

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5318 of 2001

WITH

SPECIAL CIVIL APPLICATION No 5319 of 2001

WITH

SPECIAL CIVIL APPLICATION No 9213 of 2001

WITH

CIVIL APPLICATION No 215 of 2002.

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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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 KAMGAR PANCHAYAT

Versus

KHIRA STEEL WORKS (PVT.) LTD.

Appearance:

1. Special Civil Application Nos. 5318 & 5319 of 2001
and Civil Application No. 215 of 2002
MR GM JOSHI for Petitioner
MR KM PATEL for Respondent
2. Special Civil Application No. 9213 of 2001
MR KM PATEL for Petitioner
MR GM JOSHI for Respondent

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 10/05/2002

CAV JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. This group of petitions under Articles 226 and 227 of the Constitution of India is arising from common award dated 7th April, 2001 passed by the Industrial Tribunal, Ahmedabad (for short 'the Tribunal') in Reference (IT) Nos. 22 and 23 of 1995. Special Civil Application No. 5318 of 2001 is filed against the award passed in Reference (IT) No. 23 of 1995, whereas Special Civil Application No. 5319 of 2001 is filed against award passed in Reference (IT) No. 22 of 1995. Both these petitions have been filed by employees' union known as Gujarat Kamdar Panchayat. Special Civil Application No. 9213 of 2001 is filed by the company - Khira Steel Works Pvt. Ltd. challenging the award passed in both the aforesaid References.

1.1. Since all the three petitions arise from the same award and involve common issues, they are heard together and now they are being disposed of by common judgment. For the purpose of this judgment the parties i.e. petitioner of Special Civil Application Nos. 5318 and 5319 of 2001 and respondent of Special Civil Application No. 9213 of 2001 will be referred to as 'the union', whereas respondent of Special Civil Application Nos. 5318 and 5319 of 2001 and petitioner of Special Civil Application No. 9213 of 2001 will be referred to as 'the Company'.

2. According to the Union, it is a trade union duly registered under the Trade Union Act, 1926 having its registration No. G-4784 and it represents all the workers of the Company. The Union has filed Special Civil Application No. 5318 of 2001 for challenging the award in so far it related to administrative office staff employed in the manufacturing unit of the Company and it has filed Special Civil Application No. 5319 of 2001 in respect of the award relating to pay-scale concerning workers of the manufacturing unit of the Company.

2.1. Initially the proceedings before the Tribunal were filed by another union, namely, Gujarat Mazdoor Panchayat. However, during pendency of both the References, all the remaining workers decided to join the proceedings and hence petitioner Union was allowed to be a party in the said proceedings by the Tribunal vide order dated 26th April, 1996. According to the union, several demands had been raised in respect of the workers as well as the members of the staff working in the factory of the Company, for which negotiations with the Company went on for some time. The matter was thereafter referred to the Conciliation Officer, but the conciliation efforts failed and the Assistant Labour Commissioner by passing two orders dated 17th January, 1995 made a reference under section 10(2) of the Industrial Disputes Act, 1947 (for short 'the Act') referring the dispute to the Tribunal for adjudication. Before the Tribunal the Union filed statement of claim wherein inall 16 demands were made. These demands related to (1) basic salary and classification, (2) to place the employees in appropriate step or grade, (3) service wages, (4) dearness allowance, (5) allowance like house rent, etc., (6) conveyance allowance, (7) medical allowance, (8) leave, reserved leave and encashment of leave, (9) uniform, (10) provident fund, (11) gratuity, (12) loan, (13) vehicle allowance, (14) trade union facilities, (15) allowance for meeting the expenses of funeral, etc. upon demise of the employee and (16) the implementation of the aforesaid demands. According to the Union, the employees were receiving these benefits from the Company for the last 33 months in light of a settlement earlier arrived at. However, considering the substantial increase in the cost of commodities required for maintenance of day-to-day life, the said scales were required to be revised. The Unions started negotiations with the Company, which were going on for some time, but the same did not materialise. Hence, the matter was referred to the Conciliation Officer. But there also no success was achieved and, therefore, the dispute was required to be referred to the Tribunal. According to the Union, considering the prevailing circumstances their demands were just, proper and legal and they were required to be allowed.

2.2. The Company resisted the claims of the Union by filing written statement. According to the Company, it was a small scale industrial unit engaged in the manufacturing of steel furniture and was established in the year 1969. Its case is that it was facing financial difficulties and it had been incurring losses since last five years. Despite that, it was paying wages to the

workers far in excess to the minimum wages prescribed under the statute. It has further stated that the Union had entered into an agreement with the Company and that agreement was signed on 20th March, 1991 under which pay-scales and dearness allowance and other allowances of the workmen were fixed. The Tribunal in Reference (IT) No. 325 of 1990 had made award in terms of the aforesaid settlement. According to the Company, the said award adequately took care of the interest of the workmen and their present demand for revision of wages, etc. was not justified. It has submitted that while considering the revision of pay, instance with regard to revision of pay and facilities and other allowances, company's financial condition is also required to be kept in view. Since the Company was not in a financial sound condition, there was no justification in imposing additional financial burden on it as such burden would ultimately kill the industry.

2.3. During the pendency of the proceedings, the Union preferred application at Exh. 7 for obtaining interim monetary relief. The Tribunal vide its order dated 6th March, 1998 partly allowed the application at Exh. 7 and directed the Company to pay Rs.225/- per month towards the increase of salary to the workers, staff and sub-staff with effect from 1st May, 1996 in two installments, within four weeks from the date of receipt of the order and that it should continue to pay the same from 1st March, 1998 onwards. This interim increase was granted against the demand of Rs.700/- per month made by the Union in interim application.

3. At the hearing of the aforesaid References, the Union examined Shankarbhai Bhulabhai Patel at Exh. 14 and Pramodkumar Pranjivan Vyas. The Company examined its Director Ashokbhai Ravindrabhai Patel. On conclusion of recording of the evidence, the Union also submitted its written arguments.

4. The Tribunal delivered its judgment and award on 7th April, 2001 at Exh. 43. The Tribunal partly allowed both the References and directed that whatever demands which were not accepted by the Tribunal were required to be continued on the basis of the old settlement. So far basic salary and classification were concerned, it directed that the parties should act in accordance with the earlier award passed in Reference (IT) No. 320 of 1990. It also directed that the Company should pay house rent allowance at the rate of Rs.100/- p.m., conveyance allowance at the rate of Rs.100/- p.m., education allowance at the rate of Rs.150/- p.m. and medical allowance of Rs.1200/- per year to the workers and

sub-staff of the Company. L.T.C. was required to be paid in accordance with the practice then prevailing in the Company. With regard to the leave, leave encashment, etc. the Tribunal directed that it should be in accordance with the practice already in existence in the Company. It also directed the Company to pay to the workers annually Rs.220/- in place of Rs.125/- for jersey and Rs.200/- in place of Rs.100/- for purchase of shoes. It also directed that the provident fund, gratuity, milk allowance, trade union facilities and also the allowance to be paid after the demise of the employee for meeting the immediate expenses were to be continued in accordance with the earlier settlement. The Tribunal further directed that so far demand no. 1 was concerned, it was to be effective from 1st October, 1993 and award pertaining to other demands was to be effective from 1st May, 1996. It further directed the Company to pay the amount of difference within 30 days from the date of publication of the award in Government Gazette. This was subject to the adjustment of the amount received by the employees, staff and sub-staff of the Company by virtue of interim relief granted vide order passed on application Exh. 7.

5. Union and the Company having been aggrieved by the aforesaid award passed by the Tribunal, have approached this Court by filing aforesaid respective petitions.

6. Mr. G.M. Joshi, the learned counsel appearing for the petitioner Union has submitted that the award passed by the Tribunal is not very clear and in particular in respect of demands made at serial nos. 1 to 5. He has further submitted that by directing the parties to act in accordance with previous settlement in the matter of demands which were not accepted by the Tribunal, the Tribunal has not properly appreciated circumstances requiring acceptance of the said demands and to bring about necessary upward changes. He has further submitted that since scales of wages and different allowances which were decided in accordance with the earlier settlement were found to be inadequate, the Union had raised the aforesaid demands. However, the Tribunal has, in respect of most of the demands, directed parties to go by the terms of the earlier awards. Thus, it has resulted into miscarriage of justice.

6.1. As against that, Mr. K.M. Patel, the learned counsel for the Company has submitted that while passing the award the Tribunal has completely ignored the unsound financial condition of the Company. According to him,

the Company's financial condition existing at the time of deciding the References was very much relevant factor which had to have considerable weightage. However, the Tribunal has not given due weightage to this factor and has imposed additional financial burden on the Company which has almost become unbearable. He has further submitted that the Tribunal has erred in taking into consideration the award passed in Reference (IT) No. 103 of 1996 between Calama Pumps Pvt. Ltd. and its workmen and has wrongly placed reliance on it, since, there cannot be any comparison between the two industrial units, namely, the Company and Calama Pumps Pvt. Ltd. He has lastly submitted that the award passed by the Tribunal is erroneous and it deserves to be quashed and set aside.

7. We have gone through the entire record of the petition, which also included all the relevant documents produced before the Tribunal by both the parties. We have also peacefully considered rival contentions. The Union and the Company appear to be regularly keeping entangle in the matters of salaries, allowances and all benefits which are normally being afforded to the employees by the employer. It appears that there was also settlement wherein every issue relevant to aforesaid matters had been threshed out in detail and it had resulted into passing of award in Reference (IT) No. 320 of 1990. From the judgment of the Tribunal it also appears that while deciding the present two References, it has given careful consideration to the terms of settlement which had assumed the form of award in Reference (IT) No. 320 of 1990. Looking to the facts and circumstances of the case, we do not find any error having been committed by the Tribunal, when it did not accept several demands raised by the Union and directed parties to act in accordance with the old settlement. This also does not result into any financial loss to the workmen and staff members. Wherever the Tribunal found that the amount was inadequate in view of rise in price index, it has made necessary increase. It can be clearly seen from the award that in the matters of house rent allowance, conveyance allowance, education allowance and medical allowance, etc. substantial increase has been made. Not only that but the amount has also been increased for purchase of jersey and shoes. The award of the Tribunal clearly reflects that it has taken into consideration the relevant following factors, which are the determining factors while adjudicating upon the demands made in the reference. These factors have been laid down by the learned Single Judge of this Court (J.N. Bhatt, J.), who is also party to this Bench, in

the case of C.U. Shah Arogya Bharati vs. Saurashtra Mazdoor Sangh reported in 1998 (1) Gujarat Law Reporter page 374 -

- (1) Condition of wage-scales prevalent in the company.
- (2) Condition of the wage level prevalent in the industry in the region.
- (3) The wage packet as a whole of each earner in the company with all incidental amenities and facilities.
- (4) The position of the company viewed in relation to other comparable concerns in the industry and the region.
- (5) Preemptive necessity for full neutralisation of the cost of living at the rock bottom of wage-scale if at or just above the subsistence level.
- (6) The rate of neutralisation which is being given to the employees in each salary slab.
- (7) Avoidance of huge distortion of wage differentials taking into reckoning all persons employed in the concern.
- (8) Degree of sacrifice necessary even on the part of workers in general and public interest.
- (9) The compulsive necessity of security social and distributive justice to the workmen.
- (10) The capacity of the master to bear the additional burden.
- (11) The effect of inflationary trend on the purchasing power of rupee.
- (12) The interest of national economy.
- (13) The impact and ramification of other industries and society as a whole.
- (14) The state of the consumer price index at the time of decision.

The Tribunal has taken these factors into consideration to arrive at the conclusions stated by it in the award. The award, therefore, cannot be termed as erroneous, unjust, improper or detrimental to the interest of workers, staff members and sub-staff members working in the manufacturing unit of the company and, therefore, the petitions filed by the Union on their behalf do not seem to have any merit.

8. So far the Company is concerned, its financial

condition has been taken into consideration by the Tribunal, it being very relevant factor. Precisely with that reason the Tribunal tried to see that the Company is not saddled with unnecessary additional financial burden. While keeping the interest of the Union in mind the Tribunal has not at all ignored the financial crunch experienced by the Company for the last several years. In this view of the matter, it cannot be said that the award of the Tribunal is erroneous in as much as it has not taken Company's financial position into account while adjudicating upon the demands made by the Union. It can be said without doubt that in the earlier settlement the Company had already committed itself to carry out certain obligations and in accordance with that it had been fulfilling those obligations qua the employees. The Tribunal has taken care to see that no additional burden is thrust upon the Company by accepting the demands raised by Union in toto. The Tribunal has no-doubt referred to the award made in Calama Pumps Pvt. Ltd., but it has not led itself to be governed by the said award alone. Whatever the factors which are found to be relevant from that award for the purpose of determining the present dispute, are the only factors taken into consideration. It, therefore, by no stretch imagination can be said that the Tribunal has misplaced its reliance on the said award. In view of this, we do not find that even qua the Company the award passed by the Tribunal is erroneous.

9. It may be stated here that the nature of the dispute involved in the present References more or less revolve round factual aspect. The Tribunal has taken adequate care to take into consideration all the relevant facts and circumstances and has scrutinised them minutely to enable it to render the award. In our opinion, the Tribunal has not committed any mistake in reaching its conclusions which are stated above. In the matters involving prayer for issuance of writ of certiorari under Article 226 of the Constitution of India and while exercising our supervisory jurisdiction under Article 227 of the Constitution of India, we are of the opinion that this is not a fit case to exercise our discretionary constitutional powers, more particularly when we find that the award of the Tribunal is just, proper and legal. The result is that all the three aforesaid petitions are liable to be dismissed and hence they are ordered to be dismissed. Rule discharged with no order as to costs.

No order on Civil Application.

[J.N. BHATT, J.]

[AKSHAY H. MEHTA, J.]

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