15. We are, therefore, inclined to accept the submission of the learned Advocate for the appellants that, in the facts and circumstances of the case, at the most, Sec. 304, Part-I would be attracted and not Sec. 302 of I.P.C. Hence, the appeal deserves to be allowed partly.

16. In the result, appeal is allowed in part. The impugned judgment and order dated 20-7-2006 passed by the learned Addl. Sessions Judge, Fast Track Court No. 3, Amreli in Sessions Case No. 16 of 2006 recording the conviction of the present appellant hereinunder Sec. 302 of the I.P.C. is modified and the present appellant is convicted under Sec. 304, Part-I of the Indian Penal Code and is sentenced to undergo R./I. for ten years. Fine of Rs. 30,000/- imposed upon each of the appellant is reduced to Rs. 30,000/- each, in default, to undergo imprisonment for one year. The amount of fine so recovered, the same shall be paid to the mother of the deceased, as per the judgment and order of the trial Court. Rest of the judgment and order of the trial Court stands confirmed. R. & P. to be sent back to the trial Court, forthwith.

A writ of this order be sent to the concerned Jail Authority, forthwith.

(NRP) *Appeal partly allowed.*

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SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice Paresh Upadhyay

DELHI PUBLIC SCHOOL, SURAT v. STATE OF GUJARAT & ORS.*

(A) Industrial Disputes Act, 1947 (14 of 1947) — Sec. 10(1) — Reference — Validity — Claim by drivers and conductors of school buses that they are employees of school management and not of contractor — That contractor is only a paper arrangement to avoid liabilities under Labour Laws — Material showing that prior to contractor entered into contract, workmen were in employment of school and school had given names of those to be engaged by contractor, and school had given them training etc. — Held, reference valid.

(એ) ઔદ્યોગિક તકરાર અધિનિયમ, ૧૯૪૭ — કલમ ૧૦(૧) — સંદર્ભ — કાયદેસરતા — નિશાળ-બસના ડ્રાઈવરો અને કંડકટરોનો દાવો કે તેઓ નિશાળના વ્યવસ્થાપનના કર્મચારીઓ છે, કૉન્ટ્રાકટરના નહિ — માત્ર મજૂર કાયદા હેઠળની જવાબદારી ઉવેખવા કૉન્ટ્રાકટર તો કાગળ ઉપરની વ્યવસ્થા છે — વિગતો એમ જણાવતી હતી કે, કૉન્ટ્રાકટર સાથે કરાર થયો તે પહેલાં તેઓ નિશાળના કર્મચારીઓ હતા અને વ્યવસ્થાપને તેમનાં નામ કૉન્ટ્રાકટરને આપેલાં તથા નિશાળે તેમને તાલીમ પણ આપેલી વગેરે — ઠરાવવામાં આવ્યું કે, સંદર્ભ કાયદેસર છે.

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*Decided on 17-4-2013. Special Civil Application No. 3347 of 2013 with Spl.C.A. No. 6839 of 2013.

In the present case there is ample material on record to show that the arrangement of contractor is more to disown the legal liabilities arising from the Labour Laws and less for the convenience of the petitioner-School. (Para 10)

In view of the decision of Hon'ble the Supreme Court in case of *Dhanbad Colliery Karamchari Sangh v. Union of India,* 1991 Supp. (2) SCC 10, the contention of learned Advocate for the petitioner cannot be accepted. There is ample material on record to uphold the action of the appropriate Government of making Reference to the Industrial Tribunal under Sec. 10 of the Industrial Disputes Act, 1947. (Para 10)

(B) Industrial Disputes Act, 1947 (14 of 1947) — Sec. 10(4) — Constitution of India, 1950 — Art. 227 — Interim relief by Industrial Tribunal — Considering that there is a *prima facie* case of claim of workmen and there is a substance in workmen's case of victimization by school management etc., order by Tribunal, confirmed.

(બી) ઔદ્યોગિક તકરાર અધિનિયમ, ૧૯૪૭ — કલમ ૧૦(૪) — ભારતનું બંધારણ, ૧૯૫૦ — આર્ટિ. ૨૨૭ — ઔદ્યોગિક પંચ દ્વારા વચગાળાની રાહત — વિચારણામાં લેતાં કે કર્મચારીઓના દાવામાં પ્રથમદર્શીય તત્ત્વ હોઈ તથા દાવામાં સાર હોવાથી અને નિશાળ વ્યવસ્થાપન તરફથી હેરાનગતી લક્ષમાં લેતાં, પંચનો હુકમ માન્ય રાખવામાં આવ્યો.

The petitioner-School has its own buses since years and the present respondent workmen, *prima facie*, have been in the service of the petitioner-School since years. These drivers are even given training in the year 2009 and at that time, they are called the drivers of the petitioner-School. These workmen raised their demand for their legitimate dues flowing from different Labour Laws. Under these circumstances, petitioner-School entered into contract with Mahendra Travels. It was told by the petitioner-School to the said Mahendra Travels that buses will be provided by the petitioner-School and these persons will work as drivers and conductors. Arrangement of making payment through the said contractor was also worked out and the same was to continue till February, 2015. Workers and Union continued with their demand even thereafter. Appropriate Government referred the matter to the Industrial Tribunal for adjudication. In the said reference, Mahendra Travels was party-respondent. Industrial Tribunal granted *status quo* on 8-3-2013. Petitioner-School, therefore, disowned the name of Mahendra Travels and entered into contract with Shrinath Travels. This was put to the notice of the Tribunal, under these circumstances. (Para 11.2)

The Tribunal moulded relief. Be it noted that the Union has, right from the beginning, contended that when the workers raised demand, the petitioner school started browbeating that they will bring the big player like Shrinath Travels in picture and the workers will not get anything. This shows substance in the argument of the Union about victimization by the school management and lack of *bona fide* on the part of the petitioner-School to some extent. (Para 11.2)

In above factual background, the Tribunal categorically recorded its satisfaction, in Paragraph 12 of the impugned order, to the effect that the workers have *prima facie* case and that the balance of convenience is in favour of the workers and further that if interim protection is not granted, the same shall cause irreparable loss to these workers. After having found so and after recording this satisfaction, when the Tribunal granted interim relief in favour of the workers, the Tribunal cannot be said to have committed any error, which may call for interference by this Court. (Para 11.3)

Cases Relied on :

(1) *Bhilwara Dugdh Utpadak Sahakari Society Ltd. v. Vinod Kumar Sharma*, AIR 2011 SC 3546

(2) *Dhanbad Colliery Karamchari Sangh v. Union of India,* 1991 Supp. (2) SCC 10

Cases Referred to :

(1) *Gujarat Mazdoor Panchayat v. Conciliation Officer*, 2002 (2) GLH 253

(2) *Gujarat Mazdoor Sabha v. Indian Oil Corporation*, 2005 (3) GLH 85

(3) *Baroda District Co-operative Milk Producers Union Ltd. v. State of Gujarat*, 2004 (3) GCD 2277

(4) *Sarva Shramik Sangh v. Indian Oil Corporation Ltd.*, 2009 (11) SCC 609

(5) *Steel Authority of India Ltd. v. Gujarat Mazdoor Panchayat*, 2004 (2) CLR 275

(6) *Dena Bank v. D. V. Kundadia*, 2011 (131) FLR 775

(7) *Gujarat Alkalies Chemicals Ltd. v. G.A.C.L. Officers' Friends Association,* Spl.C.A. No. 779 of 2013 decided on 22-3-2013 by Guj.H.C.

(8) *Managing Director, Hassan Co-operative Milk Producer's Society Union Ltd. v. Assistant Regional Director, E.S.I.C.*, AIR 2010 SC 2109

Special Civil Application No. 3347 of 2013 :

Manish R. Bhatt, Senior Advocate with *Mrs. Mauna M. Bhatt*, for the Petitioner-School.

Dipak R. Dave, for the Respondent-Union.

D. G. Chauhan, for the Respondent-Outgoing Contractor.

Mihir Joshi, Senior Advocate for Nanavati Associates, for the Respondent-New Contractor.

Prashant G. Desai, Senior Advocate, with *G. M. Joshi,* for the Respondent-Parents.

Government Pleader, for the Respondent-State Authority.

Paritosh Calla, for the Respondent-Tribunal.

Special Civil Application No. 6839 of 2013 :

Mihir Joshi, Senior Advocate, for Nanavati Associates, for the Petitioner.

PARESH UPADHYAY, J. The Delhi Public School, Surat has approached this Court by filing Special Civil Application No. 3347 of 2013 with two-fold grievances. The first grievance is with regard to the action

of the appropriate Government of making reference to the Industrial Tribunal on 20-7-2012, in exercise of powers under Sec. 10(1) of the Industrial Disputes Act, 1947 (Annexure-A to this petition). The same is registered as Reference (I.T.) No. 51 of 2012 with the Industrial Tribunal, Surat, and the Tribunal is seized of it. The second grievance is that, in the said proceedings, on 8-3-2013, the Tribunal granted interim protection to the members of the respondent-Union ('workmen' for short), whose cause is sought to be espoused in the proceedings in question. During pendency of this petition, in due compliance of the order of this Court dated 1-4-2013, the Tribunal passed further order on 4-4-2013 continuing/ granting interim protection to the workmen, which is also challenged by amending the petition.

2. The said order of the Tribunal dated 4-4-2013 is challenged by one Shrinath Travels also by preferring a petition being Special Civil Application No. 6839 of 2013.

2.1. Mr. Manish R. Bhatt, learned Senior Advocate for the petitioner-School Management, has contended that there is no employer-employee relationship between the school management and members of the respondent-Union, and therefore the Reference itself is incompetent, and therefore, the action of the appropriate Government of referring the matter for adjudication to the Industrial Tribunal is bad in the eyes of law and therefore this Court may set aside the same. In support of this contention, learned Advocate for the petitioner has relied upon two decisions of this Court (i) in case of *Gujarat Mazdoor Panchayat v. Conciliation Officer,* reported at 2002 (2) GLH 253 and (ii) in case of *Gujarat Mazdoor Sabha v. Indian Oil Corporation,* reported at 2005 (3) GLH 85.

2.2. Without prejudice to the above contention, it is further contended by learned Advocate for the petitioner that even if the reference was to be adjudicated on merits, no *interim* protection could have been granted to the members of the respondent-Union, since it is yet to be adjudicated as to whether they are employees of the petitioner school. In support of this contention, reliance is placed on the decision of this Court, rendered in the case of *Gujarat Alkalies and Chemicals Ltd. v. G.A.C.L. Officers' Friends Association*, in Special Civil Application No. 779 of 2013, dated 22-3-2013.

2.3. It is further contended that the order dated 4-4-2013 passed by the Tribunal is illegal and the same be set aside. It is further contended that the respondent No. 4 - Mahendra Travels had employed the drivers and conductors, and if at all the members of the respondent-Union are somebody's workmen, it is the Mahendra Travels, whose workmen they are, and therefore, no direction could have been issued by the Tribunal against the petitioner-School or against Shrinath Travels as is done by it *vide* order dated 4-4-2013.

Learned Advocate for the petitioner has also relied upon the decision of Hon'ble the Supreme Court of India in the case of *Managing Director, Hassan Co-operative Milk Producer's Society Union Ltd. v. Assistant Regional Director, Employees State Insurance Corporation,* reported at AIR 2010 SC 2109. Learned Advocate for the petitioner has taken this Court through the material on record and has contended that petition be allowed.

3. Mr. Mihir Joshi, learned Senior Advocate for Nanavati Associates for Shrinath Travels has addressed the Court in two capacities. Firstly, Shrinath Travels is the petitioner in Special Civil Application No. 6839 of 2013 wherein it has challenged the order of the Tribunal dated 4-4-2013. Shrinath Travels was also joined as party respondent No. 5 by the Delhi Public School in its petition *i.e.* Special Civil Application No. 3347 of 2013. Mr. Joshi has supported the case of the petitioner school management. Mr. Joshi, learned Senior Advocate has contended that, over and above, the arguments, which are advanced by Mr. Manish Bhatt, learned Advocate for the school to assail the order dated 4-4-2013, it is the further grievance of the Shrinath Travels that without hearing it, the order could not have been passed by the Tribunal. Learned Advocate Mr. Joshi has also relied upon the decision of this Court in case of *Gujarat Mazdoor Panchayat v. Conciliation Officer,* reported at 2002 (2) GLH 253. It is further contended that, in exercise of powers under Sec. 10(4) of the Industrial Disputes Act, 1947, to what extent relief could have been granted at this stage, is also an issue, which Court may consider. Learned Advocate Mr. Joshi further contended that what is granted by the Tribunal *vide* order dated 4-4-2013 is impermissible in view of the decision of this Court in case of *Gujarat Mazdoor Sabha v. Indian Oil Corporation,* reported at 2005 (3) GLH 85. It is contended that the impugned order dated 4-4-2013 be set aside.

4. Mr. Prashant G. Desai, learned Senior Advocate with Mr. G. M. Joshi, learned Advocate, addressed the Court on behalf of the parents. Parents had filed civil application for being joined as party respondent in the petition filed by the School, which was allowed. Mr. Desai has supported the petition filed by the school management and has in substance contended that it is in the interest of the students, if the action and stand of the school management is upheld. It is contended that the impugned order of the Tribunal dated 4-4-2013 be quashed and set aside.

5. In totality, the petitioner school management, the new contractor Shrinath Travels- who has stepped in with effect from 1-4-2013 and the parents, all have jointly contended that the workmen are not entitled to any relief and no relief ought to have been granted to them by the Tribunal.

6. On the other hand, Mr. Deepak Dave, learned Advocate for respondent-Union, espousing the cause of the workmen, has addressed the

Court at length. Mr. D. G. Chauhan, learned Advocate for the outgoing contractor *i.e.* Mahendra Travels has also addressed the Court. Both the learned Advocates have contested the petition and have supported the impugned order passed by the Tribunal dated 4-4-2013.

7. Learned Advocate Mr. Dave has stated that the members of the respondent Union are working as drivers and conductors on the buses of the petitioner school since years. When these drivers and conductors raised the demand that they be paid their legitimate dues, their miseries started. It is stated that the stand of the petitioner school that the workers are of the Mahendra Travels is also not proper, since Memorandum of Understanding between the petitioner school and said Mahendra Travels was entered into only on 1-3-2010, while the workers are working with the petitioner school since years, in any case, prior to 1-3-2010. Attention of this Court is also drawn to the fact that the drivers were even imparted training by the petitioner school and the same was much prior to Mahendra Travels coming into picture. Certificates to that effect which are of February, 2009 are also on record. It is further contended that from the terms of the said MoU with the Mahendra Travels dated 1-3-2010, it is clear that it was a paper arrangement only, which was worked out by the petitioner school, with a view to deprive the workers of their legitimate dues.

7.1. Mr. Dave further contended that so far the challenge to the action of the appropriate Government of making reference to the Tribunal is concerned, it is the settled position of law that the Court should not interfere in such action. It is further contended that Assistant Labour Commissioner, Surat had sent notice to the school management on 6-3-2012.

7.2. On facts, it is submitted by Mr. Dave that there is ample material on record to show that the respondents are employees of the petitioner school and only with a view to disown the liabilities arising under the Labour Laws, the petitioner school has worked out the contract arrangement and as and when the same arrangement does not suit the school management, it is changed. Reference in this regard is made to the contract with Mahendra Travels and now with Shrinath Travels, which are on record of these petitions. So far the challenge to the order passed by the Tribunal is concerned, it is contended that first order of the Tribunal dated 8-3-2013 was on the application filed by the Union for interim relief pending adjudication of the reference. On that application, initially status quo was granted which the petitioner school had flouted. It is stated that the petitioner school approached this Court by this petition at that stage of status quo order dated 8-3-2013 granted by the Tribunal. This Court, on 21-3-2013, had issued Notice and it so happened that because of this Court being seized of the matter, the Tribunal was not pronouncing the final order on the application

for interim relief, and therefore, on 1-4-2013 with appropriate observation, the Tribunal was requested by this Court to pronounce the order, and further hearing was kept on 5-4-2013. In due compliance of the order of this Court dated 1-4-2013, the Tribunal passed order on 4-4-2013, which is under challenge. In the meantime, it was contended by the petitioner school before the Tribunal that though the contract with the Mahendra Travels was entered on 1-3-2010 and the same was to last for a period of 59 months *i.e.* upto 1-2-2015, the school management has discontinued the said contract and has entered into new contract of 59 months with Shrinath Travels with effect from 1-4-2013. Under these circumstances, the Shrinath Travels came into picture. It is contended that in this chain of circumstances, Shrinath Travels cannot make any grievance before this Court. It is contended that the Tribunal after having found that the workers have *prima facie* case and the balance of convenience is in favour of the workers and further that if the interim protection is not granted, the main Reference would become infructuous and under these circumstances, when the Tribunal has granted relief to the poor workers, this Court may not interfere with the same. Learned Advocate for the respondent-Union has relied on the following decisions.

(i) 2009 (11) SCC 609, in case of *Sarva Shramik Sangh v. Indian Oil Corporation Ltd.*

(ii) 1991 Suppl. (2) SCC 10, in case of *Dhanbad Colliery Karamchari Sangh v. Union of India*.

(iii) AIR 2011 SC 3546, in case of *Bhilwara Dugdh Utpadak Sahakari S. Ltd. v. Vinod Kumar Sharma dead by L.Rs.*,

(iv) 2004 (3) GCD 2277 in case of *Baroda District Co-operative Milk Producers Union Ltd. v. State of Gujarat*

(v) 2004 (2) CLR 275 in case of *Steel Authority of India Ltd. vs. Gujarat Mazdoor Panchayat*.

(vi) 2011 (131) FLR 775, in case of *Dena Bank v. D. V. Kundadia*.

8. Mr. D. G. Chauhan, learned Advocate for the outgoing contractor - Mahendra Travels, has contended that essentially, this is the dispute between the petitioner school and the respondent Union. It is pointed out that even prior to Mahendra Travels entered into contract with the school management, the drivers and conductors were of petitioner school only and it was the petitioner-School, which had given names of those persons to be engaged as employees of Mahendra Travels, who were to be used only for the purpose of service on the buses of the petitioner school. It is also pointed out that the terms of the contract with Mahendra Travels are on record and it would show that this was the paper arrangement only, which was worked out by the petitioner school. It is pointed out that petitioner school did not place the said contract on record and it is the respondent

Union which placed the same on record by filing affidavit-in-reply in this petition. It is pointed out that this fact would also suggest that the litigation at the hands of the petitioner school is not *bona fide* and the petition be dismissed.

9. Having heard learned Advocates for the respective parties and having gone through the record, this Court finds that two issues fall for consideration. First is, as to whether there is anything wrong in the action of the appropriate Government of making reference under Sec. 10(1) of the Industrial Disputes Act, 1947, which the Tribunal is seized of as Reference (I.T.) No. 51 of 2012. And secondly, whether Tribunal has committed any error, by granting *interim* relief in favour of the workmen during pendency of the said reference.

10. So far the first point about the legality of the action of the appropriate Government of making reference is concerned, it needs to be recorded that the same is sought to be challenged by the petitioner by relying on two decisions of this Court. (i) 2002 (2) GLH 253, in case of *Gujarat Mazdoor Panchayat v. Conciliation Officer*, and (ii) 2005 (3) GLH 85, in case of *Gujarat Mazdoor Sabha v. Indian Oil Corporation.* There cannot be any dispute with regard to the proposition of law enunciated in those judgments, however, in the facts and circumstances of this case, and more particularly in view of the observations and mandate of Hon'ble the Supreme Court of India in case of *Bhilwara Dugdh Utpadak Sahakari S. Ltd. v. Vinod Kumar Sharma*, reported at AIR 2011 SC 3546, reference to which is made in later part of this judgment, the authorities relied by the learned Advocate for the petitioner will not take the case of the petitioner school any further. Further, in the present case there is ample material on record to show that the arrangement of contractor is more to disown the legal liabilities arising from the Labour Laws and less for the convenience of the petitioner school. Detailed discussion in this regard is recorded in the later part of this judgment. Further in view of the decision of Hon'ble the Supreme Court of India in case of *Dhanbad Colliery Karamchari Sangh v. Union of India,* reported at 1991 Supp. (2) SCC 10, the contention of learned Advocate for the petitioner cannot be accepted. There is ample material on record to uphold the action of the appropriate Government of making Reference to the Industrial Tribunal under Sec. 10 of the Industrial Disputes Act, 1947. Under these circumstances, I do not see any infirmity in the said action of the appropriate Government and the challenge to the action of the appropriate Government of making reference stands rejected.

11.1. So far the challenge to the grant of *interim relief* by the Tribunal is concerned, reference can be made to the decision of Hon'ble the Supreme Court of India, reported at 2011 (131) FLR 775 in case of *Dena Bank v.*

D. V. Kundadia, wherein it is held that petition against the interim order of the Industrial Tribunal/Labour Court would not be maintainable. In view of this position of law, one can contend that it may not be even open to this Court to examine the legality of the interim order passed by the Tribunal, however, since the controversy touches the students and further that even the parents have supported the case of school management, this Court has thought it fit, not to reject the petition only on the ground that the challenge is to the interim order of the Tribunal, and the grievance made by the petitioner school as well as parents against the interim order of the Tribunal is examined on merits. The facts as have emerged from record and which are necessary for the purpose of deciding this issue, can be enumerated as under :

11.2. The petitioner-School has its own buses since years and the present respondent workmen, *prima facie*, have been in the service of the petitioner school since years. These drivers are even given training in the year 2009 and at that time, they are called the drivers of the petitioner school. These workmen raised their demand for their legitimate dues flowing from different Labour Laws. Under these circumstances, petitioner school entered into contract with Mahendra Travels. It was told by the petitioner-School to the said Mahendra Travels that buses will be provided by the petitioner school and these persons will work as drivers and conductors. Arrangement of making payment through the said contractor was also worked out and the same was to continue till February, 2015. Workers and Union continued with their demand even thereafter. Appropriate Government referred the matter to the Industrial Tribunal for adjudication. In the said reference, Mahendra Travels was party respondent. Industrial Tribunal granted *status quo* on 8-3-2013. Petitioner-School therefore disowned the name of Mahendra Travels and entered into contract with Shrinath Travels. At this juncture, it needs to be recorded that neither the Tribunal nor this Court is examining the legality or validity of discontinuing the contract by the petitioner-School with Mahendra Travels or entering into contract with Shrinath Travels. The said action of the petitioner-School does not have any relevance with the point at issue, except to the extent that this action itself should not be fatal to the rights of the workmen, if otherwise they are entitled to any relief from the Industrial Tribunal. The grant of *status quo* by the Tribunal was challenged by the petitioner school before this Court through this petition. This Court issued notice on 21-3-2013. Since, this Court was seized of the matter, the Tribunal slowed down in pronouncing the order on the application of the Union for interim relief. This Court, on 1-4-2013, requested the Tribunal to pronounce the order, and adjourned the matter to 5-4-2013 for further consideration. On 4-4-2013, the Tribunal pronounced the order and thereby granted interim relief in favour of the workmen. By that time, the

name of Mahendra Travels was already disowned by the petitioner school and Shrinath Travels was put in place. This was put to the notice of the Tribunal. Under these circumstances, following the decision of this Court in the case of *Baroda District Co-operative Milk Producers' Union Ltd. v. State of Gujarat,* recorded on Special Civil Application No. 5122 of 2004 dated 29-4-2004 reported at 2004 (3) GCD 2277, the Tribunal moulded relief. Be it noted that the Union has, right from the beginning, contended that when the workers raised demand, the petitioner-School started browbeating that they will bring the big player like Shrinath Travels in picture and the workers will not get anything. Even prior to the petitioner school disclosing the name of Shrinath Travels before the Tribunal, this is pleaded by the Union which is on record. This shows substance in the argument of the Union about victimization by the school management and lack of *bona fide* on the part of the petitioner school to some extent. At appropriate time, petitioner school played the card of Shrinath Travels. The Tribunal ought not to have felt helpless and has rightly dealt with the situation appropriately by passing order on 4-4-2013. Be it noted that this *modus* was apprehended by the Union, and therefore, the same was put to the notice of the Tribunal, and therefore, on the notice issued by the Tribunal on 1-3-2013, on the interim relief application of the Union, reference was made to the above referred decision of this Court rendered in case of *Baroda District Co-operative Milk Producers' Union Ltd.* (supra). After hearing the petitioner school, the order came to be passed by the Tribunal on 4-4-2013.

11.3. In above factual background, the Tribunal categorically recorded its satisfaction, in Paragraph 12 of the impugned order, to the effect that the workers have *prima facie* case and that the balance of convenience is in favour of the workers and further that if interim protection is not granted, the same shall cause irreparable loss to these workers. After having found so and after recording this satisfaction, when the Tribunal granted interim relief in favour of the workers, in my view, the Tribunal cannot be said to have committed any error, which may call for interference by this Court.

11.4. So far reliance placed by learned Advocate for the petitioner as well as supporting respondents on the various authorities is concerned, there cannot be any dispute with regard to the proposition of law enunciated in those judgments, however, in peculiar facts and circumstances of this case, and more particularly in view of the observations and mandate of Hon'ble the Supreme Court of India in case of *Bhilwara Dugdh Utpadak Sahakari S. Ltd. v. Vinod Kumar Sharma (Dead) by L.Rs.*, reported at AIR 2011 SC 3546, those authorities will not take case of the petitioner any further. It is further observed that so far the reliance placed on the

decision of this Court in case of *Gujarat Alkalies* (supra), in Special Civil Application No. 797 of 2013 is concerned, even that would not have application in the facts of this case since in the said case, there was ample material to hold that the Union was not workers' Union, but in fact was officers' Union and in spite of that, the Tribunal had taken the view that the issue as to whether the employees are workmen or not will be decided at the time of final hearing of the Reference but the question of interim relief will be decided first. This was found to be illegal and the decision was rendered. In the present case, it is not even in dispute that the employees are the workmen. The only dispute raised is that they are the workers of the contractor and not of the petitioner school. Precisely this situation is dealt with and answered by Hon'ble the Supreme Court of India in case of *Bhilwara Dugdh Utpadak Sahakari S. Ltd.* (supra), and therefore, the reliance placed on the decision of this Court in *Gujarat Alkalies* (supra) will not take case of the petitioner any further.

12. So far as the grievance voiced by the parents is concerned, this Court cannot brush aside the same, but at the same time, it should also be ascertained as to whether grievance voiced by them against the order passed by the Tribunal is a genuine concern or it is one of the many fold pressure tactics applied by the school management against the workers. The timing of filing of application for being joined as party respondents through parents also speaks a lot for itself. Parents were not party before the Tribunal. The petitioner-School approached this Court by filing the petition challenging the order of *status quo* granted by the Tribunal dated 8-3-2013. This Court did not pass any *ex parte order* and issued only notice on 21-3-2013. Subsequently, the Tribunal passed order on 4-4-2013. On 5-4-2013, the petitioner-School pressed for interim stay against the order of the Tribunal dated 4-4-2013, which was refused by this Court by a speaking order and further hearing was kept on 15-4-2013. In the intervening days, the new contractor *i.e.* Shrinath Travels as well as parents, both approached this Court. Reference to the petition filed by Shrinath Travels is made hereinafter but it is recorded that on 10-4-2013 even notice was not issued on the petition filed by Shrinath Travels, and it was adjourned *simpliciter* for further consideration on 15-4-2013, along with petition filed by the petitioner school. On 12-4-2013, parents filed application for being joined as party respondents in the petition filed by school management to support the case of the petitioner-School. Urgent mention was made before this Court on 12-4-2013 for circulation of that application on 15-4-2013, which was granted. That Civil Application was listed for hearing on 15-4-2013 along with the petitions of school as well as Shrinath Travels. If at all somebody can object, it is the petitioner school, which could have objected to the parents

joining as respondents, since school management was the petitioner. Respondent Union, legally cannot have any say in that regard and the petitioner school did not object, and that is how parents are party respondents. The moment they were permitted to be joined as party respondents on 15-4-2013, it was put to learned Advocate for the parents, that since he is entering in the fray today itself, whether he wants time to go through the paper book and make his submissions. The answer was in the negative and it was requested that he may be heard along with other learned Advocates and appropriate order be passed. Learned Counsel for the parents is heard at length. Learned Advocate for the parents could not point out any specific grievance as to how they are aggrieved by the interim order passed by the Tribunal except stating that they also have complaint against drivers. In this regard, it needs to be recorded that if there is any complaint against any individual, the same can be dealt with in accordance with law and the outcome thereof may have its own further course in accordance with law but to say that even parents are also aggrieved by the protection granted by the Industrial Tribunal, in substance to the effect that about 100 drivers and conductors would not be rendered jobless, speaks more of the helplessness of the parents, less of their grievance. The parents of the students of big banner schools like the petitioner are in no enviable position, in the circumstances when they have to toe the line of the school management against its employees, more particularly when they (parents) have not to lose anything. The grievance voiced by parents, in this peculiar facts and circumstances, does not deserve any mention beyond this. Further it needs to be recorded that challenge against the impugned order of the Tribunal is already examined above and the same is found to be not tenable.

13. So far the case of the Shrinath Travel is concerned, much before his coming into fray, the petitioner-School is contesting before the Tribunal. If Shrinath Travel has any grievance about the petitioner-School keeping him in dark in this regard, it is for him to take appropriate action in that regard, but the same cannot be by challenging the order of the Tribunal granting protection to the workers. The ingenious attempt of the petitioner school was required to be dealt with firmly by the Tribunal which is done in this case and the same is also within four corners of law, and therefore, the Shrinath Travels cannot have better say in the matter than the petitioner school itself and when the petitioner-School is not found to be entitled to any relief by this Court, to contend that still Shrinath Travels is entitled to relief, will have effect of approving the ingenious attempt of the petitioner school of using the name of Shrinath Travels to deprive the workers of their legitimate dues. At this juncture, reference can be made to the observations of Hon'ble the Supreme Court of India in case of *Bhilwara Dugdh Utpadak Sahakari S. Ltd.*

v. Vinod Kumar Sharma dead by L.Rs., reported at AIR 2011 SC 3546, more particularly, Paragraphs 4, 5 and 6 which read thus :

> "4. In order to avoid their liability under various labour statutes employers are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of a contractor. It is high time that this subterfuge must come to an end.
>
> 5. Labour statutes were meant to protect the employees/workmen because it was realized that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees, but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees.
>
> 6. This Court cannot countenance such practices any more. Globalization/ liberalization in the name of growth cannot be at the human cost of exploitation of workers."

In my view, the above observations of Hon'ble the Supreme Court of India applies with full force in the facts of this case and no exception needs to be made to the impugned order passed by the Tribunal. Reliance placed by learned Advocate Mr. Joshi on the decisions which are referred above will not take the case of Shrinath Travels any further in this fact situation and on the face of the subsequent decision of Hon'ble the Supreme Court of India, which is referred above.

14. This Court is conscious that the Tribunal is seized of the matter. The observations made by this Court in this judgment and order is to be treated relevant, only for the purpose of deciding the points raised in this petition and shall not have any bearing on the reference which is pending. It is further observed that the observations made by this Court in this judgment shall not come in the way of the Tribunal while finally adjudicating the reference and the Tribunal will not only be free, but is expected to decide the reference, considering the evidence led by both the sides before it, without being influenced by the observations of this Court in this judgment.

15. For the reasons recorded above, both the petitions are dismissed. Notice in Special Civil Application No. 3347 of 2013 is discharged. No order as to costs.

(NRP) *Petitions dismissed.*

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