

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18730 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DEVAN M. DESAI**

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Approved for Reporting	Yes	No
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MUNICIPAL COMMISSIONER/DIRECTOR, AHMEDABAD JANMARG LTD.,

Versus

KARNAVATI NAGARPARIVAHAN MAZDOOR SANGH & ORS.

Appearance:

MS DHARA M SHAH(5546) for the Petitioner(s) No. 1

DS AFF.NOT FILED (R) for the Respondent(s) No. 2,3,5,6,8,9

MR HAMESH C NAIDU(5335) for the Respondent(s) No. 4

MR PRATIK P THAKKAR(6097) for the Respondent(s) No. 7

MR YOGEN N PANDYA(5766) for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI**Date : 24/08/2026****JUDGMENT**

1. The present petition is filed under Articles 226 and 227 of the Constitution of India, 1950 by the petitioner praying for following reliefs:

"A. YOUR LORDSHIP may be pleased to admit and allow the present petition;

B. Your Lordships may be pleased to issue a writ of certiorari and a writ in the nature of certiorari to quash and set aside order dated 21.08.2017 passed in Misc. Application No.1 of 2017 by the Industrial Tribunal, Ahmedabad;

C. Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to stay the operation, implementation and execution of order dated 21.08.2017 passed in Misc. Application No.1

*of 2017 by the Industrial Tribunal, Ahmedabad;
D. Any other and further relief that may be deemed fit and proper may please be granted in the interest of justice."*

2. Heard learned advocate Ms. Dhara M. Shah for the petitioner, learned advocate Mr. Hamesh C. Naidu for respondent No.4, learned advocate Mr. Yogen M. Pandya for respondent No.1 and learned advocate Mr. Pratik P. Thakkar for the respondent No.7.

3. Brief facts of the present case are as under:-

3.1. Respondent No.1 Union raised demands before learned Labour Commissioner, Gandhinagar. Upon failure report, the dispute was referred to the learned Industrial Tribunal, Ahmedabad for determining the demands of respondent No.1 – Union which are mainly summarised as under:-

(i) that the workmen should be made permanent in Jan Marg Limited (BRTS) project and be considered as employees of Ahmedabad Janmarg Limited after 180 days of the services and be granted benefits of permanent employees after 180 days.

(ii) after 1st January 2012, workmen working under

legal/illegal contractors be given benefits according to their cadre on the basis of 6th pay commission.

(iii) workmen working as Drivers, security, booking staff, Safai Kamdar, who are working as permanent nature be given Rs. 10,000/- from 1st January 2012.

(iv) prepare Caderwise seniority list of workmen along with names of contractors currently working in the organization.

3.2. The reference came to be dismissed for non-prosecution on 01.12.2016. Respondent No.1-Union filed restoration application under Rule 26(A) of the Industrial Disputes Act ('for short' the Act'). The Restoration Application came to be allowed by learned Tribunal on 21.08.2017. Being aggrieved and dissatisfied with the order, the petitioner is before this Court by way of present petition.

4. At the outset, learned advocate for the petitioner submitted that respondent No.1 - Union entered into contract with respondent No.2 which owns number of bus fleet and private buses for operation within the city. Respondent No.1 Union has submitted demand for regularisation under Section 10(1) of the Act which

was referred to the Industrial Tribunal. Respondent Union applied for interim relief during the pendency of the reference. The learned Judge granted interim relief, as prayed for. Being aggrieved and dissatisfied with the said order, petitioner preferred Special Civil Application No. 7329 of 2014 before this Court. By order dated 31.07.2014, the Co-ordinate Bench of this Court held that the identity of the persons whose services are ordered not be changed. Respondent No.8, contractor had declared that the workmen were appointed either by respondent No.8 or agency appointed by it.

5. Thereafter, a purshis dated 31.08.2015 was submitted for closure of evidence of Union, and stage was closed. Learned Tribunal issued notice dated 29.12.2015 to Union. Thereafter one Praful Patel appeared on behalf of the Union on 11.01.2016 and on 22.08.2016 requested the Court to permit him to retire from the proceedings. The learned Industrial Court passed an order on 20.12.2016 rejecting their reference. In restoration application, no sufficient and cogent reasons were assigned by Union for not remaining present in the reference proceedings. The reasons assigned by Union is that Mr. Dipak Pandya was looking after

proceedings and after his death there was no other person who was conversant with facts to look after the reference proceedings, which is factually incorrect statement because Mr. Dipak Pandya had expired on 04.01.2014 and thereafter Mr. Praful Patel appeared and represented Union from time to time. As no sufficient cause is made out for restoration of the reference, the learned Tribunal ought to have rejected the application.

6. It is submitted that against the order of interim injunction passed by learned Industrial Tribunal, the petitioner approached this Court by way of Special Civil Application No. 7329 of 2014. Upon the response of respondent No.8, it is observed by the Co-ordinate Bench of this Court in the Special Civil Application that workmen were appointed by respondent No.8 or by its agency and workmen were not appointed by the petitioner. It is therefore submitted that there is no lis between petitioner and employees of respondent company/contractors. The learned Tribunal while granting restoration application has not considered the aforesaid facts and erroneously granted the Application. It is therefore submitted that the present petition be allowed and the impugned order be quashed and set aside. Except above, no other

submissions were canvassed by learned advocate for the petitioner.

7. *Per contra*, learned advocate for respondent No.1 Union contended that the Union had raised demand for regularization by way of reference. Pending the reference, the President of the Union who was looking after the proceedings had expired. Thereafter, learned advocate Mr. Dipak Pandya was instructed to appear in the reference proceedings but he did not remain present and thereafter the Union appointed another learned advocate Mr. Praful Patel to represent Union. The respondent No.1 was not aware about the status of the reference and therefore, could not remain present. It is submitted that learned advocate Mr. Praful Patel retired from proceedings but learned Tribunal did not issue any notice to Union and therefore, there was no opportunity of being heard given to Union to prove its case. The learned Tribunal has adopted a reasonable and justice oriented approach and allowed the application for restoration.

8. It is submitted that the original reference proceedings is required to be decided on merits and not on technical grounds. The Union may not be deprived of their rights to claim

regularization and the claim for the employees of the contractor to be paid as if they are working with Ahmedabad Janmarg Ltd. If an opportunity is given to prove the case, it would serve the purpose of justice and therefore the petition be dismissed. It is further submitted that the respondent No.1 is ready and willing to co-operate with the learned Tribunal for expeditious hearing of the reference as the reference is of 2013. Except above, no other submissions were canvassed by learned advocate for respondent No.1.

9. I have considered the submissions canvassed by learned advocates for respective parties and perused papers placed on record. The respondent – Union raised demands for regularization by way of complaint before the learned Labour Commissioner, Gandhinagar. Due to non-settlement of dispute, it was referred to the learned Industrial Tribunal, Ahmedabad. The reference came to be dismissed for non-prosecution on 01.12.2016. The Union thereafter filed restoration application, which came to be allowed on 21.08.2017. The learned Tribunal was weighed with fact that the reference proceedings proceeded *ex parte*. Union submitted statement of claim against which petitioner as well as other

respondents submitted their respective replies. On 25.02.2014 below Exhibit – 11, learned Tribunal passed an order which was assigned by petitioner by way of Special Civil Application No. 7329 of 2014. Prayer was made by respondent No.7 for closure of evidence which was allowed. Thereafter, the Union appeared through one learned advocate Mr. Praful Patel, who also retired subsequently from the proceedings. Petitioner and other respondents contractors also closed their side and did not lead any evidence. Upon the application for restoration, respondent Union pointed out reasons for not remaining present in reference proceedings. The emphasis has been laid on the fact that Shri Dipak Pandya was having knowledge of the proceedings expired in an accident in the year 2014, and thereafter the learned advocate Mr. Praful Patel retired as an advocate on behalf of respondent Union.

10. The undisputed fact surfaces on record that the reference proceedings are not decided on merits and have been dismissed for want of prosecution. Granting of an application for restoration upon satisfaction of sufficient cause is discretion of the Court. The sufficient cause is not explained in the rules as well as in the

Limitation Act, 1963. Sufficient cause means cause which is a reasonable explanation which satisfies the Court for granting an opportunity to a litigant who has failed to lead any evidence.

11. Therefore, in my view, I do not find any reason to interfere in the findings and conclusions arrived at by the learned Labour Court. Resultantly, the present petition stands disposed of. No order as to costs. The learned Labour Court is hereby directed to complete the Reference proceedings within a period of six months from the date of receipt of copy of this order. It is hereby directed that the application shall be decided strictly on merits. Both the parties are directed to give full co-operation without asking for unnecessary adjournments. Rule is discharged accordingly.

SHIVANI SHUKLA / MUSKAN

(D. M. DESAI,J)