

(2014) 11 GUJ CK 0041
In the Gujarat High Court

Case No : Special Civil Application No. 13590 of 2007

Krishak Bharati Cooperative Ltd.

APPELLANT

Vs

Chemical Mazdoor Panchayat

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(d), 12(4)

Citation : (2014) 11 GUJ CK 0041

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : M.R. Bhatt, Sr. Advocate and Mauna M. Bhatt, Advocate for the Appellant; Sangeeta N. Pahwa and S. Supehia, Advocate for the Respondent

Judgement

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Paresh Upadhyay, J.—Challenge in this petition is made by the Krishak Bharati Co-operative Limited (KRIBHCO for short) to the award passed by the Industrial Tribunal, Surat in Reference (IT) No. 8 of 1995 dated 10.04.2007. The said Reference was made by the Appropriate Government at the instance of the Gujarat Mazdoor Panchayat, which espoused the cause of the workers of two Contractors of the petitioner KRIBHCO viz. M/s. Ghanshyam Builders and M/s. V.K. Patel. These two Contractors were holding valid licence as required under the law and were doing work at the Bagging Plant of the petitioner at Hazira (Surat), which involved the activities of filling the Urea into the bags, their stitching, staking, de-stacking, loading into trucks, railway wagons and unloading etc. The genesis of the controversy was that, this work was stopped with effect from 12.06.1994, which was called a lockout by the workers, and on the other hand the Contractors claimed it to be an illegal strike by the workers without notice. The point for adjudication before the Tribunal was, as to whether, it was a strike by the contract workers or was a lockout by the Contractors. The Tribunal, vide its impugned award dated 10.04.2007, inter alia declared that, there was employer-employee relationship between the workers and KRIBHCO. It is this

award which is challenged by KRIBHCO inter alia on the ground that, while passing the said award the Tribunal has exceeded its jurisdiction. It is recorded that, the issue, as to whether, these workers were workers of KRIBHCO or otherwise, was the subject matter of a separate Reference which was already pending before the Tribunal at the relevant time being Reference (IT) No. 44 of 1994, wherein it was subsequently held that, they were not the workers of KRIBHCO [vide award dated 20.05.2010], which is challenged by the Union before this Court in a separate petition being Special Civil Application No. 4056 of 2012, which is being considered separately by this Court. So far the present petition is concerned, the principal grievance of the KRIBHCO is that, the Tribunal has exceeded its jurisdiction by granting relief in favour of the workers on the ground that, there was employer-employee relationship between these workers and KRIBHCO.

2. Heard Mr. Manish Bhatt, learned senior advocate for the petitioner KRIBHCO and Ms. Sangita Pahwa, learned advocate for the Respondent Union. Both the learned advocates have taken this Court through the material on record.

3. Mr. Manish Bhatt, learned senior advocate for the petitioner KRIBHCO has submitted that, the KRIBHCO used to engage contractors having valid licence for carrying out its activities at its Bagging Plant at Hazira which involved the activities of filling the Urea into the bags, their stitching, staking, de-stacking, loading into trucks, railway wagons and unloading etc. M/s. Ghanshyam Builders and M/s. V.K. Patel were such two Contractors. It is submitted that, those Contractors, in turn, used to engage workers and those workers demanded parity in conditions of service with the employees of KRIBHCO and also demanded that they (those workers) be treated to be employees of the KRIBHCO, and for that purpose Reference was also made by the Government being Reference No. 44 of 1994 which is not the subject matter of this petition. It is submitted that, the said Reference i.e. 44 of 1994 is ultimately rejected by the Industrial Tribunal, Surat vide order dated 20.05.2010 which is challenged by the Union before this Court in a petition being Special Civil Application No. 4056 of 2012. The said petition is pending. During the pendency of that Reference before the Tribunal, the workers of the Contractors raised certain demands which according to the principal employer and Contractors were contrary to the settlement arrived at in Reference No. 56 of 1989 and therefore, those demands were not accepted. This led to industrial unrest, including physical assault by certain workers on the workers of other group, leading to injury and loss of life. Work was stopped with effect from 12.06.1994, which was called a lockout by the workers, and on the other hand the Contractors claimed it to be an illegal strike by the workers without notice. The authorities of the Labour Department intervened in the matter. The Union also entered in correspondence with the Government and attention of the Court is invited to the communication dated 07.11.1994 addressed to the Assistant Commissioner of Labour, Surat, which is projected to be the basis for making the Reference in question. Under these circumstances, the Appropriate Government passed an order on 21.02.1995 making Reference

to the Industrial Tribunal, Surat. It came to be registered as Reference No. 8 of 1995 i.e. the present one. It is submitted that, under these circumstances, the point for adjudication before the Tribunal was, as to whether it was a strike by the contract workers or was a lockout by the Contractors. It is submitted that, the Tribunal, vide its impugned award dated 10.04.2007, inter alia declared that, there was employer-employee relationship between the workers and KRIBHCO. It is vehemently submitted that while passing the said award the Tribunal has exceeded its jurisdiction. It is submitted that, what is adjudicated by the Tribunal is beyond the scope of Reference, and even while committing this jurisdictional error, the Tribunal has also committed further error by holding something contrary to the pleadings of the Union itself, and it is also contrary to the very foundation of the Reference and therefore the impugned award be set aside. It is further submitted that, assuming for the sake of argument that, it was within the scope of the Reference, then also what is held by the Tribunal is contrary to the evidence on record, and without recording any finding on the material issue. Reference is also made to the earlier litigation before this Court being Special Civil Application Nos. 4174 of 1993, 6369 of 1993, 10284 of 1994 and Special Civil Application No. 3076 of 1995. It is also submitted that, even the settlement arrived at in Reference No. 56 of 1989, which is referred above, was also challenged before this Court in Special Civil Application No. 11010 of 2009 and the said petition was dismissed vide order dated 26.10.2009. It is submitted that, on the face of the above referred material, there was no occasion for the Tribunal to adjudicate as to whether the concerned workmen were the workers of the KRIBHCO or of the Contractors. It is submitted that, it was the case of the workers themselves that, they were the workers of the Contractors. It is further submitted that, if the pleadings of the parties are kept in view, the Union could not be permitted to step back from the admitted position that they were the workers of the contractors. By referring to para: 41 of the impugned award, it is vehemently contended that, the Tribunal has committed error by proceeding on the footing that in industrial adjudication the principle of res judicata is not applicable. It is submitted that thus the very foundation of the impugned award is illegal and the same needs to be interfered with. It is further submitted that, the impugned award is neither reasoned order, nor even an order-since it only gives certain directions, without any adjudication. It is submitted that there was ample material on record to adjudicate the issue, even if it was treated to be within the scope of the Reference, and having not done so, the Tribunal has committed grave error. Attention of the Court is also invited to the common award passed by the Labour Court, Surat dated 31.12.2010 in Reference (LCS) No. 631 of 1995 with 26 other identical References. By the said award, the Labour Court had dismissed all the References where the claim of the workmen, who were similarly situated to the present group of contesting workers was that they should be reinstated in service by KRIBHCO. It is submitted that, this discontinuance of service was almost at the relevant time and even the Reference was made by the Appropriate Government on 21.06.1995. It is submitted that the said award has attained finality. It is submitted that the

respondent Union changes its stand as per its convenience and if any litigation it loses, it starts a separate proceeding afresh. It is submitted that, the impugned award is unsustainable-both on facts and in law. It is submitted that the same be quashed and set aside. Reliance is placed on the following decisions in support of this petition.

1. State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma,
2. Steel Authority of India Ltd. Vs. Union of India (UOI) and Others,
3. Hochtief Gammon Vs. Industrial Tribunal, Bhubaneswar, Orissa and Others,
4. Himmat Singh and Others Vs. I.C.I. India Ltd. and Others,
5. Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others,
6. Indian Farmers Fertilizer Cooperative Ltd. Vs. Industrial Tribunal I, Allahabad and Others,
7. 1991-LAB. I.C.-1747 (Allahabad High Court) Indian Farmers Fertilizer Co. op. Ltd. vs. Industrial Tribunal, Allahabad
8. Institute of Rural Management Vs. N.D.D.B. Employees' Union and Others,
9. Divisional Controller, Gujarat State Road Transport Corporation Vs. Anjana B. Pandya,
10. Director of Income Tax (Exemption) Vs. Shia Dawoodi Bohra Jamat
11. Gautam Harilal Gotecha Vs. DCIT,
12. Management of Premier Mills Limited Vs. Presiding Officer, Labour Court and Others,

4. On the other hand, Ms. Sangeeta Pahwa, learned advocate for the contesting respondent Union has submitted that, what was assigned to the Tribunal is adjudicated by it. Further, not only it was well within the scope of the Reference in question, but the Tribunal was under legal obligation to adjudicate it, and in any case what is decided by the Tribunal is atleast incidental to the principal dispute and under these circumstances, no interference be made by this Court. Learned advocate for the Union has taken this Court through the definition of the word "adjudication" as given by different dictionaries. It is vehemently submitted that, the Tribunal has not granted relief that the workers in question should be treated to be the workers of KRIBHCO and therefore it cannot be said that the Tribunal has exceeded its jurisdiction. Learned advocate for the Union has taken this Court through the material on record, including the orders passed by this Court in Special Civil Application Nos. 4174 of 1993, 6369 of 1993, 10284 of 1994 and Special Civil Application No. 3076 of 1995. Attention of the Court is invited to the issues framed by the Tribunal and the findings recorded by it. It is submitted that, what is decided by the Tribunal was well within the scope of the

Reference and further that the adjudication is legal and proper and is based on the material on record and therefore this Court may not interfere. It is submitted that this petition be dismissed. Learned advocate for the respondent Union has relied on the following decisions.

1. Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives,
2. Indian Farmers Fertilizer Cooperative Ltd. Vs. Industrial Tribunal I, Allahabad and Others,
3. Gujarat Mazdoor Panchayat Vs. State of Gujarat and Others,
4. Suhrid Geigy Ltd. Vs. Chemical Mazdoor Sabha,
5. 2006(0) GLHEL-HC 216841-Gujarat Telecom Circle versus Adheshkumar Sitala Prasad
6. 2012(29) GHJ 350-Ahmedabad Municipal Corporation versus Gujarat Municipal & Panchayat Kamdar Association

5. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

5.1 The genesis of the Reference in question was the Industrial unrest at the Hazira-Unit of the petitioner KRIBHCO in June, 1994. To understand the controversy in proper perspective the following facts, as emerging from record, need to be recorded. The petitioner-KRIBHCO used to engage contractors having valid licence for carrying out its activities at its Bagging Plant at Hazira which involved the activities of filling the Urea into the bags, their stitching, staking, de-stacking, loading into trucks, railway wagons and unloading etc. M/s. Ghanshyam Builders and M/s. V.K. Patel were such two Contractors. Those Contractors, in turn engaged workers and those workers demanded parity in conditions of service with the employees of KRIBHCO and also demanded that they (those workers) be treated to be employees of the KRIBHCO, and for that purpose Reference was also made by the Government being Reference No. 44 of 1994. The said Reference is ultimately rejected by the Industrial Tribunal, Surat vide order dated 20.05.2010, which is not the subject matter of this petition. During the pendency of that Reference before the Tribunal, the workers of the said Contractors raised certain demands which according to the principal employer and the Contractors were contrary to the settlement arrived at in Reference No. 56 of 1989 and therefore, those demands were not accepted. This led to industrial unrest, including physical assault by certain workers on the rival group of workers. Even one worker died. Work was stopped with effect from 12.06.1994, which was called a lockout by the workers, and on the other hand the Contractors claimed it to be an illegal strike by the workers without notice. The Authorities of the Labour Department intervened in the matter. The Union also entered in correspondence with the Government. Reference can be made to one such communication dated 07.11.1994 addressed to the Assistant

Commissioner of Labour, Surat. Under these circumstances, the Appropriate Government passed an order on 21.02.1995 making Reference to the Industrial Tribunal, Surat. It came to be registered as Reference No. 8 of 1995. The point for adjudication before the Tribunal, under these circumstances was, as to whether it was a strike by the contract workers or was a lockout by the Contractors and what relief they were entitled to. The Tribunal, vide its impugned award dated 10.04.2007, inter alia declared that, there was employer-employee relationship between the workers and KRIBHCO. With this declaration, the Tribunal granted certain relief's in favour of the workers. Thus, the very foundation of the award in question is the declaration by the Tribunal regarding employer-employee relationship between the petitioner KRIBHCO and the workers, which was not the point for determination. Be it noted that, this very issue was the subject matter of a separate Reference being Reference No. 44 of 1994, which was earlier in point of time and which was also pending with the same Tribunal at the relevant time. Further, it is relevant to note that the said Reference i.e. Reference No. 44 of 1994 is subsequently rejected by the Tribunal. In this factual background this Court finds that, the very foundation of the impugned award is untenable and therefore as the necessary consequence the impugned award is unsustainable.

5.2.1 With a view to see that, what had weighed with the Appropriate Government while making References to the Tribunal, the order making such Reference is looked at by the Court. The said order dated 21.02.1995 has recorded the circumstances in which the Reference was made. The translation from the said original Gujarati order dated 21.02.1995 [in substance] reads as under.

"GOVERNMENT OF GUJARAT LABOUR AND EMPLOYMENT DEPARTMENT
SACHIVALAYA, GANDHINAGAR DATE: 21.02.1995

No. KHR/49/SCA-1094-H-85-M(4)

M/s. Ghanshyam Builders and M/s. V.K. Patel were engaged as Contractors to carry out the contract work of Urea Handling and Bagging for the period of one year from 27.02.1994 to 28.02.1995 at Surat based Urea manufacturing Unit of Krishak Bharati Cooperative Limited. The workers of the contractors resorted to go-slow tactics w.e.f. 19.05.1994 in support of their demands for increase in wages. Consequent upon this, the said contractors suspended 11 workers and appointed new workers to maintain continuity of work. A conflict was created between the workers instigated by the so-called Union named Gujarat Mazdoor Panchayat and the new workers, thereby resulting in disruption of work environment. The work of the contractors was stopped w.e.f. 12.06.1994.

The said Union treated it as lockout by the contractors and made a request to the local labour department to reinstate 350 workers who were not allowed to resume their work and to prohibit the lockout. The contractors treated this situation as strike without notice and accordingly, published an appeal in local

newspaper to report for duties and to sign an undertaking. The act of contractors compelling the workers to sign an undertaking and then only allowing to resume duties is projected to be a lockout by the Union and to prohibit it, the said Union made a written complaint to the labour department that the efforts have been made by the contractors to project that workers have gone on strike without notice. Thus conciliation proceedings were commenced before the Assistant Labour Commissioner due to the situation arisen on 12.06.1994 and the under mentioned two demands were made by the Gujarat Mazdoor Panchayat vide their letter dated 09.07.1994 in conciliation case No. IDC-30/94. However since no compromise took place between the parties, the Conciliation Officer forwarded his failure report on 18.08.1994 to the Government to adjudicate the matter under the Industrial Disputes Act.

Demand No. 1

To prohibit the lock out from 12.06.1994 and to declare it as illegal and unjustified till the date of lifting and to reinstate the workers and be paid wages at double the rate during the lockout period.

Demand No. 2

To declare the act of the above referred contractors to compel the workers to sign the undertaking bond as illegal, unreasonable and null and void and to declare that the workers were on duty continuously without any break.

2. Keeping in mind the order dated 17.09.2014 passed by the Hon''ble High Court of Gujarat in Special Civil Application No. 10284 of 1994 filed by the Gujarat Mazdoor Panchayat and after carefully going through the entire situation as to whether the situation arisen on 12.06.1994 should be treated as a lockout or strike, the Government did not consider it to fit to decide this issue.

3. The Government of Gujarat is of the opinion that the Industrial Dispute as mentioned in the Schedule is between the aforesaid two contractors whose Principal Employer is Krishak Bharati Cooperative Limited, Surat (KRIBHCO), and its workers/workers Union Gujarat Mazdoor Panchayat, Ahmedabad.

And therefore as per Section 12(4) of the Industrial Disputes Act, the Conciliation Officer and Assistant Labour Commissioner, Surat has referred the conciliation case No. 30/94 in which demands were raised by the Gujarat Mazdoor Panchayat along with the failure report dated 18.08.1994 to the State Government to proceed further in accordance with law.

Therefore, in exercise of powers conferred under Section 10(1)(d) of the Industrial Disputes Act, the Government of Gujarat refers the following disputes to the Industrial Tribunal, Surat for adjudication.

SCHEDULE

1) Whether the lock-out was declared w.e.f. 12.06.1994 at the place of the Industrial Establishment, Krishak Bharati Cooperative Limited, Surat by the

establishment ?

2) If yes, whether or not the lock-out be declared as illegal and unjustified till the date of its lifting and whether the workmen are entitled to reinstatement with back wages at double the rate for the said period or not ?

3) Whether the act of contractors to compel the workers to sign the undertaking be treated as illegal or improper and declared as null and void ? And accordingly whether or not to declare the services of workers as continuous service without break ?

By order and in the name of the Governor of Gujarat.

Sd/- (T.A. Saiyed) Section Officer Labour and Employment Department"

5.2.2 Thus, from the above order of the Appropriate Government also, it is clear that, it was even the case of the workers that they were the workers of the contractors. It was neither the case of the workers, nor was it necessary for the Tribunal to go into the question as to whose workers they were. At this juncture, it is also required to be noted that, the minutes of the conciliation proceedings is on record. Reference can be made to the proceedings dated 16.06.1994 and 17.06.1994. It was between the Union and the Contractors before the concerned Deputy Commissioner of Labour. The employer/establishment referred therein is the Contractors and not the petitioner KRIBHCO. Thus, there is ample material on record to hold that it was not even the case of the Union that there was employer-employee relationship between the workers and the petitioner KRIBHCO.

5.3 Having held that it was neither assigned to the Tribunal, nor was it necessary for it to adjudicate whose workers they were, this Court also finds that the same cannot be termed to be incidental to the principal controversy as to whether it was a strike or a lockout. For these reasons, this Court finds that, the Tribunal, while recording the impugned award had exceeded its jurisdiction and the impugned award therefore is unsustainable.

5.4 This Court also finds that, even if it was open or necessary for the Tribunal to go into that question, there is ample material on record to adjudicate that issue, which the Tribunal has not deliberated at all. Though the impugned award is quite lengthy and it runs into hundreds of pages, on this material point, there is no discussion or adjudication. This is an additional point which makes the impugned award untenable.

5.5 This Court also finds that there is substantial force in the submission of learned advocate for the petitioner that the contesting group of workers change their stand as per their convenience. In this regard, reference can be made to the common award passed by the Labour Court, Surat dated 31.12.2010 in Reference (LCS) No. 631 of 1995 with 26 other identical References. By the said award, the Labour Court had dismissed all the References where the claim of the workmen, who were similarly situated to the present group of contesting workers

was that they should be reinstated in service by KRIBHCO. It is relevant to note that the said discontinuance of service was almost at the relevant time and even the Reference was made by the Appropriate Government on 21.06.1995. It is also required to be noted that the said award has attained finality. This is an additional factor which tilts the balance against the respondent Union.

5.6 Both the learned advocates have addressed the Court at length but many of those arguments are, in substance to make good a point that the concerned workmen were or were not, the workers of the KRIBHCO. Since that issue was already the subject matter of a separate Reference being Reference No. 44 of 1994 and the same is adjudicated by the Tribunal against the workers, and challenge thereto is pending before this Court in a separate petition being Special Civil Application No. 4056 of 2012, it would be prejudicial to the parties to go into the said question in this petition. For this reason, those arguments are not addressed by this Court in this judgment. The same is the case with the authorities cited by both the sides. It is also recorded that, though numbers of authorities are cited by both the sides, on the face of the findings recorded above, which is evident from the material on record, those authorities are not discussed in this judgment.

6. In view of above, this Court finds that, while passing the impugned award, the Tribunal has exceeded its jurisdiction. Further, even while doing so, it has excluded taking into consideration the relevant material which was on record, resulting into perversity. Further, had it been taken into consideration, the Tribunal would not have arrived at the judgment, at which it reached. Though the impugned award runs into more than 460 pages, in substance, it is an unreasoned order. In the result, the impugned award is unsustainable in law, so also on facts, and the same needs to be quashed and set aside.

7. For the reasons recorded above, this petition is allowed. The impugned award passed by the Industrial Tribunal, Surat in Reference (IT) No. 8 of 1995 dated 10.04.2007 is quashed and set aside. Rule made absolute. No order as to costs.

8. After this judgment is pronounced, learned advocate for the respondent Union has requested that this judgment be stayed for some time. This request is opposed by learned advocate for the petitioner. From record it transpires that, the impugned award dated 10.04.2007 was stayed by this Court on 31.05.2007. Thus the impugned award was not permitted to hold the field for all these years and the same is now set aside. For this reason, the request is rejected.