IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6936 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE FERTILIZER & CHEMICALS LTD

Versus

GUJARAT MAZDOOR PANCHAYAT

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Appearance:

M/S TRIVEDI & GUPTA for Petitioners

MR NR SHAHANI for Respondent No. 1

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 31/08/2000

CAV JUDGEMENT

1. Rule. Mr. N.R. Shahani waives service of rule on behalf of respondents.

2. Present petition is directed against the order

passed by the Industrial Tribunal, Vadodara in Reference (I.T.) No. 103 of 1991 on 17-7-1999, the respondent No.1 Union filed Spl.C.A. No. 4429 of 1989 claiming various reliefs on behalf of some of the contract workers named at Annexure-A1 to the petition, totalling about 420 members; contending inter alia that the said named persons were working as contract labourers in the petitioner Company Gujarat State Fertilizer & Chemicals Limited (GSFC) and were members of the Union. This Court in terms of statement made by learned counsel representing the office of the President of the Union disposed of the petition by an order dated 18-12-1989. Thereafter, State Government has issued a Notification on 28-9-1990 prohibiting employment of contract labourers in certain jobs specified in that Notification. Having felt aggrieved by the said Notification dated 28-9-1990, GSFC filed a writ petition being Spl.C.A. No. 6119 of 1991 and the said petition is still pending for decision. The appropriate Government passed an order on 5-8-1991 regarding the dispute in the Industrial Tribunal, Vadodara, and thereafter it was registered as Reference (I.T.) 103 No. 1991. The Tribunal passed an ex parte order directing to maintain status quo in respect of service of the members of the union. The petitioner Company filed its reply in the said reference. A Civil Suit No. 467 of 1992 was also filed challenging the Notification of the Government dated 28-9-1990 prohibiting the contract labourer, wherein trial court granted interim relief of maintaining status quo. It was challenged by the union in a writ petition, wherein this Court passed an order on 7-8-1992 granting interim relief to the members of the union. In view of the conflicting decision of the Tribunal on one hand, and the Civil Court on the other hand, accompanied by continuance of proceedings in both the forums, the petitioner Company moved an application in April 1992 before the Industrial Tribunal, Vadodara for modification of the interim order. After hearing the parties the Tribunal passed an order on 12-8-1992. In the meantime the State Government by notification dated 28-7-1993 postponed the Notification dated 28-9-1990 and the effective date of said earlier notification came to be changed to 1-6-1994. In the meantime, in pursuance of the Notification dated 28-9-1990 the licencing authority cancelled the licence issued to the contractors, and therefore, the Company as well as the contractors preferred appeals before the Appellate Authority appointed under Contract Labour Act. The Appellate Authority passed an order dated 22-6-1993 suspending the order cancelling licence of the contractors. The union challenged the notification on behalf of the workmen on 28-7-1993 in Spl.C.A. No. 325

of 1991. This Court by order dated 10-8-1993 suspended the operation of the Notification dated 28-7-1993. In the meantime the Company as directed by the Tribunal furnished a list containing names of persons, who at the relevant time can be said to be engaged by contractors for jobs mentioned in the Notification dated 28-9-1990. In the reference deposition of one workman of the contractor working in the canteen was recorded by the Tribunal. In the meantime State Government referred some issues relating to contract labourers to the State Contract Labour Advisory Board, in respect of which the proceedings before the Board commenced some time in January 1995. Thereafter, in 1997 one more contract labourer working in the canteen was also examined by the Tribunal. In April 1997 the union filed another application for interim relief before the Tribunal and the petitioner Company filed its reply and produced relevant documents. The Tribunal passed an interim order on 18-7-1998 rejecting the prayer of the union. Being aggrieved by the order dated 18-7-1998 the union filed writ petition being Spl.C.A. No. 471 of 1999, which has been disposed of by this Court on 12-3-1999. Thereafter the respondent union filed an application before the Industrial Tribunal for regularisation of 171 contract workers who are claimed to be in the employment of the date of Notification dated 28-9-1990. The petitioner filed its reply and produced relevant records including the record of Spl.C.A. No. 5854 of 1998. On the application of the union, the Industrial Tribunal passed an interim order directing the petitioner Company to regularise 171 labourers, who are said to be in the job as on the date of Notification dated 28-9-1990 prohibiting the contract labour. Having felt aggrieved by the interim order, passed by the Industrial Tribunal on 17-7-1999 the petitioner filed the present petition for quashing the said order.

3. Mr. Dushyant Dave, learned counsel appearing on behalf of the petitioner submitted that the Industrial Tribunal has committed an error in directing the petitioner Company to regularise services of 171 workers in its interim order dated 17-7-1999. Learned counsel further submitted that the reference has been made by the Government to the Tribunal to examine and decide whether the contract workers working in the petitioner Company are entitled to be absorbed after the Notification of the Government dated 28-9-1990, prohibiting the contract labourers. Learned counsel further submitted that, by the interim order the Tribunal has granted the principal relief to the members of the respondent union and now nothing remains to be decided by the Tribunal after the

aforesaid interim order. Mr. Dave consequently submitted that, in a pending matter the Court or the Tribunal should not have passed any interim order by which the main relief is granted to a party. Learned counsel also submitted that, it is well settled law by the Apex Court that the principal relief cannot be granted by an interim order.

4. It is further submitted by learned counsel for the petitioner that, as per different orders passed by the Tribunal and the Courts, services of the members of the respondent Union have been protected by way of maintaining status quo and these members of the union are working under the control of the contractor, and therefore the Tribunal has committed an error in deciding the entire matter before taking evidence, both oral and documentary of both the parties. It is further submitted that, in pursuance of the interim order of status quo it was made clear, the workmen will not claim permanent status during pendency of the reference. In view of the above background, learned counsel submitted that the Industrial Tribunal should not have passed the interim order granting final relief to the members of the union. It is further submitted that the petitioner Company has challenged the Notification of the Government dated 28-9-1990 prohibiting the contract labour by filing writ petition before the High Court and the same is still pending. It is further submitted that the State Government by another Notification dated 28-7-1993 postponed the implementation of the Notification dated 28-9-1990 and the said Notification is also under challenge by the petitioner as well as by the contractors engaged by the petitioner Company. Learned counsel also submitted that, the decision of the Apex Court regarding automatic absorption of contract labourer in Air India Statutory Corporation case had been referred to a Larger Bench and having regard to the reference, the Tribunal should have waited for the decision of the Larger Bench before directing the petitioner Company to absorb the workmen. Learned counsel for the petitioner further submitted that, before passing the impugned interim order, the Tribunal should have taken the oral and documentary evidence of both the parties and thereafter, should have given its finding, but without taking any evidence, the Tribunal has jumped to the conclusion that the workmen engaged by the contractors are the workers of the petitioner Company after abolition of contract labour. Learned counsel consequently submitted that the decision of the Tribunal suffers from serious error and illegality, and therefore, liable to be quashed. It is further submitted that, without giving an opportunity to

the Company to prove their case the Tribunal has erroneously passed the interim order directing absorption of the workmen under the Company. The Union or its members did not produce any evidence before the Tribunal about nature of duty/job performed by them and the field in which they are working. Without considering all these aspects the Tribunal has erroneously passed the interim order. It is further submitted that the petitioner Company has its own rules & regulations for the purpose of selection, recruitment & employment of persons and the Company cannot appoint any person who do not fulfil the eligibility criteria. It is further submitted that, the interim order of the Tribunal regularising services of 171 workmen with retrospective effect has adversely affected the interest of the regularly recruited workmen working under the petitioner Company. It is also submitted that, without hearing the persons to be affected by the order, the Tribunal should not have granted the relief by way of interim order. It is further submitted that the Tribunal has misread the letter of the Corporation dated 12-8-1992 (Exhibit-21). It is submitted that by that letter the petitioner Company has only informed the Tribunal about the number of persons who will be affected if contract labour is abolished in pursuance of the Government Notification. It is seriously argued that, this letter Exhibit-21 dated 12-8-1992 is not an admission on the part of the petitioner Company that those persons are entitled to be absorbed. It is also argued that the aforesaid information was furnished to the Licencing Authority to renew licence of the contractors, so that the workmen working under the contractors may not be affected by abolition of the contract labour.

5. Mr. Shahani, learned counsel appearing on behalf of the respondent union submitted that, after filing of the present writ petition the petitioner sought for time for implementing interim order of the Tribunal, as the Managing Director of the Company was not available. Mr Shahani accordingly submitted that, since the petitioner has sought for time for implementing the impugned interim order of the tribunal, at this stage they cannot challenge order of the Tribunal and they should implement the order. I have gone through the order passed by this Court on 15-3-2000. On a plane reading of the aforesaid order, it does not appear that the petitioner Company has prayed for implementing the impugned order of the Tribunal, but the order has been passed on a simple request for adjournment on the ground of absence of the Managing Director of the Company. Therefore, I do not find any force in the submission of Mr. Shahani. It is

also submitted by Mr. Shahani that the Tribunal passed the interim order on 17-7-1999 in pursuance of the direction issued by this Court in Spl.C.A. No. 471 of 1999. It is submitted by Mr. Shahani that the order of this Court has been taken to Division Bench on LPA which has been dismissed on 1-2-2000. It has been submitted that the Tribunal has already complied with the order of this Court by directing the Company to regularise 171 workmen listed in Exhibit-21.

6. I have gone through the order passed by this Court on 12-3-1999 in Spl.C.A. No. 471 of 1999. It appears that, this Court on the point of automatic absorption of the workmen after abolition of the contract work held that:-

> "... the question will still survive as to whether the workmen who are engaged as contract labour are in fact engaged in those process/operations to which the Notification extends."

From the aforesaid observation made by this Court, it is evident that the workmen are required to prove that, they were engaged as contract labourers in the process/operations where the contract labour has been abolished by the Notification. It has further been held by this Court that on the date of Notification regarding abolition of contract labour, the employees can be absorbed if they were already on such employment on the date of Notification or from a later date, if they have been engaged subsequently on the terms & conditions of employment prevailing in the establishment of principal employer. Therefore, this Court made it clear that, for absorption the workmen must satisfy the terms & conditions of the employment as per rules & procedures of the Company. However, this Court passed the following order in the Spl.C.A. No. 491 of 1999 on 12-3-1999 as under:-

> " Keeping in view this situation, the ends of justice would be served if the Industrial Tribunal is directed to take up in the first instance trial of the issue relating to the persons employed in prohibited process and operation and giving a finding thereon so that, to that extent, those persons can get the benefit to that finding. The evidence to that effect may also be led. "

7. Mr. Shahani, learned counsel appearing on behalf

of the respondents submitted that, according to the aforesaid order of this Court, the Tribunal had nothing to do except passing order for absorption of the workmen under the petitioner Company. I cannot accept the argument of Mr.Shahani for the reason that, this Court has made it clear that the workmen must satisfy the terms & conditions of employment of the Company. Consequently this Court directed the Tribunal to take up at the first instance trial of the issue relating to persons employed in prohibitted process and operations and coming to a finding thereof, so that the persons working there would get the benefit early. However the Court made it clear that, evidence in this respect may be adduced by the parties before coming to any finding. Now, it is to be examined whether any issue was framed in this regard, and finding had been given by the tribunal, after considering the evidence on record ? The answer is obviously "NO". Mr. Shahani, learned counsel for the respondents tried to argue that the whole controversy has been settled by the Apex Court in Air India Statutory Corporation Case and therefore, no evidence is required to be led and he further argued that the letter of the Corporation, Annexure-21, is conclusive proof regarding the persons working in the prohibited category, and therefore the Tribunal did not commit any mistake in passing the interim order directing absorption of the workmen under the Corporation. I, cannot accept this argument. It is true that the Apex Court has decided in Air India Statutory Corporation case that the workmen working in the prohibitory category are to be absorbed directly under the principal employer. But before doing so the employees must satisfy the terms & conditions of service of the Company and evidence have to be led in this regard. The Government Notification dated 28-9-1990 have been modified by the Government by its Notification dated 28-7-1993 and the contract labour has been abolished with effect from 1-6-1994; and both the Notifications are under challenge before this Court in writ petitions filed by the rival parties and these cases are still pending. Having regard to all the facts & circumstances of the case, I am clearly of the view that the Tribunal has committed an illegality and acted without jurisdiction in passing the impugned interim order , basing his decision on Air India Statutory Corporation case, without taking any evidence regarding the eligibility of the workmen, or the area in which these workmen are working. In this connection it is also necessary to refer to the terms of reference made by the Government to the Industrial Court. The relevant para of the reference runs thus :-

" As per the writ petition No. 4429/89 the

contract shown, the employees be considered the employees of the Main Owner and absorb them while giving the benefit of seniority in retrospect or not ?

According to aforesaid terms of reference, it is the duty of the Industrial Tribunal to take evidence both oral and documentary and give a finding to that effect. But nothing has been done before passing the impugned order. It appears, on the basis of the letter at Exhibit-21, the Tribunal jumped to the conclusion that the 171 workmen as mentioned in the said letter are working under the petitioner Company, taking the said letter as an admission on the part of the petitioner Company. It is the case of the petitioner that, aforesaid information was given to the Tribunal, by which they have informed to the Licencing Authority for grant of licence to the contractors. I have gone through copy of the letter dated 12-8-1992 (Exhibit-21). On a plain reading of the said letter it cannot be treated as an admission on the part of the Company regarding absorption of 171 employes. A copy of Exhibit-21 has been produced by the petitioner and it is kept in the case record. After going through the papers and documents produced on the case record, I am clearly of the view that the Industrial Tribunal was under an obligation to decide the issue regarding absorption of the workmen, after taking oral and documentary evidence. But the finding of the Tribunal in the interim order for absorption of the workmen is without any evidence. The principal relief claimed by the respondent union is for absorption. The Tribunal before deciding the issue on merit passed the interim order regarding absorption of the workmen under the petitioner Company, and thus, the final relief has been granted to the respondent Union without deciding the case on merit. Therefore, I am of the view that, the Tribunal should not have passed the impugned order of absorption granting final relief at the trial stage. This is another illegality committed by the Tribunal. Having regard to the submission of the learned counsel for the parties, I am of the view that the Tribunal has acted illegally and without jurisdiction in granting final relief by its impugned interim order and therefore, the order should be quashed. Accordingly the interim order of the Industrial Tribunal passed in Reference (I.T.) No. 103 of 1991 on 17-7-1999 is quashed. The Tribunal is directed to decide the dispute between the parties as early as possible. To protect the interest of the workmen , I do not find it necessary to pass any interim order, as the interim order of status quo regarding services of the workmen have already been

protected. Accordingly this petition is allowed. Rule made absolute. However, I make no order as to costs.

Dt: 31-08-2000

( P.K. Sarkar, J )

/vgn.