

(2003) 06 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No.5433 of 2002 and Civil Application No.1649 of 2003

Saurashtra University and Another

APPELLANT

Vs

Saurashtra University Karmachari Parivar

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Gujarat University Service Tribunal Act, 1983 — Section 2, 7(3), 8
Industrial Disputes Act, 1947 — Section 2
Life Insurance Corporation Act, 1956 — Section 48(2)

Citation : (2004) 101 FLR 536 : (2004) 1 GLR 160

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : J.R. Nanavati, for the Appellant; P.V. Hathi and P.R. Desai, for the Respondent

Judgement

Ravi R. Tripathi, J.—The present petition is filed by Saurashtra University and its Registrar challenging the order dated 4th December, 2001 passed by the Deputy Labour Commissioner, Saurashtra-Kutch at Rajkot making a Reference of the dispute mentioned in the Schedule attached thereto, and the order dated 7th March, 2002 passed by the Industrial Tribunal, Rajkot in Reference (IT) No.10 of 2002 directing the petitioner-University to maintain status quo qua the five workmen till the next date of hearing, issuing a show cause notice to show cause as to why the reliefs prayed for in the application be not granted and fixing the next date of hearing on 20th March, 2002.

2. The Civil Application No.1649 of 2003 is filed for a relief to issue an interim mandatory order to the opponents not to give effect to the show cause notice dated 19th February, 2003 in any manner, by terminating the services of the said five workmen, pending the hearing and final disposal of the Special Civil Application No.5433 of 2002.

3. Mr.J.R.Nanavati, learned Senior Advocate appearing for the petitioner-

University, submitted that the petitioner-University is constituted by a statute i.e. Saurashtra University Act and it conducts its affairs as permitted under the statute. He submitted that the order passed by the Industrial Tribunal, Rajkot in Reference (IT) No.10 of 2002 is without any jurisdiction and authority of law inasmuch as the subject matter of the said order is covered under the Gujarat Universities Services Tribunal Act, 1983 ("the Act" for short). He submitted that in view of that, the order passed by the Deputy Labour Commissioner dated 4th December, 2001 is also without any authority and it suffers from non-application of mind. Mr.Nanavati invited the attention of the Court to the provisions of the Act. He pointed out the object for which the Act is enacted. It reads as under:

"An act to provide for the constitution of a Tribunal for the purpose of determining disputes relating to conditions of service of the members of the teaching, other academic and non-teaching staff of Universities in the State of Gujarat, for procedure for imposition of penalty or any such member and for matters connected therewith".

He submitted that when a specific forum, namely, Universities Services Tribunal, is constituted under the Act for resolving the disputes relating to conditions of service of the members of the teaching, other academic and non-teaching staff of Universities, there is no question of the dispute being referred to the industrial forum.

4. Mr.J.R.Nanavati also invited the attention of the Court to the definition of the term, "University employee", in Clause (g) of Section 2 of the Act, which reads as under :

(g) "University employee" means any member of the teaching, other academic and non-teaching staff of a University (whether confirmed or temporary or on probation) in the service of such University and for the purpose of any proceeding under this Act in relation to a dispute referred to in section 8, includes any such member who has been dismissed, or removed or whose services are otherwise terminated;"

Section-8 of the Act provides that a dispute is to be decided by the Tribunal. This section is the most relevant one for the purpose of deciding the issue involved in this petition. The same is reproduced hereunder:

"8. Where there is any dispute between the University and any University employee, which is connected with the conditions of service of such University employee, the University or, as the case may be the University employee may make an application to the Tribunal for the decision of the dispute."

Mr.Nanavati further submitted that by Subsection-3 of Section-7 of the Services Tribunal Act, the jurisdiction of other forums is barred. Subsection-3 of Section-7 reads as under :

"(3) Notwithstanding anything contained in any other law for the time being in force, where the Tribunal has jurisdiction to entertain and decide a dispute as

aforesaid, no other person, officer or authority shall have jurisdiction to entertain and decide such dispute and any such dispute pending before any person, officer, or authority on the appointed day shall, as soon as may be, be transferred to the Tribunal for its decision."

Mr.Nanavati submitted that in view of these provisions, there is no question of any other forum having jurisdiction to decide a dispute between the University on one hand and its employee on the other. He also submitted that besides this, even on the ground that the University is not an `industry", the industrial forum will not have jurisdiction to entertain the dispute between the University and its employee.

5. Mr.J.R.Nanavati, learned Advocate, submitted that the term, "industry", is defined in Clause-(j) of Section 2 of the Industrial Disputes Act, 1947, which reads as under :

"Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

Mr.Nanavati submitted that the definition of the term, "industry", is under contemplation of change, but then, the said change is not brought into force till date and, therefore, today the definition of the term, "industry", as mentioned herein above, is applicable. Under this definition, the petitioner-University cannot be said to be an industry. He submitted that this may not be taken to mean that under the new definition, the University will be an industry. For the academic interest, the new proposed definition, which is to be the definition after the same is substituted with effect from the date, which may be notified later, reads as under:

"Industry means any systematic activity carried on by cooperation between any employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not -

(i) any capital has been vested in for the purpose of carrying on such activity; or
(ii) such activity is carried on with a motive to make any gain or profit, and includes

(a) xxx xxx xxx xxx xxx

(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include --

(1) any agricultural operation except, where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is

the predominant one"

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

(4) xxx xxx xxx xxx

(5) xxx xxx xxx xxx

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the department of the Central Government dealing with defence, research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like individuals in relation to such activity is less than ten;"

Mr.Nanavati submitted that as on date, the definition of the term, "industry", as stated herein above, does not cover the University in its scope and, therefore, even on that ground, the order passed by the Deputy Labour Commissioner, Rajkot dated 4th December, 2001 is required to be quashed and set aside and once that order of reference goes, the ex parte order dated 7th March, 2002 passed by the Industrial Tribunal would not survive.

6. Mr.Nanavati submitted that the facts of the present case are that somewhere in the year 2001, the respondent-Union raised a demand in respect of twenty five persons, who were engaged as ad hoc daily wage employees by the petitioner-University, without following the prescribed procedure for engaging any person, coupled with a fact that there was no sanctioned post. Mr.Nanavati submitted that the respondent-Union could not have enrolled these persons as its members because they were engaged on daily wage basis and the constitution of the respondent-Union did not permit the enrollment of such persons. The submission of Mr.Nanavati is that therefore, the respondent-union could not have raised a demand on behalf of these twenty five persons as it could not have enrolled them as its members. His submission is that the respondent-Union did not have any authority to raise any demand on their behalf. The said demand was forwarded to the Conciliation Officer appointed under the provisions of the I.D.Act, 1947 and the Conciliation Officer issued notice dated 10th April, 2001 calling upon the University to remain present in the conciliation proceedings, being Conciliation Case No.21 of 2001, in which the University filed its reply, a copy of which is produced at Annexure-F to the petition. In that reply, the University has specifically contended that the University does not fall within the

definition of the term, "industry", and that as there is already a tribunal constituted for dealing with the disputes of the University and its employees, no other authority has jurisdiction to entertain a dispute between the University and its employees. It was also contended that the said issue is already decided by this Court, wherein it is held that the Labour Court or Tribunal has no jurisdiction to decide the dispute between the University and its employees. It was further pointed out that even the Labour Court, Rajkot has decided in one case that the disputes between the University and its employees cannot be entertained by the Labour Court. It was further requested that the matter may not be referred to the Labour Court or Tribunal. However, the Conciliation Officer made a failure report and the matter was referred to the Industrial Tribunal, Rajkot. The Industrial Tribunal, Rajkot issued notice to the respective parties on 23/01/2002. Thereafter, the Tribunal has passed an ex parte order on 7th March, 2002, which is under challenge in this petition.

7. Mr.Nanavati submitted that five persons, in whose favour, the Tribunal has granted interim relief by the impugned order dated 7th March, 2002, were lastly engaged on purely ad hoc basis and, therefore, there is no justification to grant interim relief. He further submitted that as is mentioned in paragraph 3.11, these five persons were engaged on purely ad hoc basis in one of the Bhavans, namely, "M.B.A. Bhavan", imparting education in the stream of business management for which the U.G.C. had granted permission/sanction only for a period of 5 years. Thereafter, the Government has agreed to give grant only in respect of teaching faculty. Mr.Nanavati submitted that unfortunately, neither these persons nor the respondent-Union brought these vital facts to the notice of the Tribunal, by suppressing this very important information, and therefore, the Tribunal was led to pass the impugned order.

8. Mr.J.R.Nanavati relied upon a judgement dated 26th September, 1996 of this Court (Coram:D.G.Karia, J.) in Civil Revision Application 821 of 1983, which came to be decided along with Appeal From Order No.330 of 1984 and Special Civil Application No.4517 of 1982 by a common judgement, wherein this Court has held that once there is a specific forum constituted for adjudicating the dispute between the management and the employees, the other forums will have no jurisdiction. It was directed that the appellant-original plaintiff be handed over the plaint of his Special Civil Suit No.125 of 1978 filed in the Court of the 2nd Joint Civil Judge (S.D.), Bhavnagar for presenting the same to the Tribunal constituted under the Gujarat Affiliated Colleges Services Tribunal Act, 1982. The Court has held that the Civil Court has no jurisdiction to entertain the suit in respect of the service conditions of the college employees.

9. Mr.Nanavati, the learned Advocate, next relied upon a judgement of the Apex Court in the matter of M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, . Mr.Nanavati submitted that the Apex Court was pleased to hold that the termination of service of a probationer, appointed under a contract of employment whereby the

Corporation (LIC) was entitled not to confirm the probationer in case he fails to achieve the target fixed in regard to his performance, even if the termination was effected without any notice, as stipulated in the contract read with Regulation-14, will not amount to "retrenchment" within the meaning of Section 2(oo) of the Industrial Disputes Act because the regulations framed u/s 48(2)(cc) of the Life Insurance Corporation Act, 1956 will have overriding effect over the provisions of the Industrial Disputes Act. The learned Advocate submitted that in the present case, as Subsection 3 of Section 7 of the Act bars the jurisdiction of other forums, the forum constituted under the Act only will have jurisdiction to decide the dispute between the parties. Paragraph-14 of the said judgement, on which Mr.Nanavati relied, reads as under :

"14. The amendments introduced in S. 48 of the Corporation Act have clearly excluded the provisions of the Industrial Disputes Act, so far they are in conflict with the rules framed under S. 48(2)(oo). The result whereof will be that termination of the service of the appellant shall not be deemed to be a "retrenchment" within the meaning of S. 2(oo), even if sub-sec.(bb) had not been introduced in the said section. Once S. 2(oo) is not attracted, there is no question of application of S. 25-F on basis of which the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period of probation is in terms of the order of appointment read with Regulation 14 of the Regulations, which shall be deemed to be now Rules u/S.48(2)(oo) of the Corporation Act."

10. On the other hand, Mr.P.V.Hathi, learned Counsel appearing with Mr.P.R.Desai for the respondent, submitted that under Subsection-3 of Section-7 of the Act, what is barred is the jurisdiction of the Civil Court only and not that of the 'Labour Court' and 'Industrial Tribunal'. The submissions of Mr.Hathi cannot be accepted in view of the language of Subsection-3 of Section-7, which reads as under :

". no other person, officer or authority shall have jurisdiction to entertain and decide such dispute.."

It is further required to be noted that Subsection-3 of Section-7 has used the words, "person, officer, or authority". There is no reason for which these words should be read to mean exclusion of the jurisdiction of the Civil Courts only and not the exclusion of the jurisdiction of the Labour Court and Industrial Tribunal also.

11. Mr.Hathi, the learned counsel, relied upon a judgement of the Apex Court in the matter of Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another, , to contend that once a dispute is referred to an Industrial Tribunal, it has to adjudicate the same. In this regard, he relied upon the observations of the Apex Court in paragraph-3, which read as under :

"3... Raising an industrial dispute is a well recognised and legitimate mode of redress available to a workman, which has achieved statutory recognition under

the Industrial Disputes Act and we fail to see why the statute-recognised mode of redress should be denied to a workman because of the existence or availability of another remedy. Nor are we able to understand how an Industrial Tribunal to whom a dispute has been referred for adjudication can refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly has to some other authority. While the Government may exercise their discretion in deciding whether to refer or not to refer a dispute for adjudication, the Tribunal to whom the dispute has been referred has no discretion to decide whether to adjudicate or not. Once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by the Industrial Tribunal. Resolution of the dispute cannot be avoided by the Tribunal on the ground that the workman had failed to pursue some other remedy."

Mr.Hathi, the learned Counsel, could not convincingly point out as to how the decision of the Apex Court is applicable to the facts of the present case. In the present case, by a specific provision in the statute, the jurisdiction of other forums is barred. This was not the position in the case before the Apex Court and, therefore, the said decision has no application to the facts of the present case.

12. Mr.Hathi, the learned Counsel, next relied upon a decision of the Apex Court in the matter of *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, . He invited the attention of the Court to the principles laid down by the Apex Court, which are to be applied while considering the question of "jurisdiction of the Civil Court" in the matters related to the "industrial dispute". The same are as under:

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter-VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be."

Mr.Hathi could not convince the Court that how the principles laid down by the Apex Court are applicable to the facts of the present case. In fact, the short question, involved in the present case, is as to whether the Labour Court or Industrial Tribunal will have any jurisdiction, when the jurisdiction of such forum is specifically barred by a provision of the Act. In view of that, the said decision

has no application to the facts of the present case.

13. Mr.Hathi, the learned Counsel, next relied upon a judgement of the Apex Court in the matter of Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another, , wherein the Apex Court was pleased to hold that, "the only question raised in these appeals was whether the jurisdiction of Civil Court was barred, as the relief sought for by the plaintiffs-appellants in their civil suits came within the ambit of "industrial dispute" u/s 2(k) of the Industrial Disputes Act, 1947". It was held that, "the jurisdiction of the Civil Court was impliedly barred in these cases, having regard to the relief sought for in the suits, in which workmen of the respondent-Municipal Corporation had challenged orders of dismissal/removal from service". It was further held that, "the appropriate forum for resolution of the dispute was the one constituted under the Industrial Disputes Act".

In the case before the Apex Court, the workmen of Ahmedabad Municipal Corporation challenged the orders of dismissal/removal from service, by filing a Civil Suit. The City Civil Court framed four issues, of which one was `whether the suit was bad for want of jurisdiction". On the said issue, the Court came to the conclusion that, `the Civil Court has no jurisdiction to entertain and try the suit", accordingly the suit was dismissed. Identical suits filed by different employees against the orders of termination were also dismissed by the City Civil Court. Individual appeals were preferred and all those appeals, six in number, were disposed of by a common judgement by the learned single Judge of this Court. The learned single Judge came to the conclusion that, `the Civil Court will have the jurisdiction to go into the question, as to whether the orders of termination of services were null and void, having been passed by an authority who had no competence to pass the same". The learned single Judge was further pleased to hold that, `it will have no jurisdiction to examine the alleged lacuna in the procedural part of disciplinary inquiry which is governed by Standing Orders", meaning thereby, that the jurisdiction of the Civil Court to enter into such question must be held to be impliedly barred. With this conclusion, the learned single Judge set aside the judgement of the City Civil Court and remitted the matters for adjudication on the point, as to whether the order of termination could be interfered with on the ground of want of competence on the part of the authority, who had passed the order. The plaintiff/workman assailed the same by filing Letters Patent Appeal contending, inter alia, that the City Civil Court will have no jurisdiction to go into the procedural irregularities because the provisions of Industrial Disputes Act are applicable. Ahmedabad Municipal Corporation filed cross-objection in the Letters Patent Appeal challenging that part of the judgment and decree of the learned single Judge whereunder the single Judge had quashed the decree of the City Civil Court and remanded the matter to City Civil Court. All these Letters Patent Appeals as well as the cross-objections were disposed of by a common judgment. The Division Bench of this Court was pleased to hold that the City Civil Court was right in holding that it has no jurisdiction to hear the suits instituted by the employees/plaintiffs and the

learned single Judge was not right in holding that the question of competence of the authority, who had passed order of dismissal or who had passed the order to initiate disciplinary proceedings could be decided by the Civil Court. According to the Division Bench even that question about the competence of the authority who had passed the order can be gone into by the Labour Court or Industrial Tribunal, and therefore, the Civil Court's jurisdiction to entertain a suit was held to have been impliedly barred. The Letters Patent Appeals were dismissed and cross-objections filed by the Corporation were allowed.

It is in this background that the Apex Court was pleased to hold that the jurisdiction of the Civil Court was impliedly barred and that the appropriate forum for resolution of the dispute was the one provided under the Industrial Disputes Act.

In the present case, an appropriate forum for resolution of the dispute is provided under the special statute by a specific provision, that is, Section-8 of the Act, and the jurisdiction of the other forums is barred by Subsection-3 of Section-7. In such circumstances, it will be the forum provided under the statute, which will have the jurisdiction to decide the dispute between the parties.

14. In view of the foregoing discussion, this Court is of the opinion that the forum, which is provided under the Act, will have jurisdiction to try and decide the dispute between the parties and not the Labour Court or Industrial Tribunal. The order dated 4th December, 2001, passed by the Deputy Labour Commissioner, Saurashtra-Kutch, Rajkot, Annexure-A to the petition, and the order dated 7th March, 2002 passed by the Industrial Tribunal, Rajkot in Reference (IT) No.10 of 2002 are, therefore, quashed and set aside. The Industrial Tribunal, Rajkot is directed to return the papers of Reference (IT) No.10 of 2002 to the respondent-Union within two weeks from the date of receipt of this order, so as to file the same before the Tribunal constituted under the Act for its adjudication. Rule is made absolute. No order as to costs.

15. As the main Special Civil Application No.5433 of 2002 is finally heard and disposed of, no orders are required to be passed in Civil Application No.1649 of 2003. The Civil Application stands disposed of accordingly.