

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/309/92 With MA/202/92

Date of Decision : 3.12.99

Mr. Baldevbhai S. Parmar : **Petitioner (s)**

Mr P. H. Pathak : **Advocate for the petitioner(s)**

Versus

Union of India & Ors. : **Respondent(s)**

Mr. B. N. Doctor : **Advocate for the Respondent(s)**

CORAM

The Hon'ble Mr. V. Radhakrishnan : **Member (A)**

The Hon'ble Mr. P. C. Kannan : **Member (J)**

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Baldevbhai S. Parmar,
337/56/2, Pritampura Society 2,
Girdharnagar, Shahibaug,
Ahmedabad-10.

: Applicant

Advocate: Mr. P. H. Pathak

Versus

1. Union of India,
Notice to be served through
General Manager,
Ahmedabad Telecom Dist.
Ahmedabad.
2. Sr. District Officer of Phone RLPI,
Ahmedabad Telecom Dist.
Ahmedabad.
3. Divisional Engineer,
Phones,
Railway pura,
Ahmedabad.

: Respondents

Advocate: Mr. B. N. Doctor

ORAL ORDER

OA309/92

With

MA/202/92

Date: 3/12/99

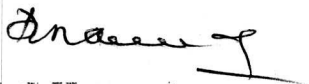
Per: Hon'ble V. Radhakrishnan : Member(A)

Heard Mr. P. H. Pathak and Mr. B. N. Doctor, learned advocates for the applicant and the respondents respectively.

2 . This OA was called from the Registry at the request of Mr. Pathak who states that the matter pertains to interpretation of Industrial Disputes Act and the Tribunal does not have jurisdiction at present to deal with the same. He seeks

permission to withdraw the OA so that ,he may file it at the appropriate forum.
Permission granted with liberty as prayed for. OA stands disposed of as withdrawn
accordingly. No costs.

In view of the disposal of the OA, MA/202/92 does not survive.



(P.C.Kannan)
Member(J)



(V.Radhakrishnan)
Member(A)

aab

DATE: 13/8/2004

RESPECTFULLY SUBMITTED TO : HON'BLE VICE CHAIRMAN
HON'BLE MEMBER (J) (J) (J)
HON'BLE MEMBER (A) (A) (A)
HON'BLE MEMBER () () ()

Certified Copy of order dated 2/8/04 in C.A.

Special C.A. No. 2317 of 2004 passed by the
Hon'ble Supreme Court / Hon'ble High Court against the
Judgment / Oral Order passed by this Tribunal in CA. No.
309/24/85/00 placed for perusal please.

Dealing Clerk

S.O. (J)

D.R. (J)

Registrar

HON'BLE VICE CHAIRMAN

HON'BLE MEMBER (J)

HON'BLE MEMBER (A)

HON'BLE MEMBER ()

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

OPP. SARDAR PATEL STADIUM
NAVRANGPURA
AHMEDABAD-380 009

No.1/14/Genl/CAT/A'bad/2002 DATED: 13-12-2002

N O T I F I C A T I O N

It is notified for information of all concerned that Ahmedabad Bench of the Central Administrative Tribunal, will observe the following vacation during the Calendar year 2003.

- | | | | |
|----|-----------------|---|--------------------------|
| 1) | Winter Vacation | : | 13-01-2003 |
| 2) | Autumn Vacation | : | 17-03-2003 to 21-03-2003 |
| 3) | Summer Vacation | : | 19-05-2003 to 06-06-2003 |
| 4) | Diwali Vacation | : | 27-10-2003 to 31-10-2003 |

This issue with the approval of the Hon'ble Chairman conveyed vide P.B. letter No. 8/1/Calendar/2003 -JA-10038/A dated 5-12-2002.

N. S. Sampath Kumar
(N.S. SAMPATH KUMAR)
DEPUTY REGISTRAR (A)

Copy to:-

1. The Under Secretary, Deptt. of personnel & Training, New Delhi.
2. P.S. to Hon'ble Chairman, C.A.T., P.B., New Delhi.
3. The Registrar, C.A.T., P.B., New Delhi.
4. The Registrar, High Court of Gujarat, Ahmedabad.
5. The Registrar/Deputy Registrar of all outlying Benches.
6. The Secretary, High Court of Gujarat, Bar Association, A'bad.
7. The Secretary, CAT, Practitioners Association, Ahmedabad.
8. P.S. to Hon'ble Vice Chairman, CAT, Ahmedabad.
9. P.S. to Hon'ble Member (A), CAT, Ahmedabad.
10. P.S. to Hon'ble Member (J), CAT, Ahmedabad.
11. Deputy Registrar (A) and (J), CAT, Ahmedabad.
12. Section Officer/Court Officer, CAT, Ahmedabad.
13. Accounts Section.
14. Notice Board of CAT, High Court of Gujarat, Ahmedabad.
15. The Standing Counsels for Central Govt. Ahmedabad.

URGENT

Decree Despatch No.

Date 18863

9/8

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 2317 of 2004

(Under Article(s) 226, 227 of the Constitution of India)



1. BALDEV S PARMARANKI

Vs

Petitioner

1. CHIEF GENERAL MANAGER

GUJARAT CIRCLE & ORS.

Respondents

To

1. CHIEF GENERAL MANAGER
GUJARAT CIRCLE
B.S.N.L. KHANPUR,
AHMEDABAD.

2. DIVISIONAL ENGINEER

OFFICE OF D.E., PHONES,
RAILWAYPURA,
AHMEDABAD.

3. MINISTRY OF LABOUR
REGIONAL LABOUR COMMISSIONER
(CENTRAL), NEW MENTAL COMPLEX,
BLOCK NO.14, ASARWA,
AHMEDABAD.

4. THE MEMBER
C.A.T., OPP. SARDAR PATEL
STADIUM, ASHRAM ROAD, AHMEDABAD
(REF. O.A. 309/92 WITH MA 202/
92 & O.A. 85/2000).

सत्यमेव जयते

Upon reading the petition of the above named Petitioner presented to this High Court of Gujarat at Ahmedabad on 01/10/2003 praying to grant the prayers and etc...

And whereas upon the Court ordered 'Rule' to issue on 02/08/2004

And Whereas Upon hearing
MR HARMISH K SHAH for the Petitioner no. 1
MR SANDIP C SHAH for the Respondent no. 1-2
MR JITENDRA MALKAN for the Respondent no. 3

Court passed the following order :-

CORAM : AKIL KURESHI, J.

DATE : 2-8-2004.

"Rule. Mr. Sandip C. Shah, learned Advocate waives.....
.....with no order as to costs."

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

Librarian

Record
12/8

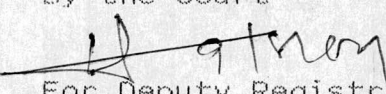
an OA 24
JP 51

11/8

GUJARAT HIGH COURT

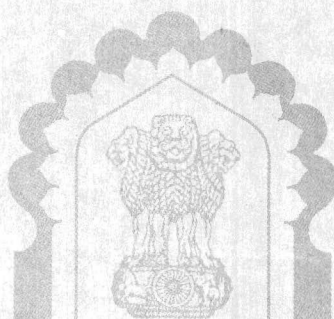
Witness BHAWANI SINGH, Esquire Chief Justice at Ahmedabad
aforesaid this 02nd day of Aug, 2004.

By the Court


For Deputy Registrar
This day of Aug 2004

Note : This writ should be returned
duly certified within 2 weeks.
(501) 050820

q.b



सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2317 of 2004

BALDEV S PARMARANKI

Versus

CHIEF GENERAL MANAGER

GUJARAT CIRCLE

Appearance:

1. Special Civil Application No. 2317 of 2004
MR HARMISH K SHAH for Petitioner No. 1
MR SANDIP C SHAH for Respondent No. 1-2
NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of Order: 02/08/2004

ORAL ORDER

Rule. Mr. Sandip C. Shah, learned Advocate waives notice of rule on behalf of respondents Nos. 1 and 2. Learned Senior Standing Counsel Mr. Malkan waives notice of rule on behalf of respondent No.3. At the joint request of learned Advocates for the parties, the matter is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 7.5.2003, passed by the respondent No.3, by which the request of the petitioner to refer the dispute with respect to his termination for adjudication to the appropriate Industrial Tribunal was rejected. The ground of such rejection is as follows:-

"It is reported that the workman has not worked for 240 days in a year. He is not eligible for any protection under the I.D. Act."

3. On earlier occasion, the petitioner had approached Central Administrative Tribunal, Ahmedabad for certain reliefs, but his petition was disposed of as withdrawn on the ground that the same involves provisions of Industrial Disputes Act and that therefore, Central Administrative Tribunal would not have jurisdiction to entertain the petition.

4. Subsequently, the petitioner approached the respondent No.3 seeking reference of his dispute for adjudication to the appropriate Industrial Tribunal. The said request was however turned down as mentioned above, on the ground that the petitioner had not worked for more than 240 days in an year and that he was not eligible for any protection under the Industrial Disputes Act. It is by now well settled that while deciding the question whether a dispute has to be referred for its adjudication to the appropriate Labour Court/Industrial Tribunal, the appropriate Government exercising powers under Section 10 of the Industrial Disputes Act, cannot enter into the merits of the dispute and decide the lis.

5. The Hon'ble Supreme Court has held that the Government should be very slow to attempt an examination of demand with a view to decline reference and the Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. In a decision reported in AIR 1985 SC 860 (M.P.Irrigation Karamchari Sangh v. State of M.P.), the Hon'ble Supreme Court has observed as follows:-

"There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render S.10 and S.12(5) of the Industrial Disputes Act nugatory."

6. In a decision reported in AIR 1985 SC 915 (Ram Avtar v. State of Haryana), the Hon'ble Supreme Court held to the effect that if the Government performs an administrative act while making or refusing to make a reference under section 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis and that would certainly in excess of the power conferred by S.10. It was further held that section 10 of the said Act requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous or irrelevant reasons. It was further held that if the administrative determination is based on grounds irrelevant, extraneous or not germane to the exercise of power, it is liable to

be questioned in exercise of the power of judicial review and the Court in such a case would direct the Government to reconsider its decision.

7. In a decision reported in AIR 1989 SC 1565 (Telco Convoy Drives Mazdoor Sangh v. State of Bihar), the Hon'ble Supreme Court once again observed that while exercising power under section 10(1), the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function and that in performing this administrative function, the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis which would be in excess of the power conferred on it by section 10. The Hon'ble Supreme Court further observed that though it is true that in considering the question of making reference under section 10(1) of the Act, the Government is entitled to form an opinion as to whether an industrial dispute exists or is apprehended, but that formation of opinion as to whether an industrial dispute exists or is apprehended is not the same thing as to adjudicate the dispute itself on its merits.

8. In the present case also, I find that the respondent No.3 has travelled beyond its powers and decided that the workman has failed to prove that he has worked for more than 240 days in an year. The ground that he is not eligible for protection under the Industrial Disputes Act is in the realm of deciding the dispute between the parties, which function the appropriate Government cannot discharge. On this short

ground alone, I find that the impugned order dated 7.5.2003 is bad in law and is required to be set aside. Consequently the impugned order dated 7.5.2003 is quashed and respondent No.3 is directed to reconsider the question whether the dispute raised by the petitioner is required to be referred for its adjudication to appropriate Tribunal or not, keeping in mind the observations made in this order. With these directions, the petition stands allowed. Rule is made absolute to the above extent with no order as to costs.

Sd/- Akil Kureshi, J.)

*/Mohandas

TRUE COPY

P.S. TO THE HON'BLE JUDGE
HIGH COURT OF GUJARAT.

TRUE COPY

ASSISTANT REGISTRAR
HIGH COURT OF GUJARAT
SOLA, AHMEDABAD.