
(1990) 12 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 2119 of 1989

Gujarat Electricity Board

APPELLANT

Vs

Hind Mazdoor Sabha

RESPONDENT

Date of Decision : 15-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1991) 1 GLR 577 : (1995) 3 LLJ 218

Hon'ble Judges : D.G. Karia, J;A.P. Ravani, J

Bench : Division Bench

Advocate : M.J. Thakore and M.D. Pandya, for the Appellant; N.S. Sahani, for the Respondent

Final Decision : Dismissed

Judgement

Ravani, J.—The petition is filed by the Gujarat Electricity Board and it is directed against the award passed by the Industrial Tribunal inter alia holding that the workers engaged by the Contractors and who are working in the Thermal Power Station of the petitioner-Board at Ukai were employees of the Board and were also entitled to benefits such as weekly off, sick leave, casual leave, earned leave etc.

2. A preliminary point was raised before the Tribunal. It was submitted that by demands Nos. 1 and 2, in substance it was prayed that the contract system of labour should be abolished and the workers employed by the contractors should be treated as regular employees of the Board, and should be entitled to all the benefits available to regular employees of the Board. Therefore it was contended that the Tribunal had no jurisdiction to consider the question of abolition of Contract labour in view of the provisions of the Contract Labour (Regulations and Abolition) Act, 1970. The Tribunal, as per its order dated August 25, 1982 held that the Tribunal was called upon to decide as to whether the workers" who were engaged, for working in the Ukai Thermal Power Station were employees of the

Board or they were employees of the contractors. There was no demand for abolition of contract labour as alleged. Demands nos. 1 and 2 referred to the Tribunal read as follows:

"(1) Whether the workers whose services are engaged by the contractors, but who are working in the Thermal Power Station of Gujarat Electricity Board at Ukai, can legally claim to be employees of the G.E.B.?

(2) If yes, whether such employees can claim the following rights which the other employees of Gujarat Electricity Board are already enjoying:

- (a) Weekly off
- (b) Sick Leave
- (c) C.L.
- (d) Earned or Privilege leave
- (e) Maternity Leave and other benefits to female employees.
- (f) Gratuity
- (g) Provident Fund
- (h) Bonus
- (i) Wage Scales, etc."

The aforesaid point was raised by filing application Exh. 22 and it has been decided by a speaking order by the Tribunal. The matter was not carried further and thereafter the Tribunal decided the reference on merits. The same point is sought to be urged before this Court. The term of reference clearly shows that there is no demand for abolition of the contract labour. The demand is for examining the actual reality behind the facade. After piercing the veil the tribunal was required to examine as to whether there existed the actual contract labour system or it was only make belief.

3. Way back in the year 1957 in the case of J.G. Vakharia v. Regional Provident Fund Commissioner, reported in 1957 (1) LLJ 448, a Division Bench of the Bombay High Court observed that the canon of construing a social Legislation is very different from the canon of construing a taxation law. The Court must not countenance any subterfuge which would defeat the provisions of a social Legislation. It is further observed that if necessary the Court must strain the language of the Act in order to achieve the purpose which the Legislature had in placing the Legislation on the statute book. Recently, in the case of Workmen, A.R.I. Ltd, v. A.R.I. Ltd., Bhavnagar, reported in 1988 (1) LLJ 142, the Supreme Court has held that it is the duty of the Court in every case where ingenuity is expended to avoid taxing and welfare Legislations so get behind the smoke screen the discover the true state of affairs. The Court is not to be satisfied with form and leave well alone the substance of a transaction.

4. In view of this settled legal position, it was within the jurisdiction of the Tribunal to examine the reality behind the facade of paper arrangement of contract labour system. The Tribunal has examined the relationship between the Board and the employees elaborately. It is not correct to say that the Tribunal has based its finding on the sole ground that there were no valid licences for certain period with certain contractors, issued under the provisions of the Contract Labour (Regulations and Abolition) Act, 1970. On the contrary the Tribunal has in terms observed that even apart from the question of licence, on overall consideration of the facts and circumstances, the relationship between the workers engaged at the Thermal Power Station and the Board was that of employer and employee.

5. It is incorrect to say that the basic approach adopted by the Tribunal was erroneous and therefore the award is required to be interfered with and quashed and set aside. The Tribunal has discussed the documentary evidence in the shape of registration certificates and four licences produced before it at Exh. 106. It is contended that because the Tribunal observed that these documents were copies and have not been proved by production of necessary evidence in support of, its authenticity, the Tribunal has adopted an erroneous approach, The award of the Tribunal is required to be read in its entirety. In the same para of the award, the Tribunal has further observed that even otherwise the documents are not wholly relevant for the purpose of deciding the issues involved.

6. Reading the entire award, it is evident that the Tribunal has taken into consideration the various factors such as continuous nature of the work; that unloading of coal was required to be done within a specified time limit; that the process of handling of coal like unloading, breaking, removal of foreign particles from the coal, stacking, reclaiming of coal from tracks, etc., are continuous process. The Tribunal also took into consideration that the work had increased with the commissioning of the fifth unit and that the work performed by the workmen were integral part of the industry. The work was being done on the premises of the Board itself. The coal was being utilised for the business of the Board, i.e., generation of electricity. The workmen were broadly under the control of the Board, and that there was overall supervision of the work by the officers of the Board. After considering the aforesaid aspects and all other relevant aspects the Tribunal in terms held that apart from the fact that no valid licence under the Contract Labour (Regulations & Abolition) Act, 1970 was produced, other facts and circumstances were sufficient to lead to the conclusion that the workmen were the employees of the Board.

7. The aforesaid finding is essentially a finding of fact. The scope of exercise of powers in a petition for writ of certiorari under Articles 226/227 of the Constitution of India is very limited. Simply because the Tribunal has not used the words "device, subterfuge, make belief, it cannot be said that the Tribunal was not examining the real relationship between the petitioner-Board and the workmen and was not examining the make belief nature of the contract labour

system. Moreover, even if it is assumed that there is some mistake here and there in appreciating the evidence, that would not justify interference with the award by us in exercise of powers under Articles 226/227 of the Constitution of India. Hence the petition is rejected.

Rest of the Judgment is not material for the Reports.