IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9698 of 2012
with
SPECIAL CIVIL APPLICATION No. 9699 of 2012

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes

2 To be referred to the Reporter or not ? Yes

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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TATA CHEMICALS LIMITED - Petitioner(s)
Versus
TATA CHEMICALS MAZDOOR SANGH (BMS) & 1 - Respondent(s)

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Appearance :
MR KM PATEL, Learned Senior Advocate with MR VARUN K PATEL for Petitioner
MR TR MISHRA for Respondent No.1
NOTICE UNSERVED for Respondent No.2

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/09/2012

CAV COMMON JUDGMENT

1. Rule. Mr. T.R.Mishra, learned advocate waives service of notice of Rule for respondent No.1, in each petition.

2. These petitions have been filed under Articles 226 and 227 of the Constitution of India, praying for the issuance of a writ of certiorari or any other writ or direction, quashing and setting aside the impugned order dated 29-6-2012 passed by the Industrial Court, Rajkot, below Exhs.66 and 34 in Reference (IT) No.25 of 2011, as also in Reference (IT) No.59 of 2011.

3. As identical issues of fact and law arise in both these petitions, with the consent of learned counsel for the respective parties, the petitions are being decided finally by a common order. For the sake of convenience, the facts as obtaining in Special Civil Application No.9698 of 2012 shall be referred to, which are as follows:

4. The brief facts of the case are that the petitioner Company is engaged in manufacturing Soda Ash, Salt and other chemicals in its Factory which

is situated at Mithapur. It is the case of the petitioner that on account of automation undertaken in the Packing Department from July 2009,it was no longer possible for the petitioner to provide employment to temporary workmen. The petitioner had, therefore, floated a Voluntary Retirement Scheme (“VRS” for short) for such workmen, on 15-2-2011. According to the petitioner, most of the workmen opted for VRS except about 32 workmen. The workmen filed a Reference being Reference (IT) No.25 of 2011 on 12-1-2011 for regularisation of their services, which is still pending. It is mentioned in the petition that upon the application for interim relief filed by the workmen, the Industrial Tribunal (“Tribunal” for short) had passed an order dated 24-11-201 directing the petitioner not to terminate the services of the workmen concerned in the Reference, and those who did not opt for VRS. The petitioner challenged the order of the Tribunal by filing a petition in the High Court being Special Civil Application No.2212 of 2012, which was disposed of by order dated 3-5-2012, and no interference was made with the order passed by the Tribunal, which was directed to decide the Reference expeditiously and on

day-to-day basis. After the disposal of the said petition, the respondent Union filed an application at Exh.66 for production of documents. The petitioner filed a reply opposing the application on the ground that the documents sought were irrelevant and the entire exercise was in the nature of a roving and fishing inquiry. By a common order dated 29-6-2012 the Tribunal has allowed the application by directing the petitioner to produce the documents as mentioned in the impugned order. Aggrieved by the same, the petitioner has approached this Court by way of the present petition.

5. Mr.K.M. Patel, learned Senior Advocate with Mr. Varun K. Patel, learned counsel for the petitioner has submitted that the documents sought by the respondent Union are not relevant for the decision of the dispute referred for adjudication. Most of the documents are voluminous and it would take a great deal of time to produce them. It is further submitted that some of the documents relate to the Contractor and are not in the possession of the petitioner. In any case, the respondent Union has sought the documents with the sole purpose of making a roving and fishing inquiry,

which aspect has not been considered by the Tribunal in proper perspective.

6. Mr. T.R. Mishra, learned advocate for the respondent Union, has raised a preliminary objection that the petition is directed against an interlocutory order of the Tribunal and as per the principles of law laid down by the Supreme Court in **Dena Bank Vs. D.V. Kundadia & another reported in 2011 III CLR 415,** only a final Award can be challenged by a Writ Petition and not an ad-interim order.

6.1 Reliance has also been placed on behalf of the respondent Union on a judgment of this Court in **Asrafkhan Alikhan Pathan Vs. Divisional Controller, reported in 2009 I CLR 758** wherein this Court has held, while rejecting the petition under Article 226 of the Constitution of India against an interim order, that the petitioner therein would be at liberty to raise all disputes permissible under law against the final order.

6.2 Further, learned advocate for the respondent Union has relied upon an unreported judgment of this

Court in Special Civil Application No.17966 of 2003 dated 09.07.2012, wherein this Court has declined to interfere in a petition wherein a challenge was made to an interim order, by observing that in the light of the judgment of the Supreme Court in **Dena Bank Vs. D.V. Kundadia & another (Supra),** parties would be at liberty to make their respective contentions before the Labour Court.

6.3 On merits, it has been contended on behalf of the respondent Union that the documents sought by the respondent Union vide Exh.66 are relevant to the decision of the pending Reference in view of the aspect that temporary workmen have prayed for regularisation of their services in the context that the petitioner has floated a Scheme for voluntary retirement only in order to compel them to accept it and reduce the strength of the workers. It is submitted that the petitioner is slowly deploying contract workers and terminating the services of the employees with a view to achieving entire automation of its Packing Department. It is contended that the VRS is forcefully thrust upon the workmen with an ulterior motive. The documents sought to be produced

by the respondent Union are of utmost necessity to prove the case of the respondent workmen in this regard. It is contended that the main intention of the petitioner Company is to terminate the services of permanent employees/temporary employees and switch over the entire production by deploying contract labourers and more than 3000 persons are working as contract labourers in the Company even though the Government of Gujarat has issued a Notification prohibiting such deployment. It is further contended that as per the information of the respondent Union, no recruitment has taken place during the last five years though a large number of employees have retired or left and the labour force has been considerably reduced; therefore, the documents that are sought to be produced are essential for proving the case of the respondent Union in the Reference.

6.4 It is submitted that no fishing or roving inquiry has been made and the documents have relevance to the main prayer of regularisation of the services of the workmen made in the Reference.

6.5 It is further submitted by learned advocate for

the respondent Union that the petition has been filed in order to delay the proceedings of the References in some way or the other, in spite of the fact that the petitioner is aware that the High Court has directed the Tribunal to decide the References expeditiously, and on day to day basis.

7. Replying to the preliminary objection raised on behalf of the respondent Union, it is submitted by learned Senior Advocate for the petitioner that it is the ratio of a judgment that has to be culled out and no word or sentence can be picked up at random. The whole judgment has to be read, and in the case of **Dena Bank Vs. D.V. Kundadia & another (supra)** the facts do not emerge. It is further submitted that in such a case, the pleadings would have to be gone into. It is further contended that the judgment of the Supreme Court has to be viewed in the context of the order that was impugned before it and it cannot be taken to mean that the Court should not interfere with any interim order, even though it is without jurisdiction and in excess of jurisdiction, which is required to be corrected at the appropriate stage by issuance of a writ of certiorari. It is further submitted that the

petitioner is also invoking the supervisory jurisdiction of this Court, therefore, the legality of the interlocutory order ought to be looked into.

8. It is further contended that Article 226 of the Constitution of India, in itself, does not say that no Writ can be issued against an interim order. When a Court exercises Writ jurisdiction its powers are plenary, though there are certain self-imposed restrictions. It cannot, therefore, be stated as a general principle of universal application that no writ petition would lie against an interlocutory order, even if it is grossly erroneous or without jurisdiction.

9. In support of the above submission, learned Senior Advocate for the petitioner has placed reliance upon a judgment in the case of **Islamic Academy of Education and another Vs. State of Karnataka and others, reported in AIR 2003 SC 3724,** more particularly, paragraphs 140 to 144 of the said judgment wherein certain judgments have been quoted on the point of interpretation of judgments of the Courts in relation to Article 141 of the Constitution. It is

submitted by learned Senior Counsel that observations made in judgments by the Supreme Court should not be read as a statutory enactment and it is the ratio of a decision that would be binding.

10. Referring to the case of **U.P. State Brassware Corporation Ltd. and another Versus Uday Narain Pandey, reported in (2006) 1 SCC 479,** more particularly, paragraph 36 thereof, it is submitted that if a judgment is rendered on the fact situation obtaining therein it should not be taken as a declaration of law within the meaning of Article 141 of the Constitution.

11. Referring to the case of **Hari Vishnu Kamath Vs. Ahmad Ishaque and others, reported on AIR 1955 SC 233,** particularly paragraph 6 thereof, it is submitted on behalf of the petitioner that Article 226 of the Constitution of India confers power on the High Court to issue an appropriate Writ to any person or authority within its territorial jurisdiction and this power is absolute and unqualified. If the Courts are to recognise or admit any limitation on this power, it must be founded on some provision in the Constitution

itself. That there is nothing in the Constitution that would limit the power of issuing a writ of certiorari against an interlocutory order.

12. Reliance has been placed upon **The Cooper Engineering Ltd. Vs. P.P. Mundhe, reported in AIR 1975 SC 1900,** wherein it is stated by the Supreme Court in paragraph 22 that when the matter is in controversy between the parties that question must be decided as a preliminary issue and on that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it would not be permissible thereafter, to raise the issue and there will be no justification to stall the final adjudication by the Labour Court by questioning its decision with regard to the preliminary issue, if the matter can be agitated even after the final award.

13. Conversely, the judgment in **The Cooper Engineering Ltd. Vs. P.P. Mundhe (Supra),** has also been relied upon by the learned advocate for the respondent Union by submitting that the issue of

production of documents can be agitated by the petitioner after the final Award is passed.

14. An alternative submission made by learned Senior Advocate on behalf of the petitioner is that in this case there is a direction to produce voluminous record which is not at all relevant. The petitioner has challenged the interlocutory order of the Tribunal at this stage otherwise he would be obliged to comply with the same and produce the record.

15. On merits, it is contended that insofar as the documents at Sr.No.3 in the impugned order are concerned, the said Forms are in the custody of the Contractor. Item No.4 is partly in the possession of the petitioner and partly with the Contractor. Regarding the other documents directed to be produced, though they are in the possession of the petitioner, the records are voluminous and relate back to several years. Moreover, they are not at all relevant in deciding the controversy at issue.

16. On the above grounds, it is submitted on behalf of the petitioner that the impugned order of the

Tribunal, being bad in law and illegal, may be quashed and set aside.

17. I have heard learned counsel for the respective parties, perused the averments made in the petition and other documents on record. It is not disputed that the order impugned in the petition is an interlocutory order made by the Tribunal. It has been submitted by learned Senior Advocate for the petitioner that the powers to issue a writ of certiorari under Article 226 of the Constitution of India and under the supervisory power of the High Court under Article 227 of the Constitution are plenary in nature, therefore, they cannot be circumscribed by saying that the writ jurisdiction of the Court cannot be exercised against interim orders.

18. In order to examine this contention we may first advert to the case of **Dena Bank Vs. D.V. Kundadia & another (Supra).** The Supreme Court was hearing a Special Leave Petition filed against a judgment of the Bombay High Court wherein the Division Bench had upheld the order of the learned Single Judge dismissing the writ petition filed by the petitioner,

challenging an interim order of the Central Government Industrial Tribunal. In the above context, the Supreme Court has held as below:

> "It is well settled by this Court that no writ should be entertained against an interim order of the Labour Court or the Industrial Tribunal. It is only when a final award is given,then a party should be allowed to challenge it if he is aggrieved.
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> In the present case, the order of the Tribunal dated 28.5.1997 was only an interim order and it did not decide the reference finally. Therefore, the writ petition was rightly dismissed. Hence, we are not inclined to interfere in this matter.
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> The Special Leave Petition is dismissed accordingly."

19. It has been submitted by learned Senior Advocate for the petitioner that the ratio of a judgment is a binding precedent under Article 141 of the Constitution and not any observation picked up randomly. In this context, reliance has been placed upon **Islamic Academy of Education and another Vs. State of Karnataka and others (Supra)** and **U.P. State Brassware Corporation Ltd. and another Vs. Uday Narain Pandey (Supra).**

20. The thrust of the submissions made by the learned Senior Advocate for the petitioner is that in **Dena Bank Vs. D.V. Kundadia & another (Supra)** the fact situation has not been stated. It is further elaborated that in the said judgment, the Supreme Court has said that it is well settled that no writ should be entertained by the Court against an interim order, which means that it was qua the nature of the order that was impugned before it and this judgment should be read in the context of the judgment in **The Cooper Engineering Ltd. Vs. P.P. Mundhe (Supra).** It has also been submitted on behalf of the petitioner by referring to **Islamic Academy of Education and another Vs. State of Karnataka and others (Supra)** that only the ratio decidendi of a judgment would be a binding precedent.

21. Though not clearly stated, it is obliquely being argued on behalf of the petitioner that this Court may not follow the law laid down in **Dena Bank Vs. D.V. Kundadia & another (Supra)** because the facts of the case are not stated and the judgment should be read only in the context of the order that was impugned in

that case. Such a submission made by learned Senior Advocate for the petitioner deserves to be rejected outright, and is accordingly rejected. The facts of the case in **Dena Bank Vs. D.V. Kundadia & another (Supra)** are not relevant but the declaration of law made in the said judgment, certainly is. The Supreme Court has held in clear and unequivocal terms that, it is well settled by the Apex Court that no writ should be entertained against an interim order of the Industrial Tribunal and it is only when a final award is given that a party should be allowed to challenge it, if he is aggrieved. This is, in my view, the ratio decidendi of the said judgment and is a binding precedent. In this view of the matter, there is no requirement of delving deeper into other judgments cited on behalf of the petitioner.

22. Submissions have been advanced on behalf of the petitioner to the effect that there is nothing in the Constitution, more especially in Article 226, restraining the High Court from exercising its writ jurisdiction by issuing a writ of certiorari, or in the exercise of supervisory jurisdiction under Article 227 of the Constitution. This submission is an over-

simplistic one and does not take into consideration judicial pronouncements vide which the Supreme Court has, in a catena of judgments, interpreted the provisions of the Constitution. It is now well settled law that though the power of the High Court under Article 226 is plenary in nature and cannot be circumscribed, certain self-imposed fetters are imposed by the Courts in the exercise of such power. In this regard, the Supreme Court has in **Dena Bank Vs. D.V. Kundadia & another (Supra)** laid down a principle of law regarding entertaining a petition against an interim order of the Labour Court or Industrial Tribunal. No judgment of the Supreme Court has been shown to this Court wherein the judgment in **Dena Bank Vs. D.V. Kundadia & another (Supra)** has been explained or the principles of law laid down therein been modified, or watered down.

23. It is no doubt true that where there is an excess of jurisdiction or a total lack of it, or where the order is ex-facie illegal and perverse the Court would exercise powers under Article 226 and may, in a fit case, issue a writ of certiorari. In the present case, a perusal of the impugned order of the Tribunal

does not reveal that the same is a result of lack of jurisdiction or excess thereof. Nor can it, prima facie, be said that it is an illegal or perverse order. It was not the case of the petitioner before the Tribunal, and is also not the case before this Court, that the Tribunal has passed the impugned order in excess of jurisdiction or lack of it. In this view of the matter, the submission advanced on behalf of the petitioner that the Court can issue a writ of certiorari when the order is without jurisdiction or passed in excess of jurisdiction, is irrelevant.

24. It has been submitted on behalf of the petitioner that some of the documents that the petitioner is directed to produce are not in its possession. No such ground has been taken in the petition and neither was such a plea been taken in the reply filed by the petitioner to the Application at Exh.66 before the Tribunal, which is on record as Annexure “C” to the petition. It appears that this ground is now taken by the petitioner before this Court, by way of second thought.

25. Insofar as the relevance of the documents sought

to be produced is concerned, the Labour Court would be the best Judge to consider this issue, as it is seized of the pending References, of which this litigation is an offshoot. The case of the respondent Union appears to be that as a result of the process of automation introduced in the Factory of the petitioner, the workers are slowly being eased out. Moreover, to facilitate this process VRS has been introduced, in order to lure the workmen so that they leave employment. It also appears to be the case of the Union before the Tribunal that the petitioner is not recruiting any new workmen for the last five years, in spite of the fact that a large number of workmen have retired. The record sought to be produced is stated to be necessary in order to prove this aspect in the pending References. The respondent Union is demanding regularisation of the services of temporary workmen stating that, though work is available, the workmen are being eased out and contractual workmen are being deployed in their place, with the sole intention of depriving them of their entitlement to regularisation.

26. As the References are still pending adjudication,

no opinion can be expressed on merits. Suffice to say that the Tribunal has directed the petitioner to produce certain documents after considering the lengthy rival submissions regarding the relevance of the documents. The contentions now being raised by the petitioner before this Court regarding relevance of the documents and the exercise being a roving and fishing inquiry have already been raised before the Tribunal, which has examined them and found them to be unworthy. A direction to the petitioner to produce the documents does not mean that the Tribunal has accepted them. The evidentiary value of the documents would be examined by the Tribunal at the appropriate stage in the References. Moreover, the petitioner is not estopped from raising all contentions in this regard at that point of time. One of the reasons for opposing the production of documents advanced by the petitioner is that they are voluminous and pertain to several years and their production would consume a great deal of time. Merely because the documents are voluminous and may relate to several years does not, by itself, mean that they may not be relevant for the decision of the pending References. Besides, no prejudice would be caused to the petitioner if the documents are

produced. It was not the case of the petitioner before the Tribunal and nor has it been stated before this Court, that prejudice would be caused to the petitioner by production of the said documents.

27. Viewed from all angles, the petition does not merit acceptance. The Court is not inclined to entertain the petition against an interlocutory order, especially as it does not find that the Tribunal has exceeded its jurisdiction or acted in excess of jurisdiction vested in it, while passing the impugned order. It is open to the petitioner to raise all contentions that have been raised in the petition at the time of final hearing of the References.

28. The petitions are, therefore, dismissed. Rule is discharged, in each petition.

It may be noted that while passing this order, the Court has not entered into the merits of the case. No observation made by this Court may be taken as an expression of opinion on merits.

(Smt.Abhilasha Kumari,J)

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