
(1997) 03 GUJ CK 0029
In the Gujarat High Court

Gujarat Mazdoor Panchayat

APPELLANT

Vs

Chief Labour Commissioner and Another

RESPONDENT

Date of Decision : 03-03-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 21, 227
Equal Remuneration Act, 1976 — Section 2(h), 4

Citation : (1997) 3 GLR 2454

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—What is the real connotation of expressions "same" or "similar" work and ambit and extent of the statutory functions of the Chief Labour Commissioner (Central) are the significant and substantial questions raised for the consideration and adjudication in this writ petition.

2. By this petition, the petitioner-Union has challenged the order passed by respondent, Chief Labour Commissioner (Central), on 17-4-1996, recorded in exercise of the powers contained under Rule 25(2)(v)(a) of Contract Labour (Regulation and Abolition) Central Rules, 1971, (Rules).

3. Petitioner is a registered Trade Union registered under the Trade Unions Act, 1926. Petitioner has got substantial membership in the factory of respondent No. 2, Indian Oil Corporation Limited, at Baroda, (I.O.C). Petitioner-Union filed Special Civil Application No. 566 of 1996 on 18-1-1996, wherein, this Court had passed an interim order directing the Government to take decision with regard to pending Failure Reports and also the complaint under Rule 25, on 26-2-1996. There was a direction in terms of prayer Clause 10(F) of that petition, whereby, during the pendency and final disposal of that petition, respondent Nos. 1 and 2 were directed to take decision with regard to two pending Failure Reports and also complaint under Rule 25 and to submit it before the Court. The petition was ordered to stand over to 22-4-1996.

4. The petitioner's contention in this petition is that the aforesaid direction

seems to have compelled respondent No. 1 to depute an officer from the office of Regional Labour Commissioner (Central) on 9-4-1996 and obtain his report dated 11-4-1996. Respondent No. 1 has passed his final order on 17-4-1996. It is, inter alia, contended by the petitioner that the impugned order is vitiated by number of legal errors including non-application of mind and undue haste and hurry.

The petitioner-Union has also contended that the complaint dated 1-3-1994 was given and it sought to cover the following areas and places of work in the premises of Indian Oil Corporation Ltd.:

- (1) Canteen
- (2) Garden
- (3) Security
- (4) House Keeping

Respondent No. 1 took adverse decision on 17-4-1996 and has refused to grant the equality of wages. The impugned order is challenged on various grounds.

5. The Regional Labour Commissioner, one Mr. P.C. Bhargav, has filed affidavit-in-reply on behalf of respondent No. 1-Chief Labour Commissioner, whereas one Mr. A.C. Shekhar has filed three affidavits on behalf of respondent No. 2, at different stages.

6. After having examined dispassionately the material emerging from the record and having heard the learned Advocates appearing for the parties, this Court is satisfied that the impugned order of respondent No. 1 is not legal and justified.

7. It seems from the record that the quasi-judicial work entrusted to respondent No. 1 pursuant to Rule 25(2)(v)(a) is not properly and legally exercised. The impugned order of respondent No. 1 is tainted with various vices and suffers from non-application of mind. Rule 25(2)(v)(a) reads as under:

25. Forms and terms and conditions of licence:

XXX XXX XXX XXX

(2) Every licence granted under Sub-rule (1) or renewed under Rule 29 shall be subject to the following conditions, namely....

(v)(a) in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment or the same or similar kind of work:

Provided that in the case of any disagreement with regard to the type of work

the same shall be decided by the Chief Labour Commissioner (Central).

It could very well be seen from the aforesaid provision that in the case of disagreement with regard to the type of work, the Chief Labour Commissioner (Central) is required to decide. As stated hereinbefore, pursuant to the direction of this Court, respondent No. 1-Chief Labour Commissioner was required to decide as there was disagreement with regard to the type of work.

8. There is no dispute about the fact that the Regional Labour Commissioner (Central), Ahmedabad, had conducted an inquiry in the matter, as directed by respondent No. 1. The Regional Labour Commissioner (Central), Ahmedabad, had visited Gujarat Refinery on 9-4-1996 and after inquiring into the matter, he had submitted his report dated 11-4-1996. It seems that respondent No. 1 has placed reliance on the report of R.L.C. (C).

9. It could very well be visualised from the aforesaid provisions that in absence of an agreement regarding the type of work done by the workmen of the contractor and the workmen of the principal employer, the claim of the contractor's workmen for equal wages has to be determined by the Chief Labour Commissioner. This work statutorily assigned to the Chief Labour Commissioner is quasi-judicial and he is obliged to address himself to the various relevant factors and circumstances and apply his mind so as to reach to a conclusion as to whether the type of work done by the workmen of the contractor and the workmen of the principal employer is same or similar for the purpose of deciding issue of equal wages. No doubt, he is expected to take assistance from the Regional Labour Commissioner or other sources. However, after having received the assistance and the material from different sources, it is the authority which has to place into focus all such relevant aspects and material and has to form its own opinion and reach a conclusion as to what is the type of work done by the workmen of the contractor.

10. The expression "same" and "similar" are not the same. The expression used in the aforesaid provision is "same" and also "similar". Therefore, what is required to be examined by the Chief Labour Commissioner in discharge of statutory obligation is to see as to whether the type of work done by the workmen of the contractor and the workmen of the principal employer is the same, if not, whether it is similar. It appears that respondent No. 1-Chief Labour Commissioner has failed to examine and appreciate the aforesaid statutory expression. It is true expression "same" or "similar" is not statutorily defined in the Rules. Therefore, plain dictionary meaning can be resorted to.

11. The underlying purport and design of the aforesaid provision appears to be that equal wages should be paid to the workmen of the contractor, same as that of the wages paid to the workmen of the principal employer, if the type of work done by the workmen of both the categories is same or similar in nature. Otherwise, apart from the fact that there will be discrimination between the company labour and the contractor labour, there will be an exploitation and

employment of unfair labour practice by resorting to such practice, which is contrary to the celebrated principles enunciated in catena of judicial pronouncements and also the mandate of Constitutional provisions enshrined in Articles 14 and 39-D, which, unequivocally prescribe that the State shall have the policy which says that there is equal pay for equal work of both men and women. Same is the voice and cry raised in Equal Remuneration Act (25 of 1976).

12. Section 2(h) read with Section 4 of Equal Remuneration Act provides that there shall be equal remuneration for men and women performing same work or work of similar nature. Work whether same or similar nature will have to be decided and adjudicated upon in case of disagreement and the statutory duty is cast upon the Chief Labour Commissioner, who is obliged to take into consideration all the relevant aspects for analysing the nature of work and for job evaluation.

13. The case law has clarified and amplified the expressions "same" and "similar". The Chief Labour Commissioner ("C.L.C." for short) has failed to appreciate this aspect. The expression "same" as per the dictionary means : (1) resembling in every way, (2) not different in relevant essentials, (3) conforming in every respect, and (4) having one nature or individuality; whereas, the expression "similar" means : (1) having characteristics in common, (2) very much alike in substance or structure. The authority who is obliged to exercise statutory functions under Rule 25(2)(v)(a) must bear in mind that the above meanings clearly bring out the distinction between the two expressions "same" and "similar". An object or an operation can be said to be the same as another if it is absolutely identical to it or resembles it in every way. It may happen that there may be a few points of dissimilarity, but if there are such few points of dissimilarity existing between the two, that would not ipso-facto mean that the same is not covered by the said rule. Though there may be dissimilarity between a nature of work of contract labour and the employer labour, yet, on the whole, the majority of symptoms or characteristics may be alike or common. In such a factual situation, it could be said that they are similar.

In reality, the word "similar" connotes the existence of two objects with some dissimilarities. If there was no dissimilarity, it would obviously be the same kind of object. But the preponderance of similarities as compared with the microscopic or insignificant dissimilarities entitle that object to be called of a similar nature. Although, the expression "same" is generally, loosely and frequently employed in the sense of "similar", the word "similar" would never mean "same" in its strict sense and, in fact, it cannot, since similarity implies existence of two or more objects for the purpose of comparison.

14. It must be noted by the authority called upon to discharge the aforesaid rule function that the expressions used in Rule 25(2)(v)(a) by the Legislature in its wisdom is obviously with a purpose and policy behind it. There is a distinction between two expressions, namely, "same" and "similar". If it was to be intended that absolutely identical kind of job employed by the company and by the

contractor should be dealt with at par, then the expression similarity of work would not have been used or employed by the Legislature in the said Rule. It could safely be inferred that the Legislature had contemplated situational reality that the work may not be exactly the same, but may be very much akin or alike and in such circumstances it found no justification for differentiating the service conditions of the labour employed by the company and by the contractor. What was necessary to be seen by the statutory authority like that the C.L.C. was to first consider whether there was same nature of work and, if not, whether the nature of work was similar. The work carried out or performed by the labour contract in canteen, garden, security and house keeping and the work carried by the labour of the principal employer or the company in the aforesaid branches or departments were similar, if not same. The C.L.C. has, unfortunately, failed to consider and appreciate this important aspect and statutory expression.

15. The C.L.C. was required to address himself whether the members of the petitioner-Union were engaged in the same type of work as that of the employees or the workmen of the respondent-company and, if not, whether it was similar. Instead of keeping in focus the statutory expressions and the factual aspects, the C.L.C. recorded the impugned order on the considerations which were not germane to the point and failed to consider the aspects which were very material and relevant and that too, without observing and following due and requisite exercise of process, and further on placing reliance on the report of the Regional Labour Commissioner.

16. Whether a particular work is same or similar in nature as another work could be determined mainly on three considerations as per the settled proposition of law. In deciding whether the work is the same or broadly similar, the statutory functionary or the authority should bear in mind a broad view; next, in ascertaining whether any differences are of practical importance, the authority should take an equally broad approach for the very concept of similar work implies differences in details, but these should not defeat a claim for equality on petty grounds. The authority is obliged to consider the duties actually performed, not those theoretically possible. In making comparison, it is also, obviously, necessary for the authority to look to the duties generally performed by the employees of the contractor and the company.

17. No doubt, it is true that the jurisdictional parameters in a writ petition like one on hand are very much fettered and limited against the order of a statutory authority. It was, therefore, contended on behalf of the respondents that the conclusions recorded by the C.L.C. are based on facts and should not be interfered with. It may also be noted, at this stage, that the statutory functionary in exercise of its statutory powers is obliged to consider the object of the provisions under which the duty is to be performed and the process of making decision or the exercise for reaching conclusion ought to be fair, unbiased, objective, with full application of mind to the relevant and vital facts and after adverting to the relevant proposition of law. If the process of decision making is

polluted or vitiated, it becomes necessary for the Court even in a writ jurisdiction under Article 227 to interfere with the order under challenge and put it in the legally right track. After having considered the facts and circumstances emerging from the record of the present case, this Court is satisfied that the impugned order recorded by the C.L.C. is not justified on the ground of non-application of mind to the vital facts and considerations of the facts which were trivial in natural, not giving an opportunity of hearing and thereby non-observing the principles of natural justice; and basing mainly the decision under challenge on a hasty, hot, erroneous report of the Regional Labour Commissioner and, that too, without any necessary material inquiry much less the spot inquiry.

17.1. The grounds stated in the impugned order dated 17-4-1996 by the C.L.C., unequivocally radicates, an imprint that the statutory authority failed to appreciate and interpret the expression "same" and "similar", and the purport and design of the provisions of Rule 25(2)(v)(a) of the Rules and reveals non-application of mind to the vital aspects and considering mainly the jet-speed report of Regional Labour Commissioner, Ahmedabad, without making spot inquiry.

17.2. The Regional Labour Commissioner (Central), Ahmedabad, was directed by the Chief Labour Commissioner (Central) to conduct an inquiry in the matter. The Regional Labour Commissioner visited Gujarat Refinery and, after inquiring into the matter, submitted his report dated 11-4-1996. In the impugned order mainly reliance is placed on the report of Regional Commissioner without full application of mind and considering the purpose and philosophy behind the expressions "same" and "similar" of Rule 25(2)(v)(a).

It could very well be highlighted by one illustration in the impugned order. It is observed by the C.L.C. in the impugned order that as regards Canteen workers, Regional Commissioner found that the employees employed in Refinery Canteen prepare only lunch for the staff, whereas, the workers of the contractor working in the Canteen were preparing only tea and snacks. It was, therefore, observed that the nature of work performed by the employees of company in Canteen and the employees of the contractor in Canteen were not compatible and comparable. The staff engaged in the Canteen has to perform duties in relation to preparing tea, snacks, food, etc. The expression "snacks" is very wide and would include many estables. This is just highlighted to show and drive at home the point which led to impugned order which has culminated, unfortunately, into miscarriage of justice and misreading of the provisions of Rule 25(2)(v)(a). There are other such instances in relation to the observations of the work of Sweepers, Gardeners and Security staff. Not only that, the C.L.C. concluded the impugned order observing that management, i.e., respondent-Gujarat Refinery of Indian Oil Corporation, did not controvert the claim of the petitioner that the workers of the contractor are performing the same type of work as that of the employees of the company. A statutory functionary, who is obliged to address itself to a vital and important aspect so as to decide the nature and type of work or function

performed by the workmen of the contractor and the company, should not be led away in passing order like the impugned one merely on such observations or denial on the part of respondent-management.

In fact, that there was a denial required the discharge of statutory obligation and necessary exercise by the C.L.C. in view of the plain perusal of the proviso attached to Rule 25(2)(v)(a). He has to assume the role of an adjudicator only when there is a disagreement or denial of the rights. Such a denial cannot form basis for denying the legitimate claim. It must also be noted that the statutory authority must consider the mandate of the provisions of Articles 14, 15, 16, 21, 38, 39 and also 46, which are aimed at removing social and economic inequalities and to achieve social and economic justice, by making equal opportunity available in reality. It appears from the plain perusal of the impugned order recorded by the C.L.C. that, the aforesaid Constitutional provisions are lost sight of. The authority has also failed to exercise statutory duty properly. The impugned order, therefore, in the opinion of this Court, is vitiated by such vices. When such an authority fails to perform required and requisite statutory duties in performance of the statutory provisions while dealing with such an important aspect without proper application of mind and basing mainly the decision on the report of a subordinate and not independently scrutinising, analysing or considering material without proper inquiry, it becomes not only necessary but a duty to interfere with such an order even while exercising extraordinary, equitable, supervisory writ jurisdiction.

Next it would lead to consideration of a question as to whether should this Court substitute the conclusion recorded by the authority in the light of the material and evidence on record or to remand the matter to the authority for reconsideration and re-examination of the issue in focus after giving an opportunity of hearing to the parties concerned in its letter and spirit. In the opinion of this Court, the latter course would be expedient and the petitioner has also prayed for remand, so that the statutory authority could reconsider and decide the whole matter afresh.

18. Before parting, it may be noted that the record does show that no notice was issued to the contractor and the petitioner. It was precisely one of the reasons why the contractor is not a party in the present proceedings and which was sought to be used as a legal missile to show that the petition is not maintainable. On the contrary, it was obviously desirable and necessary to associate the contractors, the union and the principal employer. It may also be mentioned that the record shows that 370 statements were submitted to the C.L.C. (within less than two days) who, it appears, has not properly considered them. It would have been also better had there been exchange of documents between the parties. No such exercise of inquiry contemplated by the aforesaid rule provision made. It is, therefore, necessary to sound a caution that the statutory authority is expected to decide the matter afresh after giving an opportunity of hearing to the parties concerned and also observing the principles of natural justice and hearing and to

decide the matter in accordance with law and in the light of the observations made hereinbefore.

19. In the result, the petition is allowed. The matter is remanded for reconsideration and re-examination in accordance with law, as aforesaid, with a direction to conclude the same as early as possible and preferably within the a period of six months from the date of receipt of writ of this Court. Rule is made absolute. No order as to costs.