

(2005) 07 GUJ CK 0073

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1195 of 2004 in Special Civil Application No. 6106 of 1994 with Civil Application No. 9077 of 2003 in Letters Patent Appeal No. 1195 of 2004

Executive Engineer and Another

APPELLANT

Vs

Dilipsinh C. Chavda and Others

RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 25 GLH 285 : (2006) 1 LLJ 396

Hon'ble Judges : R.S. Garg, J; R.R. Tripathi, J

Bench : Division Bench

Advocate : Paurami Sheth, Assistant Government Pleader, for the Appellant; J.S. Brahmbhatt for Respondent Nos. 1, 2, 6 and 8, for the Respondent

Judgement

R.S. Garg, J.—Heard learned counsel for the parties. The facts necessary for disposal of the present appeal in the nutshell are that 18 workmen filed an application before the Labour Court, Godhra which was registered as Misc. Application No. 30 of 1993 and was disposed of finally by award dated 15.01.1994 and a direction was issued against the present appellants to engage the respondent-workmen in accordance with seniority and not to disturb and defeat their legal rights to receive the benefits and not to adopt unfair labour practice with a further direction to implement Government Resolution dated 17.10.1988 by extending benefits thereof to the workmen if in the facts and circumstances the workmen are entitled to the benefits under the said Govt. Resolution. The appellants being aggrieved by the said award filed Special Civil Application No. 6106 of 1994. It was submitted before the learned Single Judge that such a direct application at the instance of the workmen was not maintainable before the Labour Court and the Labour Court was unjustified in assuming jurisdiction and making the award. It was also submitted that the Labour Court could assume jurisdiction only when a reference is made by the competent authority. The contention was opposed by the workmen, after hearing

the parties the learned Single Judge observed that the submission made by the learned Additional Government Pleader that the Labour Court had no jurisdiction was a just and proper submission. The objection was upheld, but the learned Single Judge proceeded to consider the alternative argument raised by the workmen that even if the Labour Court has no jurisdiction in the matter, but if it had made a just and proper order then the High Court can refuse to interfere in the matter under Article 226 of the Constitution of India. The learned Judge referring to a judgement of Delhi High Court observed that the award made by the learned Labour Court though was patently without jurisdiction but as the award is just and proper and does not create any additional rights in favour of the workmen the High Court is not required to interfere in the matter. While holding that the Labour Court has no jurisdiction the learned Single Judge refused to interfere in the matter. Hence the appellants are before this Court under clause 15 of the Letters Patent.

2. Learned counsel for the appellants after taking us through the order passed by the learned Single Judge submitted that if there is inherent lack of jurisdiction in a Tribunal, Court or Authority and it makes an order, then the Court, especially High Court under Article 226 of the Constitution of India cannot refuse to interfere in the matter. The submission is that there may be circumstances or special reasons for which the High Court may refuse to interfere in a given matter in its jurisdiction under Article 226 of the Constitution of India, the present is not a case where inherent lack of jurisdiction could be ignored by the High Court simply on the ground that the order made by the Tribunal was just and proper.

3. Learned counsel for the respondents on the other hand submitted that true it is that the Labour Court could not exercise its jurisdiction in absence of competent, valid and legal reference, but what is to be seen in the matter is that even if a valid reference was made what other order could be made by the Labour Court. His submission is that the High Court taking into consideration the totality of the circumstances the fundamental facts and mischief likely to occasion to either party can refuse to interfere in the matter. We have heard the parties.

4. The concept of jurisdiction is in relation to competence of a person, court, tribunal or authority to decide a particular lis or dispute presented to it in accordance with law. The concept of jurisdiction though is abstract in its form, but can always be felt and seen. The question of jurisdiction is always important and material. The foundational facts provided competence to a particular court, tribunal, authority or a person to enter upon a dispute or look into a disputed issue and decide the matter. If there is inherent lack of jurisdiction which means that such court, tribunal, authority or person at all cannot touch the matter and it tends to exercise its jurisdiction not vested in it by law, then any court which is entitled to examine the question of jurisdiction of the said tribunal or court would certainly examine the question of jurisdiction and if records a finding that such

court or tribunal has no jurisdiction, then it would set aside the order or judgement. The basic question would be whether the court, tribunal or authority is competent to take up a matter and decide it.

5. In a given case, if a Magistrate tries an offence which is exclusively triable by the Court of Sessions and acquits the accused, then the High Court in its writ jurisdiction on facts, even if is satisfied that the Sessions Judge would have taken the same view, would not refuse to interfere. The question of jurisdiction is a conceptual and decisive factor for holding that what is the competence of court, tribunal or authority.

6. In a given case the High Court may refuse to interfere in exercise of its jurisdiction under Article 226/ 227 of the Constitution of India. If the High Court finds that because of its interference and setting aside of a particular order, an illegal order would revive, the High Court may refuse interference in such a case and say that for revival of an illegal order we would not exercise our writ jurisdiction. In a given case if the High Court holds that no useful purpose would be served by making interference under Article 226/ 227 of the Constitution of India the High Court may refuse to interfere. If the High Court holds that its interference is likely to disturb the equity and would be against the principles of good conscious then the High Court may refuse in its writ jurisdiction. If the High Court finds that its interference is likely to violate the principles of natural justice, the High Court may refuse to interfere in the matter. In a particular matter if the High Court finds that it would be just and proper not to interfere in the matter, High Court may refuse to interfere in the matter. There may be varied or myriad reasons for the High Court not to interfere in a given matter, but the question of inherent lack of jurisdiction would certainly assume importance in comparison to such other matters where High Court may refuse to interfere.

7. Article 226 of the Constitution of India is in relation to power of the High Court to issue certain writs. The High Court under Article 226 of the Constitution shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. Under Article 226 of the Constitution writs are to be issued for enforcement of any of the rights conferred by Part III and not upholding an illegality or to suppress fundamental rights or to perpetuate an illegality.

8. Article 227 of the Constitution of India refers to power of superintendence over all courts/ tribunals. Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The High Court in exercise of its jurisdiction under Article 227 of the Constitution of India may call for returns from such courts make and issue

general rules, prescribe forms, etc. The High Court while exercising such powers under Article 227 of the Constitution is entitled to correct legal infirmities, those which go to the very jurisdiction of the court, tribunal or authority and it may issue necessary writs of certiorari and mandamus. In a given case where High Court finds that its interference is not likely to achieve anything or is not likely to enrich the petitioner before it, High Court may refuse to interfere either under Article 226 or Article 227 of the Constitution of India. The non-interference shall depend upon the facts of the case, shall depend upon the far reaching consequences. The reason for non-interference should be a reason germane to the legal provisions. In a given case where non interference would lead to an illegality to survive for perpetuate and would go just contrary to the very concept of the jurisdiction then the High Court would always be obliged to interfere in the matter.

9. In the present matter the learned Single Judge has given a thoughtful consideration to the objection raised by the Government and has agreed with the objection observing that the Labour Court had no jurisdiction. Once the Court had found that the order was made by a court, authority or tribunal or a person who had no basic jurisdiction, then the court should have interfered in the matter.

10. In the present matter the learned Single Judge has observed that as the High Court has discretion to interfere or not to interfere in a given matter it would examine the necessity of its interference. We do not dispute the proposition proposed by the learned Single Judge. The learned Single Judge had jurisdiction to interfere or not to interfere in the matter. But in a given case where an order is passed by an authority which has inherent lack of jurisdiction and the Court finds that the order is without jurisdiction and it refuses to interfere then non-interference is likely to create a chaotic situation. The moment such an order is put to its execution an objection would always be raised by the other side that such an order cannot be executed because it has been made by the authority or court which had no jurisdiction. It is trite law that the question of inherent lack of jurisdiction can always be raised and even at the time of execution. If this order is allowed to stand then the order would stand on its own legs, but it would not have strength to walk because of the objection which may be raised by the other side that such order cannot be executed. The court by its non interference would bring out such an impossible situation where everybody is aggrieved and there is no relief to anybody or no retreat from the impossible situation.

11. In our considered opinion the learned Single Judge was not right and justified in not interfering in the matter.

12. It was next submitted by the learned counsel for the respondents that the question of inherent lack of jurisdiction was not raised by the appellants before the Labour court, therefore, the question was not gone into by the Labour Court and as such it must be held that the appellants had given up their right or have abandoned the plea in relation to want of jurisdiction. In our opinion the argument can be rejected as one of frustration. The law settled by the Apex

Court is that the question of lack of inherent jurisdiction or absolute want of jurisdiction can be raised at any point of time. Catena of authorities say that if the court makes an order or award, or delivers a judgement beyond its jurisdiction or without having any jurisdiction then any person adversely affected by such judgement is not required to challenge it, but he can always resist its execution when the order is put into execution. We have already observed that if this order is put to execution and such an objection relating to jurisdiction is raised by the appellants, then the court before which the execution is filed would be in horns of dilemma because one side the High has refused to interfere in the matter and at the same time the Supreme Court says that execution of the order can be thwarted by raising such legal plea.

13. Learned counsel for the appellants has referred to a judgement of the Delhi High Court in the matter of Management of The Statesman Ltd. v. Lt. Governor & others, reported in 1995 III LLJ (Suppl.) 648 to submit that a writ is not issued as a matter of right and writ court may, in proper cases, not set aside the order which may be technically bad in law as long as the orders are just, fair and proper. The learned Single Judge in the said matter had referred to certain directions and observations made by the Division Bench of Delhi High Court in the matter of Maya Sharma v. Management of Mother's International School (Letters Patent Appeal No. 56 of 1978). In the main matter, i.e., the matter between Management of The Statesman Ltd. v. Lt. Governor, the basic challenge in the matter was to the order passed by the Presiding Officer, Labour Court on an application filed by the respondent workman pertaining to the demand by the Management to be permitted to lead evidence on a reference pending before the Labour Court. In the said matter the High Court refused to interfere in the matter on the ground that interference would not be just and proper. That was not the case where the Court had no inherent jurisdiction. The basic question was whether the court reviews its earlier order or not.

14. So far as the matter relating to Maya Sharma v. Management of Mother's International School referred to in the judgement of Management of The Statesman Ltd., is concerned we would respectfully disagree with the observations made by the Division Bench of Delhi High Court. In our considered opinion an order which is simply just, correct and fair cannot be allowed to stand, if it is without jurisdiction, the order if is allowed to stand would have far reaching effect or consequences. In none of the cases relied upon by the learned counsel for the respondents the question relating to executability of the order has been considered. If the order on hand is allowed to survive and stand, then as observed above its executability would become impossible. Would we be justified in upholding an order which cannot be executed or which patently even in our own opinion is without jurisdiction. What is the use of such an order? How would such order help and promote the cause of a person who holds that order in his hands? When a competent court makes an order in favour of a person then that court arms such person with such an order so that he can strike with the order or save himself under the protective umbrella of such an order. In a given

case when the order is patently without jurisdiction, then it cannot be used as a sword or shield, no useful purpose would be served by maintaining such order. Even otherwise the endeavour of the High Court should always be to strike against an illegality at the first available opportunity.

15. Taking into consideration the totality of the circumstances and the findings recorded by the learned Single Judge we are of the considered opinion that the Labour Court has no jurisdiction in the matter. It could not make an award. We set aside the judgement of the learned Single Judge and quash the award. There shall be no order as to costs.

16. Civil Application No. 9077 of 2003 is accordingly disposed of. Rule is made absolute in terms of the above judgement.