

(2012) 09 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 4930 of 2012

Gujarat Industrial Security Force Society APPELLANT

Vs

Workmen Represented by Gujarat Industrial Security, Force RESPONDENT
Society Karmachari Union

Date of Decision : 26-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227
Industrial Disputes Act, 1947 — Section 10, 10(1)

Citation : (2013) LabIC 1531

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : K.M. Patel, Adv with Varun K. Patel, for the Appellant; Mukul Sinha, for the Respondent

Judgement

Bhaskar Bhattacharya, C.J.—By this application under Article 227 of the Constitution of India, the petitioner has prayed for setting aside the order dated February 22, 2012 passed by the Industrial Tribunal, Ahmedabad, below Exh. 13 in Reference (IT) No. 180 of 2011. By the said order, the Tribunal has granted interim relief of wage-rise of Rs. 500/- a month to all the workmen and annual increment in wages at the rate of Rs. 100/- for each completed year of service. The Tribunal further directed that the arrears should be paid with effect from 1st November, 2011. The Tribunal also granted interim relief to extend leave benefits as per the provisions of the Bombay Shops and Establishment Act and for making payment of wages in accordance with Payment of Wages Act, 1936, to issue pay-slips. Being dissatisfied, the petitioner has come up with the present application under Article 227 of the Constitution of India.

2. The facts giving rise to the filing of the present writ-application may be summed up thus:--

2.1 The petitioner is a Society registered, under the provisions of the Societies Act, 1860. The petitioner is also registered as a Public Charitable Trust under the

provisions of the Bombay Public Trusts Act, 1950. Thus, the petitioner is registered as a Society and a Public Charitable Trust with effect from 4th July, 1997.

2.2 The petitioner was formed by 7 members who were Government Officers. The aim and object of the Society is to provide employment to the young, unemployed and well-built persons to work as security guards, to appoint Ex-Army and Ex-Officers from the Police Department for supervisory work, and thereby, provide comprehensive and safety services to properties of industrial undertakings.

2.3 The petitioner recruits security guards and other supervisory personnel and there are about 3500 workmen engaged by the petitioner, out of which about 2800 are working as security guards. About 800 retired police personnel are working as supervisors and there is a skeleton office staff and administrative personnel.

2.4 On being selected and appointed as security guards, the candidates are given one months' training. At present, there are about 30 organizations, which are Government undertakings, with whom the petitioner has contracts for providing security services. The workmen employed by the petitioner are posted to work at different undertakings with whom the petitioner has entered into contracts for providing security services. The contracts are generally valid for a period of one year.

2.5 The contract provides for payment of wages based on actual minimum wages payable to the security guards and other statutory liabilities, such as, the provident fund and ESI and service charges at the rate of 12% of the amount of wages inclusive of statutory benefits.

2.6 The petitioner does not get any grant or financial assistance from the State Government. The billing pattern of the petitioner is based on actual cost of minimum rates of wages borne by the petitioner towards security and statutory benefits and 12% service charges thereon. The petitioner, from the amount of 12% service charges receivable by it, meets administrative and other overheads.

2.7 The persons, who were recruited by the petitioner and employed in various organizations, filed writ-applications in this Court, being Special Civil Application Nos. 16360 of 2004, 13699 of 2004, 3323 of 2005 to 3456 of 2005 and 12891 of 2004 for regularization of their services and for payment of regular scale of pay and other benefits as per Government Rules. Those petitions were dismissed by an order dated 18th April, 2009 passed by a learned single Judge of this Court.

2.8 The Letters Patent Appeals filed against the said judgment were permitted to be withdrawn in terms of order dated 12th July, 2011.

2.9 Thereafter, the respondent No. 1, the Union, purported to represent the workmen employed by the petitioner, submitted a charter of demand for pay-scales in accordance with the recommendations of the 5th Pay Commission and

for payment of different allowances and conditions of service. At the instance of the respondent No. 1, the State Government, by its order dated 19th October, 2011, made a Reference u/s 10 of the Industrial Disputes Act, 1947 to the Industrial Tribunal, Ahmedabad being Reference (IT) No. 180 of 2011.

2.10 Before the Tribunal, along with the statements of claim, the respondent No. 1, Union, also filed an application for interim relief of wage-increase of Rs. 2,500/- a month and also for interim directions for the benefits of leave, over-time and for payment of wages on the third day of the succeeding month.

2.11 The petitioner filed a reply to the said application, contending that the petitioner was not established for profit motive and its object is to provide employment avenue to unemployed youth. It was further contended that the petitioner was not receiving any financial assistance by way of grant or otherwise from the Government, and all its expenses are met from the income derived by the petitioner.

2.12 As indicated earlier, by the order impugned in this writ application, the Tribunal has partly allowed the interim relief application thereby directing that the workmen, working with the petitioner establishment, should be paid with effect from 1st November, 2011 the wages payable to them under the Minimum Wages Act and the Special Allowances declared there under with revision made thereon in future from time to time. Over and above that, the Tribunal also directed the petitioner to pay to all the employees working in the establishment the lump sum fixed increase in wages at the rate of Rs. 500/- a month and to calculate and add Rs. 100/- a year for each completed year of service in the monthly wages and to pay the same in the subsequent month's salary. The Tribunal further directed the petitioner to pay to the concerned workers, the amount of difference in wages to which they are entitled to, with effect from 1st November, 2011 within 60 days from 1st November, 2011. It was further directed that the relief granted in the present interim relief application would be liable to be adjusted against the final order that may be passed in the Reference. The Tribunal further directed that the employees working with the petitioner should be extended the benefit of leave with effect from 1st January, 2012 in accordance with the Shops and Establishments Act and shall make payment of the wages in accordance with the provisions of the Payment of Wages Act, 1936 and shall issue monthly wage-slips to the employees.

3. Mr. Patel, the learned advocate appearing on behalf of the petitioner, has attacked the interim relief by contending that while passing such interim relief, the Tribunal below has failed to consider the total income of the petitioner. According to Mr. Patel, if the directions by way of interim relief granted by the Tribunal is implemented, it will exceed the total income of the petitioner, and thus, in passing such interim relief, the Tribunal below failed to follow the well-accepted principles which are required to be followed in granting this type of interim relief. Mr. Patel points out that the Tribunal itself has arrived at a conclusion that the petitioner earned a profit of Rs. 75,50,037-00 in the year

2008-2009, Rs. 1,59,58,041 in the year 2009-2010 and Rs. 2,28,15,724-00 in the year 2010-2011. Mr. Patel points out that having regard to the fact that for implementation of the interim order, the petitioner will become a losing concern, the Tribunal should not have passed such an interim order. In support of his contention, Mr. Patel relies upon the following decisions of the Supreme Court:

1. Workmen of Gujarat Electricity Board, Baroda Vs. The Gujarat Electricity Board, Baroda, .
2. State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha, .
3. A.K. Bindal and Another Vs. Union of India (UOI) and Others, .
4. Officers and Supervisors of I.D.P.L. Vs. Chairman and M.D. I.D.P.L. and Others, .
5. A. Srinath and Others Vs. A.P. State Road Transport Corporation and Others,
6. Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, .
7. State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma, .

4. Mr. Sinha, the learned advocate appearing on behalf of the employee-respondents, has, on the other hand, opposed the aforesaid contention of Mr. Patel and has contended that the petitioner being a non-profit-making institution and all the clients of the petitioner with whom the workmen are employed being Government organizations, the Tribunal was justified in passing the interim relief. According to Mr. Sinha, all the clients of the petitioner being Government organizations, there was no justification of compelling the workmen to perform similar duties done by regular employees of those organizations at a nominal rate. According to Mr. Sinha, the petitioner is really an "instrumentality of the State", and by adopting the present practice of payment of minimum wages, the petitioner is exploiting the workmen who are really serving for benefit of the State, in violation of Articles 14 and 16 of the Constitution of India. Mr. Sinha submits that the Tribunal, on consideration of the entire materials on record, having passed an award which is interim in nature and subject to adjustments at the time of final award, this Court, sitting in the jurisdiction under Article 227 of the Constitution of India should not interfere as the award cannot, at any rate, be described as perverse or in violation of any law of the land. Mr. Sinha, therefore, prays for dismissal of the writ application.

5. Therefore, the only question that arises for determination in this writ application is whether the Tribunal below committed any error in passing the interim relief justifying interference under Article 227 of the Constitution of India.

6. Before proceeding further, we are quite alive to the scope of interference at the instance of a High Court in a proceeding under Article 226/227 of the Constitution of India as repeated and reiterated by the Supreme Court in the case of Shama Prashant Raje Vs. Ganpatrao and Others, where the said Court made the following observations:--

Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by mis-construing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal. Then again the two questions on which the Tribunal under the Rent Control Order were required to give finding, namely, habitual defaulter and subletting are not pure questions of fact but can be held to be mixed questions of fact and law. In this view of the matter, on going through the Appellate order passed by the District Collector as well as the order of the learned single Judge, we are not in a position to hold that the High Court exceeded the parameters prescribed for interference with the findings of an inferior Tribunal. Under Clause 13(3)(ii) Controller has to be satisfied that the tenant is habitually in errors with the rent. The expression "habitually" would obviously connote some act of continuity. Under the Lease Deed dated 8-4-1982 between the landlord and the tenant Clause 4 made it obligatory for the tenant to pay the rent before 10th day of each English Calendar month, and under Clause 9 in the event of arrears of rent over 3 months is not paid then the landlord was entitled to give notice and then if the matter is not settled within one month from the date of the notice then the landlord is entitled to terminate the tenancy. Reading the aforesaid two Clauses it would not be correct, as contended by Mr. Verma, learned senior counsel appearing for the appellant, that under the agreement itself 4 months period has been provided to enable the tenant to pay the rent. If a tenant, notwithstanding the obligation of paying the rent by 10th day of each English calendar month continuously makes a default of paying the rent for the first month by two months thereafter, and pays the rent in similar manner, then he must be held to be habitually in arrear with the rent in question. This being the position, the fact that the rent for September to November, 1984 was paid in December only after the Distress Warrant was issued and that again from December, 1984 to March, 1985 the rent had not been paid and were deposited within the 10th of next month, as stipulated in the lease agreement would constitute the tenant to be habitually in arrear within the meaning of Clause 13(3)(ii) of the Control Order. The Appellate Authority under the Control Order was obviously in error in interfering with the well reasoned conclusion of the Controller on this score, and the High Court was fully justified in correcting the said error by interfering with the finding of the lower Appellate Authority on the

question of applicability of Clause 13(3)(ii) to the case in hand. Similarly, on the question of subletting, there is no dispute with the proposition that the two ingredients namely, parting with the possession and some consideration therefor, had to be established. The conclusion of the lower Appellate Authority on this score was obviously on a misconstruction of the document Exhibit N2 and the High Court, therefore, was entitled to correct the error which was based upon a construction of the aforesaid document. The different Clauses of the lease deed unequivocally indicates that the sum of Rs. 1.500/- p.m. was the consideration money for parting with the possession of the premises and allowing the Singer Sewing Machine to do business in the premises.

6. In the aforesaid premises, we are unable to accept the contention of Mr. Verma, learned senior counsel appearing for the appellant that the High Court committed error in interfering with the finding of the Appellate Authority under the Control Order by way of re-appreciating the evidence. In our considered opinion, the High Court was fully justified in interfering with the conclusion of the Appellate Authority and correcting the error of the said Authority, as already stated. In the premises, as aforesaid, this appeal is devoid of any merits and the same is dismissed accordingly.

(Emphasis supplied)

6.1 Bearing in mind the aforesaid principles, we now proceed to consider the order of the Tribunal.

7. After hearing the learned counsel for the parties and after going through the materials on record, we find that the State, by virtue of powers conferred u/s 10(1) of the Industrial Disputes Act has referred the following disputes to the Tribunal, out of which the present application arises:--

(1) Pay Scale as per the 5th Pay Commission to the Security Guards working in the establishment.

(2) Transfer

(3) Working hours and overtime

(4) Weekly Off, Public Holiday, CL, PL, Medical Leave

(5) ESI Act

(6) Uniform

(7) Payment of salary as a result of closure of the point

(8) Taking the employee on duty who has been denied the duty

(9) Retirement age limit

(10) Allotment of the duty point

(11) Expenditure to be borne in reference to the incidents occurring during the

course of employment.

(12) Loan

(13) Education Loan

(14) Conveyance allowance

(15) Promotion, giving of recognition to the Union

(16) Provident Fund

(17) Interim Relief

(18) Issuance of pay slip

(19) Payment of salaries.

8. During the pendency of the aforesaid dispute, the employees filed an application for interim relief.

9. The employer resisted the said application for interim relief by contending that the employees had wrongly assumed that the rules applicable to the employees of the Government of Gujarat are applicable to the employer-establishment and thus, the benefits of the 6th pay commission are also applicable to them. According to the employer, the establishment was an independent establishment and is not being given any grant by the Government of Gujarat nor is the Government of Gujarat administering the affairs of the establishment. According to the employer, since the rules applicable to the Government of Gujarat are not applicable to the establishment, the contentions of the employees are not prima facie acceptable. The employer further contended that adjudication is required to be made by the Tribunal after taking into consideration the paying capacity of the employer as well as the Region-cum-Industry while adjudicating the demands for rise of pay and other benefits. The employer further asserted that it pays more salary and benefits to its workmen than the salary and benefits given by other establishments where the employees are doing similar type of work. It is further contended that the workmen are being paid wages as per Minimum Wages Act and the establishment was not earning profit of more than Rs. 400/- in respect of each workman. Therefore, according to the employer, if the interim relief of Rs. 2,500/- a month was given to the workmen, it was financially impossible for the establishment to run its activities. It was further pointed out on behalf of the employer that some of the employees of the establishment approached the High Court of Gujarat by filing different petitions praying for benefit of regular employees of the Government of Gujarat but such prayer was rejected. Ultimately, it was contended that once the interim relief is granted and thereafter, at the time of final order if the Tribunal comes to the conclusion that the benefits given by the employer to the employee are just and reasonable, in such a case, the employer would not be able to recover the benefits paid to the employees.

10. The Tribunal below, on consideration of the materials on record including the documents which were exhibited at the time of disposal of the application for interim relief, came to the conclusion that the first-party establishment had been shown in those documents as a semi-Government organization, and it prima facie indicated that the first party establishment was administered and managed in all respect by the State Government and with its approval.

11. The Tribunal below, after taking into consideration Exh. 61, which was an advertisement for recruitment of security guards wherein educational qualification, further qualification, experience, required age and physical qualification of the candidates had been shown, pointed out that it was necessary for the candidates to have passed the examination conducted by the SSC Board or equivalent to it and such candidates who are appointed will be given monthly allowance of Rs. 1,000/-, uniform and boot, and thereafter, they will be paid fixed wages of Rs. 1,800/- per month. The Tribunal also considered the object of introduction of the establishment and the fact that the Government has allotted a Government building to the employer for doing the work and vehicles, furniture, computer and other equipments are also provided from the year 1997. The Tribunal also took into consideration that the Government has granted an amount of Rs. 75 lakhs to the employer from the GIDC fund without interest.

12. From the aforesaid facts, the Tribunal prima facie came to the conclusion that the remuneration paid to the employees were utterly insufficient and the employees were entitled to get some amount by way of interim relief.

13. Ultimately, on consideration of the financial position of the establishment and also the amount of pay received by the employees, the Tribunal came to the conclusion that instead of the demand of interim relief of Rs. 2,500/- per month to the employees working in the establishment, it was fit case to have pay rise of Rs. 500/- a month to all the workmen and annual increment in wages at the rate of Rs. 100/- for each completed year of service and also passed some other directions as indicated hereinabove.

14. As pointed out by the Supreme Court in the case of Workmen of Gujarat Electricity Board, Baroda Vs. The Gujarat Electricity Board, Baroda, , if the claim is for a minimum wage, the employer must pay that wage in order to be allowed to continue the industry, and, in such a case, the capacity of the industry to pay is irrelevant. However, if the industry is already paying minimum wage, and the claim is for fair wage or living wage, the capacity of the industry to pay is a very important factor and the burden above the minimum wage can only be justifiably imposed if the industry is capable of meeting that extra burden.

14.1 In the case before us, we have already pointed out that the Tribunal itself has arrived at a finding that the industry is saving a sum of Rs. 2,28,15,724/- and odd every year after meeting all the expenditure in the last two years. In spite of such findings, the Tribunal below granted interim relief which if implemented will incur additional expenditure of about more than Rs.

4,77,65,700/- every year Therefore, in granting the interim relief, the Tribunal below failed to apply the appropriate principle laid down by the Supreme Court with regard to enhancement of wages.

15. Similarly, we find substance in the contention of Mr. Patel that employees of State Government Undertaking cannot claim wages at the same rate which is payable to Government institutions A.K. Bindal and Another Vs. Union of India (UOI) and Others, , Officers and Supervisors of I.D.P.L. Vs. Chairman and M.D. I.D.P.L. and Others, . Thus, there cannot be any direction upon the State of Gujarat to pay additional amount.

(Contd. on Col. 2)

16. We, therefore, find that in case before us, the interim award passed by the Tribunal requires modification so that the additional relief granted should be within the financial capacity of the employer.

17. After taking into consideration the aforesaid principles laid down by the Supreme Court, we are of the view that in this case, it will be appropriate if we confirm the increase in wages at the rate of Rs. 500/- per month with effect from 1st November, 2011 but the direction to calculate and add Rs. 100/- per year for each completed year of service in the monthly wages should be deleted. The detailed chart indicated below will make the position clear.

Put together, the total additional expenditure for implementation of the aforesaid two directions would be as under:--

18. We accordingly modify the impugned award. It is directed that during the pendency of the reference, the employer should pay increase in wages at the rate of Rs. 500/- a month with effect from 1st November, 2011. So far as the increment is concerned, it is not possible to pay any amount towards yearly increment having regard to the present income of the employer. We do not touch the rest of the interim award. It is, however, needless to mention that the interim award will be subject to the award that will be passed by the Tribunal.

19. We make it clear that we have otherwise not gone into the merits of the dispute which is the subject of Reference for which the final award is yet to be given. With the above observations, this writ-application is disposed of. No order as to costs.