are to be taken as sacrosanct even the order passed by the Labour Court for closing evidence of the employee will have to be set aside and the Labour Court should be called upon to follow the technical requirement of drawing up the issues before calling upon the parties to lead evidence.

(iii) In Burrakar Coal Co. Ltd. Vs. Labour Appellate Tribunal of India and Another, , the learned single Judge of the Calcutta High Court held that the Industrial Disputes (Central) Rules grant -

"power to a Board, Labour Court or a Tribunal as regards the state of the proceedings at which and the manner in which, the evidence shall be adduced, but it does not dispense with legal proof that it to say proof in accordance with the principles laid down in the Indian Evidence Act."

In the case before the Calcutta High Court the trade union which was conducting case of the respondents-workmen sent to the Tribunal alleged copy of the petition and slip of paper purporting to be a receipt granted by the Conciliation Officer bearing no seal or rubber stamp to indicate its genuineness. The Calcutta High Court, therefore, deprecated the action of the Tribunal to exhibit such evidence without proof and to decide the dispute on the basis of such evidence. Such a question does not arise in the present case.

(iv) In Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, , the

Supreme Court examined the procedural requirements of the rules and held that even though the Labour Court or Tribunal may not be hidebound by the rules prescribed in the Evidence Act, it is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a list between the parties arrayed before it and must decide the matter on the evidence produced by the parties before it. The Supreme Court held that in the absence of pleading in which any claim for additional evidence was made and in absence of any request made before the Industrial Tribunal by which the award was made, Calcutta High Court had committed an error in granting opportunity to produce additional evidence to the Employer at the stage of Letters Patent Appeal. Such point does not arise in the present case.

(v) In *The Workmen and Others Vs. Hindustan Lever Ltd.*, , the Supreme Court observed that if a contention is not raised the Tribunal was under no obligation suo motu or on its own to raise such a contention to clothe itself with jurisdiction to adjudicate upon the dispute. Mr. Patel emphasised the following observation of the Supreme Court :

"If the contention is not raised, the Tribunal is under no obligation suo motu or on its own to raise an decide such a contention to clothe itself with jurisdiction to adjudicate upon the dispute. In this connection it may be recalled that when a reference is made u/s 10 of the Act, Rule 10-B of the Industrial Disputes (Central) Rules, 1957 obliges the workman involved in the reference to file with the Tribunal a statement of demands relating only to the issues as are included in the order of reference and simultaneously serve a copy of the same on the employer. Sub-rule (2) enjoins the employer within two weeks of the receipt of the statement of claim to field its rejoinder and simultaneously serve a copy of the same on the workman. Ordinarily, the Tribunal after ascertaining on what issue the parties are at variance raises issues to focus attention on points in dispute. In Industrial adjudication, issues are two types : (i) those referred by the Government for adjudication and set out in the order of reference and (ii) incidental issues which are sometimes the issues of law or issues of mixed and fact The Tribunal may as well frame preliminary issues if the point on which the parties are at variance, as reflected in the preliminary issue, would go to the root of the matter. But the Tribunal cannot travel beyond the pleadings and arrogate to itself the power to raise issues which the parties to the reference are precluded or prohibited from raising, to wit, if the empower does not question the status of the workman, the Tribunal cannot suo moto raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of the expression of the Act. And it is not obligatory upon the employer necessarily to raise the contention that the concerned workman was not a workman within the meaning of the expression under the Act. Therefore, the Tribunal was wholly in error in holding that if the contention of the Union were to prevail, the well laid rule of no estoppel against a statute would be violated."

In the present case the question of estoppel does not arise at all, nor it has been raised. The question of travelling beyond pleadings also does not arise. Therefore, the question of applying the ratio contained in this Supreme Court judgment to the facts of the present case does not arise.

(vi) The last judgment cited by Mr. Patel is State of West Bengal Vs. Atul Krishna Shaw and Another, . The reference is made to the actual finding of the Supreme Court to the effect that in absence of adduction of the available documentary evidence the necessary conclusion drawn by the Assistant Settlement Officer was well justified. The Supreme Court incidentally observed that "the proceedings under the Act in a Civil Court and the question of burden of proof does not arise. " This judgment does not help the petitioner because he has approached this court before any award is made by the Labour Court.

14. We now refer to certain judgments cited by Mr. Shahani appearing for Mr. H. M. Mehta, on behalf of the respondent workmen.

(1) In Union of India (UOI) Vs. T.R. Varma, , the Supreme Court observed that :

"The Evidence Act has no application to enquiries conducted by Tribunals, even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law. Stating is broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

(2) In The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka Vs. Its Workmen and Another, , the Supreme Court observed that :

"In dealing with the employer's claim for rehabilitation in working out the available surplus formula for bonus the Tribunal values of the relevant factors on hypothetical and empirical considerations, and so it may generally not be useful or wise to make recourse to strict legalistic principles like estoppel in deciding this question as indeed all material questions in Industrial adjudications."

(3) In The Punjab National Bank Ltd. Vs. Its Workmen, , the Supreme Court has observed that :

"Where an application is made by the employer for the requisite permission u/s 33 the jurisdiction of the Tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer

for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimisation or a unfair labour practice, the Tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In these proceedings it is not open to the Tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the Tribunal grant permission subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it according as it holds that prima facie case is or is not made out by the employer.

But it is significant that even if the requisite permission is granted to the employer u/s 33 that would not be the end of the matter. It is not as if the permission granted u/s 33 validates the order of dismissal. It merely removes the ban and so the validity of the order of dismissal still can be, and often is, challenged by the Union by raising an Industrial dispute in that behalf.

But if an Industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requisite permission obtained u/s 33 has to face the scrutiny of the Tribunal."

The Labour Court, therefore, has power to call upon the employer to produce his evidence which is in his exclusive possession and not in possession of the workmen.

(4) In *Sitaram Sugar Mills and Deoria Sugar Mills Ltd. v. Their Workmen*, in Civil Appeals Nos. 181 and 182 of 1959, reported in *S. C. Labour Judgments (1950-83) Vol. 2* the Supreme Court observed that :

"In adjudication of Industrial matters it would be unreasonable to rely on technical or academic considerations of onus. Relevant facts being within the knowledge of the Mills, the concerned workmen could not be expected to prove them. Further, it could not be contended that workmen ought to have called upon the Mills to produce the relevant document, which is only a technical plea, importance of which could not be exaggerated in Industrial proceedings."

(5) In case of *Workmen of Joint Steamer Companies Vs. Joint Steamer Companies*, , the Supreme Court has observe that :

"The employers and workmen both should make available to Industrial adjudication all relevant papers, including account books which are likely to assist a proper decision of the question at issue."

(6) In *Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others*, the Supreme Court observed that :

"If a party in possession of best evidence which would throw light on the issue in controversy withholds it the Court ought to draw an adverse inference against

him notwithstanding that onus of proof does not lie on him and the party cannot rely on abstract doctrine of onus or on the fact that he was not called upon to produce it."

(7) In *Airtech Private Ltd. v. State of U. P. & Ors.* 1984 (49) FLR 38 the learned single Judge of the Allahabad High Court held that the burden of proof lies on the workman and the obligation to lead evidence to establish allegation is on the party making allegations. This observation would not hold good in the present case, since the burden can be discharged by one of the parties to the dispute on the basis of the evidence in possession of the other side and particularly in view of the provisions of the Act and Rules which empower the Court to call upon the party to produce evidence.

15. We, therefore, sum-up views as follows :

"Production of the inquiry papers in the earlier proceedings u/s 33(2)(b) would not be sufficient to debar the Labour Court from calling upon the employer to produce his evidence in view of the powers conferred by Secs. 10 and 11 of the Act as well as Rules 17, 26 & 28 which are to be exercised for the purpose of investigation and settlement of Industrial Dispute as provided in the Preamble of the Act. The order of approval granted u/s 33(2)(b) does not conclude the question of legality of termination of employment. The Labour Court is not bound by the provisions of the CPC in view of the power contained in the aforesaid statutory provisions and the abstract doctrine of burden of proof is not applicable, in adjudication of Industrial disputes as pointed out by the Supreme Court, particularly in view of helpless and migratory character of the workmen. Even if it is assumed for the sake of argument that issues have to be raised in view of the statement and written statement, the result would be that the order regarding closing the right of the workmen to lead evidence may have to be set aside and they may have to be given such right after directing the Labour Court to raise issues. Since the material evidence in the form of papers relating to inquiry are in possession of the employer, the Labour Court committed no error in calling upon employer to produce such evidence. The stage of making any observation or rendering any finding regarding award to be made by the Labour Court has not arisen at all, since the workmen also rely on the evidence in exclusive possession of the employer."

16. Mr. Patel, therefore, ultimately narrowed down the controversy by heavily relying on the observations made by the Supreme Court in para 25 of the judgment in *Workmen of Hindustan Lever Ltd.* (supra). He submitted that any order passed by the Labour Court without framing issues would be illegal and ultra vires. The implications of these submissions were put to Mr. Patel and he could not escape from the inevitable conclusion that if the order of the Labour Court is set aside on this ground, the earlier part of the order regarding closure of the workmen's right to evidence also will have to be set aside. Mr. Shahani, learned counsel appearing for the respondent-workmen also realised that the result of such an order would be for the benefit of the workmen who will get an

opportunity to lead evidence. He, therefore, submitted that if the impugned order of the Labour Court is to be quashed on the ground of the Labour Court's failure to raise necessary issues, the earlier part of the order regarding closure of the workmen's right to evidence also should be especially set aside. He submitted that ordinarily raising of issues is not a mandatory procedure. Still, however, in the facts of the cases, if the issues are raised and the parties are permitted to lead evidence in support of their respective cases, the interests of justice will certainly be served. We, therefore, accept the consensual submission of Mr. Patel as well as Mr. Shahani on this narrow procedural point. We hold that in the facts of the present case, it would be in the interests of justice to remit the three cases to the Labour Court, Rajkot, for raising necessary issues on the basis of respective statements of the parties and to adopt such other procedure as may give sufficient opportunity to the parties to lead their evidence. We clarify that even the Supreme Court had observed in the aforesaid case that ordinarily the Tribunal or the Court would raise issues with the object to confine its scrutiny or inquiry to the respective pleadings, so that the Tribunal may not travel beyond these pleadings and may not act as a benevolent despot giving findings at random in favour of a particular party. However, at the same time it cannot be laid down as a general proposition of law that in all cases, the Tribunal or the Labour Court cannot proceed without drawing up issues.

17. The petitions are, therefore, allowed to this limited extent. The orders passed by the learned Judge. Labour Court, Rajkot, dated 2-11-1988 (Annexure "A" to each petition) are hereby set aside. The matters are remitted to the Labour Court for taking a proper decision after drawing up the issues that arise out of the pleadings contained in the statements of parties and deciding the dispute in accordance with law. It is clarified that the Labour Court's order regarding closure of the workmen's right to lead evidence is also set aside and the parties to every dispute will have full opportunity to lead their evidence before the Labour Court.

18. Rule is made absolute accordingly with no order as to costs. Since the original references were made in the year 1984, the Labour Court will expedite the hearing and decide the references as expeditiously as possible.

19. Matter remanded.