136 of the Constitution of India, concurrent findings of fact cannot be interfered with unless shown to be perverse (*Vide* : *Mahesh Dattatray Thirthkar v. State of Maharashtra,* 2009 (11) SCC 141). Where the appreciation of evidence is erroneous, the Supreme Court would certainly appreciate the evidence. In our considered view, the High Court ought to have weighed and considered the materials. When the findings of the trial Court and the High Court are shown to be perverse and there is no proper appreciation of evidence *qua* the appellant, the Supreme Court would certainly interfere with the findings of fact recorded by the High Court and the trial Court. It is to be pointed out that the High Court has not appreciated the oral evidence, other evidence and the points raised by the appellant-accused No. 1. In our considered view, the impugned judgment affirming the conviction of the appellant-accused No. 1 cannot be sustained and the impugned judgment is liable to be set aside.

21. The conviction of appellant-accused No. 1 under Sec. 302 I.P.C. read with Sec. 34 I.P.C. and Sec. 307 I.P.C. read with Sec. 34 I.P.C. and under Sec. 25(c) of the Arms Act is set aside and this appeal is allowed. The appellant/accused No. 1-Ashoksinh Jayendrasinh is ordered to be released forthwith unless his presence is required in any other case.

(NRP) *Appeal allowed.*

* * *

LETTERS PATENT APPEAL

Before the Hon'ble Mr. Justice S. R. Brahmbhatt
and the Hon'ble Dr. Justice A. P. Thaker

SURAT (HAZIRA) KAMDAR KARMACHARI, THROUGH PRESIDENT v. STATE OF GUJARAT & ORS.*

(A) LETTERS PATENT — Clause 15 — Constitution of India, 1950 — Arts. 226 & 227 — Contract Labour (Regulation & Abolition) Act, 1970 (37 of 1970) — Sec. 10 — Notification by State Government not to abolish contract labour system in 38 processes in 3rd respondent-Industry — Contentions by petitioner-Union that work performed by contract labourers in said processes perennial in nature — Before taking impugned decision no opportunity of hearing afforded to Union — Contentions negatived — Considering report by Committee constituted by State Advisory Board and signed by representatives of petitioner-Union — Held, opportunity of hearing given to all parties including petitioner-Union and its Advocate — Advisory Board has considered oral and documentary evidence produced before it — There is no violation of principles of natural justice — Judgment by Single Judge confirmed.

*Decided on 4-9-2019. Letters Patent Appeal No. 527 of 2007 in Spl.C.A. No. 4763 of 2001.

(એ) લેટર્સ પેટંન્ટ — ખંડ ૧૫ — ભારતનું બંધારણ, ૧૯૫૦ — આર્ટિ. ૨૨૬ અને ૨૨૭ — શ્રમિક કરાર (નિયમન અને નાબૂદી) અધિનિયમ, ૧૯૭૦ — કલમ ૧૦ — ત્રીજા પ્રતિવાદી-ઉદ્યોગે શરૂ કરેલ ૩૮ કામગીરીઓમાં શ્રમિક કરાર પ્રથા નાબૂદ ન કરવા બાબત સરકારનું જાહેરનામું — અરજદાર-સંઘની એવી રજૂઆત કે, કરાર શ્રમિકોએ જે કામગીરી જણાવેલ એકમોમાં કરી છે, તે નિરંતર પ્રકૃતિની છે — આવો તકરારી નિર્ણય લેતા પહેલા સંઘને સાંભળવાની તક આપવામાં આવી નહોતી — રજૂઆત નકારવામાં આવી — રાજય સલાહકાર બોર્ડે રચેલ સમિતિ દ્વારા દરખાસ્તનો અહેવાલ અરજદાર-સંઘના પ્રતિનિધીઓ દ્વારા સહી કરેલ — ઠરાવ્યું, સાંભળવાની તક તમામ પક્ષોને તેમ જ અરજદાર-સંઘને તથા તેના વકીલને આપવામાં આવી હતી — સલાહકાર બોર્ડે તેની સમક્ષ રજૂ થયેલ મૌખિક તેમ જ દસ્તાવેજી પુરાવા ધ્યાનમાં લીધા છે — કુદરતી ન્યાયના સિધ્ધાંતનો ભંગ થયો નથી — વિદ્વાન ન્યાયાધીશનો ચૂકાદો માન્ય રાખવામાં આવ્યો.

Referring to the report by Committee of State Advisory Board, the Court observed as under :

On perusal of the report, it transpires that the State Advisory Board has given similar opportunity of being heard to all the parties which includes the present Union and its Advocate. It also transpires from the report that the Advisory Board has also considered oral and documentary evidence produced before it. It also transpires from the report that the Surat (Hazira) Kamdar Karmachari Union has also made a representation to the Labour Commissioner and the Secretary *vide* order dated 5th December, 2000 which is at page 151 to 175. It also transpires from the report that the same Union has also filed further submissions to Labour Commissioner on 2nd January, 2001 which is at page 176 to 183 including a letter dated 15th March, 2001 from the Advocate addressed to the Secretary Government of Gujarat and Labour Commissioner. All these materials available on record clearly show that necessary opportunity of being heard has been provided to the Union. (Para 24)

On perusal of the impugned Notification dated 31st March, 2001 issued by the Labour and Employment Department, Gandhinagar, Gujarat, it clearly emerges that the Government has taken into consideration the advice of the Advisory Board. (Para 25)

(B) Constitution of India, 1950 — Arts. 226 & 227 — Contract Labour (Regulation & Abolition) Act, 1970 (37 of 1970) — Sec. 10 — Held, before deciding whether contract labour is to be abolished or continued in particular industry or activity of industry appropriate Government required to consider factors in clauses (a) to (d) of Sec. 10(2) of the Act — However, Government not precluded from considering other factors which may have bearing on question — Further, decision in this regard not to be taken on subjective satisfaction but it is to be taken on objective consideration of relevant factors.

(બી) ભારતનું બંધારણ, ૧૯૫૦ — આર્ટિ. ૨૨૬ અને ૨૨૭ — શ્રમિક કરાર (નિયમન અને નાબૂદી) અધિનિયમ, ૧૯૭૦ — કલમ ૧૦ — ઠરાવ્યું, શ્રમ કરાર બાબત નિર્ણય કરતા પહેલાં તેને નાબુદ કરવો કે તેને ચાલુ ઉદ્યોગમાં ચાલુ રાખવો અથવા ઉદ્યોગની ગતિવિધિ વિષે યોગ્ય સરકારે અધિનિયમની કલમ ૧૦(૨)ના ખંડ (એ) થી (ડી) ઉપર વિચાર કરવો જોઈએ — તેમ છતાં, સરકાર

બીજા પ્રશ્નવિષયક ઘટકોને કાઢી નાખવા બાબતમાં વિચારશે — વધુમાં, આ બાબતનો નિર્ણય વિષયવસ્તુનાં સંતોષને આધારે નહી પણ પ્રવર્તમાન ઘટકોને આધારે લઈ શકાય.

A bare perusal of the aforesaid provision reveals firstly, that the appropriate Government is required to have consultation with the concerned Board for issuing a notification under Sec. 10 thereof, and that is the matter of procedure, by which in the form of constitution of the Board requiring representation of different interests to be part of the constitution of the Board. The Act ensure a fair procedure of taking into consideration all the affected interests through an effective consultation with the Board constituting of various interest in the matter. Section 10(2) of the Contract Labour Act provides relevant considerations which must go in a decision-making process. The relevant factors required to be taken into account detailed in the statute are not exhaustive in the sense that the appropriate Government is not precluded from taking into consideration other factors which may have relevant bearing on the question of deciding whether the employment of contract labour is to be abolished or continued to be regulated in a particular field of activity of any industry or in any industry, but does lay down that the considerations enumerated under Clauses (a) to (d) are the minimum which must be accounted for in the decision-making process of the appropriate Government before the notification is issued. It is apparent that exercise of authority in this regard is not on subjective satisfaction of the delegate authorized to exercise such power, but it depends on objective consideration of relevant factors stated in statute and in consultation with an Advisory Board. (Para 31)

(C) Constitution of India, 1950 — Arts. 226 & 227 — Contract Labour (Regulation & Abolition) Act, 1970 (37 of 1970) — Sec. 10 — Decision by State Government not to abolish contract labour system — Held, all that Sec. 10 requires is that such decision should be taken in consultations with State Advisory Board — That is done — Further, when appropriate Government takes action under Sec. 10 of the Act and issues notification Government performs quasi-legislative function — Therefore, hearing of parties not necessary.

(સી) ભારતનું બંધારણ, ૧૯૫૦ — આર્ટિ. ૨૨૬ અને ૨૨૭ — શ્રમ કરાર(નિયમન અને નાબૂદી) અધિનિયમ, ૧૯૭૦ — કલમ ૧૦ — રાજય સરકારનો નિર્ણય શ્રમ કરાર પ્રથા નાબૂદ કરવાનો નથી — ઠરાવ્યું, કલમ ૧૦ જે ઘણુ બધુ દર્શાવે છે જે જરૂરી છે કે તેણે પોતાનો નિર્ણય રાજય સલાહકાર બોર્ડ સાથે મસલત કરીને લેવો જોઈએ — તે પ્રમાણે જ કરવામાં આવ્યુ છે — વધુમાં, અધિનિયમની કલમ ૧૦ હેઠળ સરકાર યોગ્ય પગલા ભરે અને જાહેરનામું બહાર પાડે, ત્યારે સરકાર અર્ધ-વૈધાનિક રીતે વર્તે છે — તેના કારણે પક્ષોને સાંભળવા જરૂરી નથી.

If one looks at the provisions of Sec. 10 of the Contract Labour Act it becomes evident that all that the Section requires is that before exercising the powers under Sec. 10(2) of the Act, the Government should make consultation with the Central Board or the State Board as the case may be. Sub-section (2) of Sec. 10 of the Act requires that the appropriate Government "shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors". The other factors have been enumerated

in Clauses (a) to (d) by prefacing the expression "such as". When the appropriate Government takes action under Sec. 10 of the Act and issues notification, it performs its duty as quasi-legislative function. Therefore, hearing is not necessary. (Para 32)

***Cases Confirmed* :**

(1) *Surat (Hazira) Kamdar Karmachari v. State,* Spl. C.A. No. 4763 of 2001 decided on 15-2-2006 by Guj. H.C.

Cases Relied on :

(1) *Alembic Chemical Works Company Ltd. v. State of Gujarat*, 1995 (1) GLH 502

(2) *South Gujarat Textile Processors Association v. State of Gujarat,* 1994 (1) GLH 944

(3) *Prabhakaran Nair v. State of Tamil Nadu*, AIR 1987 SC 2117

Cases Referred to :

(1) *Surat (Hazira) Kamdar Union v. State of Gujarat,* 1999 (2) GLR 1776

(2) *Gujarat Narmada Valley Fertilizers Company Ltd. v. State of Gujarat,* 1999 (2) GLR 794

Sachin D. Vasavada, for Appellant No. 1.

Utkarsh Sharma, A.G.P., for Respondent No. 1.

K. S. Nanavati, Senior Advocate for Nanavati Associates, for Respondent No. 3.

DR. A. P. THAKER, J. This Letters Patent Appeal is preferred under Clause 15 of Letters Patent against the *order dated 15-2-2006* passed by the learned Single Judge in Special Civil Application No. 4763 of 2001 (*Surat (Hazira) Kamdar Karmachari v. State*).

2. By way of writ petition under Arts. 226 and 227 of the Constitution of India, the appellant had prayed for the following reliefs in the main petition :

"(A) Directing the respondent No. 1 to reconsider the question of prohibition the contract labour system in all the 38 trade activities listed in Annexure-A to the petition and to set aside the decision refusing to prohibit the contract labour system in three activities and declaring the same to be contrary to law and in violation of the principles of natural justice, arbitrary and capricious and further directing the Government respondent No. 1 to take a fresh decision within a period of three months from the date of the order after giving full opportunity to all concerned.

(B) Directing the respondent No. 1 to reconsider the whole matter afresh and issue necessary Notification abolishing contract labour system in all the 38 activities carried on the respondent No. 3.

(C) Awarding the costs of this petition.

(D) Any other and further orders as may be deemed fit and proper to be granted."

3. The appellant writ petitioner is the Workers' Union representing the contract labourers engaged by the respondent-Essar Steel Limited. The claim of the appellant is that the nature of work performed in 38 trade processes of contract labourers are perennial. The State Government shall, by Notification issued under the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the Act'), prohibit contract labour in those areas.

4. It is contended that the State Government has decided not to abolish of contract labour system in those areas. The sum and substance of the stand of the Union is that they had grievance against the exploitation of the workers by the establishment by perpetually employing contract labour through contractors.

5. It is contended that the grievance has culminated into a final order dated 9-9-1998, which was subject-matter of the case of *Surat (Hazira) Kamdar Union v. State of Gujarat*, reported in 1999 (2) GLR 1776, wherein, the learned Single Judge directed the Gujarat State Advisory Board to consider, by adopting a nine stage procedure to ensure that the parties concerned get appropriate opportunity to represent their case for abolition of contract labour system in the aforesaid 38 trades processes.

6. It is contended that the Board has substantially deviated even from the procedure set out by this Hon'ble High Court and on the contrary, it was falsely shrouded on the ground of secrecy. It is also contended that till 2006, the report was not placed on the record of the matter in spite of the order of this Court. That only after this Court passed special order that the report was placed before the Court.

7. It is contended that the State Government decided issue of issuance of notification not to abolish the contract labour on the basis of the opinion of the Board which was never circulated to the Union for its comments.

8. It is contended that the deviation in itself was a substantial and sufficient ground for granting relief prayed in the main petition. It is also contended that before issuance of notification, no opportunity of hearing was afforded to the Union and even the Committee has not taken into consideration the submissions made by the Union.

9. It is contended that in the 38 trade practices under consideration the establishment has been adopting contract labour in perpetuity. It is contended that even as per the Act, the abolition of contract labour ought to have been recommended. But on the contrary, the approach of the Board was exactly opposite to the terms of reference made to it. It is also contended that the decision is bad, unjust and liable to be quashed and set aside. It is also contended that the learned Single Judge has not taken into consideration all these aspects.

10. Heard learned Advocate Mr. Sachin Vasavada for the appellant, Mr. Utkarsh Sharma, learned A.G.P. for the respondent No. 1 and learned Senior Counsel Mr. K. S. Nanavati appearing for the Nanavati Associates for the respondent No. 3 and perused the material placed on record.

11. Learned Counsel for the appellant vehemently submitted that without affording any opportunity of being heard, the Committee has prepared a report and submitted it to the Board and even the Advisory Board has not taken into consideration the submissions made by the Union according to the provisions of Sec. 10(2) of the Act.

11.1. It is contended that the Government has not afforded opportunity of being heard to the Union and Union has made submission which has not been considered. By referring to the report of the Committee, it has been submitted by the learned Counsel for the appellant that the Committee in its report itself has stated that the submissions were made on 15th December, 1999 but has not been considered by it. He has also referred to the affidavit of one Mr. Kochunny V. K. It is alleged that his statement was recorded by the Committee, but he has denied this fact in his affidavit. He has also contended that since there is non-compliance of provision of Sec. 10(2) of the Act, the Government can be directed to consider the entire matter afresh.

11.2. It is also contended that the Union has made written submissions on 15th December, 1999, which have been ignored by the Board. According to him, a notice to remain present and submit report was given to the Union on the same day. He has also submitted that the members of Advisory Board Committee are also members of Special Committee. While referring to the earlier order passed by the Single Judge in the previous matter, it is submitted that as per the direction of this Court, the Committee had to consider the question of abolition of contract labour system in 38 processes. However, the report of the Committee was not placed in the record before this Court till special order in this regard was made on 13-1-2006. The Government decided the issue of issuance of notification not to abolish the contract labour system on the basis of opinion of the Board which was never circulated to the appellant. Learned Counsel for the appellant relied upon the decision in the case of *Surat (Hazira) Kamdar Union* (supra) and in the case of *Gujarat Narmada Valley Fertilizers Company Ltd. v. State of Gujarat*, reported in 1999 (2) GLR 794 and submitted to allow the present Appeal and to issue necessary directions to the State to reconsider the submissions of the Union and to pass a fresh order.

12. Mr. Utkarsh Sharma, learned A.G.P. submitted that the Government has taken into consideration all the aspects of the case and report of the Commissioner and Advisory Board and the submissions made on behalf of the Union, and ultimately, has issued Notification under Sec. 10(2) of the

Act. According to him, the report of the Advisory Board has been taken into account, along with the other aspects of the matter and the Government has followed the principles of natural justice as there were representatives of the employer as well as employees in the Board. He has also submitted that while issuing Notification, the Government has considered all the aspects of the matter and this being a quasi-legislative function, no judicial review is permissible under the law.

13. Mr. K. S. Nanavati, learned Senior Advocate for respondent No. 3 vehemently submitted that as per directions of the Hon'ble Supreme Court, this matter is remanded to this Court only on the question as to whether principles of natural justice have been duly followed or not. According to him, other questions on merit cannot be considered at this stage. While referring to various documentary evidence which includes the report of the Committee as well as report of the Advisory Board and the submissions made by the Union and input of the Labour Commissioner, the learned Counsel has submitted that the Government has followed principles of natural justice before issuing impugned Notification.

13.1. Learned Senior Counsel appearing for respondent No. 3 has further submitted that opportunity of being heard has been afforded at every stage to the Union. According to him, there was rivalry between two Unions and these facts are also narrated in the report of the Advisory Board. He has also submitted that the Advisory Board's report has been sent to the respective employees as well as the employer, and the Government, while issuing the impugned Notification has taken into account the representation made by the Union. While referring to documentary evidence, Mr. Nanavati has submitted that the Committee consists of the members, who were also members of the Advisory Board. While referring to the letter dated 12th December, 2000 of the Union which was addressed to the Government Department, wherein they have submitted the same contentions which have been relied in the present petition. Learned Counsel submitted that the stand of the Union that no opportunity of being heard was afforded to it, is devoid of merits. He also referred to the document at Exh. 176 which is an additional representation dated 2nd January, 2001. While referring to page 198, he has contended that the appellant has also made a submission to the Government and on that basis, the Government has decided not to abolish the contract labour system.

13.2. Regarding breach of natural justice, learned Senior Counsel Mr. Nanavati submitted that it has been specifically held by this Court in the case of *Alembic Chemical Works Company Limited v. State of Gujarat*, reported in 1995 (1) GLH 502, that the notification under Sec. 10(2) of the Act being quasi-legislative in nature, cannot be held as invalid on the ground

of principles of natural justice. He has also relied on the decision of this Court in the case of *South Gujarat Textile Processors Association (Jayant Screen Printing Contractor) v. State of Gujarat*, reported in 1994 (1) GLH 944, for the same proposition. While referring to material on record, he has submitted that there is no breach of principles of natural justice and proper opportunity of being heard was afforded to the Union at every stage of the proceedings.

14. Regarding the decision relied on by Mr. Nanavati, learned Counsel for the appellant has vehemently submitted that in those cases, there an opportunity of hearing was afforded to all the concerned parties, and therefore, the Court has decided accordingly in those matters. Regarding Notification being invalid, he has further submitted that both these decisions have been taken into consideration by this Court, in the case of *Gujarat Narmada Valley Fertilizers Company Ltd. v. State of Gujarat*, reported in 1999 (2) GLR 794, wherein the Court has set aside impugned Notification therein and matter was remanded to the State Government for reconsideration.

14.1. While relying on that portion of the judgment, learned Advocate for the appellant has vehemently submitted that in the present case, there is a clear breach of principles of natural justice, as opportunity of being heard was not afforded to the Union and the submissions of the Union have not been considered by the Committee as well as by the Advisory Board. According to learned Counsel Mr. Vasavada for the appellant, the decisions relied on by Mr. Nanavati, learned Senior Counsel are not applicable in the present case, and this Court may allow the present Appeal.

15. At this juncture, it is pertinent to note that earlier, this Letters Patent Appeal was disposed of by an order dated 18th February, 2009 dismissing the appeal *in limine* with clarification that the workmen-Union will be at liberty to avail of alternative remedy. Against the order of this Court, the appellant filed an appeal, being *Civil Appeal No. 166 of 2006* before the Supreme Court and the Supreme Court has passed the following order :

> "1. Leave granted.
>
> 2. Upon hearing the learned Counsel for the parties, without expressing any opinion on the merits of the case, we think it just and proper to remand the matter to the High Court so as to consider whether the principles of natural justice had been duly followed while passing the order which was challenged before the High Court.
>
> 3. The impugned judgment is set aside and the appeal is disposed of as allowed with no order as to costs.
>
> 4. Parties shall appear before the High Court on 5th February, 2016 so that the date of further hearing can be fixed."

16. Thus, the matter has been remanded to this Court to consider whether the principles of natural justice had been duly followed while passing the

impugned order. Therefore, the only question which is required to be considered is as to whether there was principles of natural justice followed or not by the State Government.

17. There is no straitjacket rule that the legislative action cannot be subject to judicial review. The legislative action can be challenged on the ground of being unconstitutional or against the statutory provisions relating to the subject. The Court will not normally exercise its powers of judicial review unless it is found that the provision in the Act is unconstitutional or the entire provision is *de hors* statute itself. The jurisdiction of review is circumscribed and confined to correct errors of law or procedural errors, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. However, if there is no such error resulting in manifest miscarriage of justice, there is no scope of the judicial review of such legislative action or a quasi-legislative action.

18. On perusal of the record, it appears that the Advisory Board constituted a Committee comprising of three members and the said Committee submitted a report which is at pages 289 to 314 of the paper-book signed by Arunbhai Jarivala, Member, Employers' Representative; Pirubhai Mansuri, Member, Workers' Representative and Amitbhai J. Desai, Chairman of the Committee. As per the report, the Committee visited Surat ESSAR on 11-12-1999. As per the Paragraph 2 of the report, the following members remained present :

(1) Sumit Bhatnagar, General Manager (H.R.) ESSAR.

(2) Col. N. Kannan (Retired), General Manager (Commercial) ESSAR.

(3) Vijay L. Rajguru, Dy. General Manager, ESSAR.

(4) Rajesh D. Purohit, Dy. Manager (Commercial), ESSAR,

(5) Nilay N. Mange, Personnel Officer, ESSAR.

(6) Anil B. Nayak, learned Advocate on behalf of Surat (Hazira) Kamdar Karmachari Union.

(7) Vijaybhai C. Patel, President, Surat (Hazira) Kamdar Karmachari Union.

(8) Ramanlal R. Patel, General Secretary, Surat (Hazira) Kamdar Karmachari Union.

(9) Dasrath Nagar, President, Surat (Hazira) Kamdar Karmachari Union, (the other Union in the similar name and style).

(10) Vijay Shenmare, President, South Gujarat Engineering and General Workers Union.

19. According to Para 3 of the report, the Committee held a meeting with all concerned which includes two Unions and the employer and learned

Advocate on behalf of the Surat (Hazira) Kamdar Karmachari Union *i.e.* first Union along with its representative and the President of the other similar Union, being South Gujarat Engineering and General Workers' Union *i.e.* the third Union.

20. On Page 292 of the report, it has been observed as under :

"Again the Union was given the opportunity for submissions, whereby Shri Dashrath Nagar stated that we want some time for submissions and we were not made informed by the Committee to appear with submissions, whereby Shri Pirubhai Mansuri, member of the Committee informed Shri Nagar and other representatives of union that the Committee has already served notice in writing and also submitted urgent telegram for the visit wherein also it is mentioned to appear before the Committee with all submissions and evidences, and when he saw the said notices he apologized and asked for some time, so also Nayak learned Advocate, and they were granted time to submit the same on or before 15-12-1999. They given the application for seeking the time which was granted."

21. The Advisory Board's conclusion is at page 348, wherein, it has specifically been observed that :

"having gone through the records, submissions, arguments and written arguments as well as oral and documentary evidences of both the parties *i.e.* Union, workers, (three in numbers) contractors and learned Advocates and Executives of the ESSAR" "…this reflects that every party has been given opportunity of being heard, and thereafter, conclusion has been reached."

22. It transpires from the report that the Board has taken into consideration in all 38 processes. The relevant portion of the report is as under :

"Based on the facts aforesaid the Board has come to the conclusion that out of 38 process referred for the consideration of the Board, in the following 6 process there are no contract workers employed by the Company :

(3) Engineering;

(5) Material handling;

(13) Fabrication and maintenance;

(20) Electrical Insulation;

(23) Materials management;

(31) Fabrication;

In the following 6 process the jobs are taken purely on temporary basis during the shut-down periods only :

(33) Shutdown and fabrication;

(34) Shutdown job;

(35) Shutdown and mechanical maintenance;

(36) Fabrication and shutdown job;

(37) Erection and civil works;

(38) Civil construction;

The following processes are not perennial but are intermittent :

(26) Letter writing works;

(27) Horticulture soil treatments;

In the following processes as mentioned above are taken into consideration :

(a)(4) House keeping;

(6) Plant House keeping;

(7) House keeping and cleaning;

(b)(9) Loading unloading;

(11) Loading stacking and loading;

(30) Bagging, dumping and miscellaneous work;

(c)(14) Segregation;

(24) Skull segregation;

(e)(15) Refractory;

(16) Laddles work and castry;

(17) Refractory lining;

Thus, out of 38 processes, only 11 processes remain for examination by the Board;

(i)... Six processes are no longer in existence in the Company at all.

(ii)… Six processes are such where the contract labour is engaged only in case of shutdown, which are very intermittent and to be carried out once a week, some times after months also.

(iii)… Two processes are intermittent where the work is not perennial and they are required to be carried out once in a while where experts services of contract agency is necessity.

(iv)… Out of 13 processes enlisted, eight are duplicate. Therefore, only five are covered for which the Company., has already made its observation as aforesaid.

As regards the said 11 processes also, the Company has made detailed submissions in respect of the working of the individual processes and necessity of employing the contract labour.

Based on the facts aforesaid, we came to the conclusion that out of 38 processes referred for our consideration, in the following 6 processes there are no contract works employed by Company.

(3) Engineering;

(5) Material handling;

(13) Fabrication and maintenance;

(20) Electrical Insulation.

(23) Material Management;

(31) Fabrication;

The following 6 processes the jobs are taken purely on temporary basis during the shutdown periods only :

(33) Shutdown and fabrication;

(34) Shutdown job;

(35) Shutdown and mechanical maintenance;

(36) Fabrication and shutdown job;

(37) Fabrication and civil works;

(38) Civil construction;

The following processes are not perennial but are intermittent;

(26) Letter-wring works;

(27) Horticulture soil treatment;

In the following processes as mentioned above are taken into consideration :

(a)4 : House keeping;

6 : Plant house keeping;

7 : House keeping and cleaning;

(b)9 : Loading and unloading;

11 : Loading, staking and loading;

30 : bagging, dumping and miscellaneous work;

(c)12 : Fire and safety;

29 : operation and maintenance fire extinguishers;

(d)14 : Segregation :

24 : Skull segregation;

(e)15 : Refractory;

16 : Laddles work and castry;

17 : Refractory lining.

As regards the said eleven processes also, the Company has made detailed submissions in respect of the working of the individual processes and necessity of employing the contract labour. We have examined the submissions and the working of the processes and it appears that submissions made by the Company in respect of the said 11 processes are more or less correct. Further more, none of the unions have specifically contradicted any one of the submissions made by the Company in this respect. The said 11 processes are as under :

(i) Process No. 1 (Technical services for material handling).

(ii) Process No. 2 (Water treatment pump operation and construction).

(iii) Process No. 8 (Cleaning jetty, vessels, loading, unloading)

(iv) Process No. 10 (Security Services);

(v) Process No. 18 (Auxiliary operation services of caster);

(vi) Process No. 19 (Operation and maintenance of locomotive);

(vii) Process No. 21 (Strapping of coils);

(viii) Process No. 22 (Guest House Maintenance);

(xi) Process No. 25 (A. & B.) (Mechanical Electrical Maintenance);

The Board has already quoted the aforesaid submissions made by the Company in respect of the 5 groups of processes covering 13 processes referred for our examination as well as in respect of the 11 processes quoted aforesaid. The Board has given into much details and examined the working of the processes of these processes.

23. It appears from the report that the same has been signed by seven members which includes Amitbhai J. Desai, Chairman of the Committee; Bharatbhai Contractor, Member (Employers' Representative); Pravin K. Karia, members, Employers' Representative; Arunbhai Jarivala, Member, Employers', Representative; Pirubhai Mansuri, Member, Workers' Representative; Kantibhai C. Vaghela, Member, Workers' Representative and Hemantbhai Solanki, Member, Workers' Representative.

24. On perusal of the report, it transpires that the State Advisory Board has given similar opportunity of being heard to all the parties which includes the present Union and its Advocate. It also transpires from the report that the Advisory Board has also considered oral and documentary evidence produced before it. It also transpires from the report that the Surat (Hazira) Kamdar Karmachari Union has also made a representation to the Labour Commissioner and the Secretary *vide* order dated 5th December, 2000 which is at pages 151 to 175. It also transpires from the report that the same Union has also filed further submissions to Labour Commissioner on 2nd January, 2001 which is at pages 176 to 183 including a letter dated 15th March, 2001 from the Advocate addressed to the Secretary, Government of Gujarat and Labour Commissioner. All these materials available on record clearly show that necessary opportunity of being heard has been provided to the Union.

25. On perusal of the impugned Notification dated 31st March, 2001 issued by the Labour and Employment Department, Gandhinagar, Gujarat, it clearly emerges that the Government has taken into consideration the advice of the Advisory Board.

26. In the case of *South Gujarat Textile Processors Association v. State of Gujarat* (supra), Division Bench of this Court, while referring to catena of decisions of the Supreme Court as well as other High Courts on the Notification issued therein by the State Governments under the Act specifically in Para 11(5) and Para 12, has observed that :

"11(5) The action of issuing the impugned notifications was strictly within the four corners and requirements of Sec. 10, and so it was beyond the pale of challenge, nor it could be challenged on the ground of non-compliance with the principles of natural justice, it being the result of quasi-legislative action. Even if such an action be described as quasi-judicial action, it has come on record that all the interested parties involved in the industry, namely, the factory owners, contractors' employees, were given sufficient opportunity to submit their say and viewpoints before the Advisory Board, and the Advisory Board had taken those submissions and considerations into account. It can certainly be said that a fair treatment was given to all concerned and the use of a particular nomenclature would not make any difference so far as the validity of the ultimate decision of the Government is concerned. We find that the power conferred under Sec. 10 of the Act is essentially quasi-legislative in character and it was exercised in the instant case within the limits of the statutory provisions, and so the question of affording an opportunity of hearing would not strictly arise. Even if such power is regarded as quasi-judicial in character, all the concerned interests were heard by the Board and the notification was issued by the appropriate Government after considering and accepting the report of the independent Advisory Body representing the concerned interests and presided over by a high judicial entity, and after also considering the relevant facts indicated in sub-sec. (2). We, therefore, hold that the impugned notifications are not vulnerable to any challenge.

12. Since, issuance of notification is a legislative action, it is for Legislature to decide which action is necessary in a particular local area."

27. In the case of *Prabhakaran Nair v. State of Tamil Nadu*, reported in AIR 1987 SC 2117, it has been observed that :

"if there are any considerations for enacting a particular measure, or abolishing a particular system if found pernicious, in a particular local area or establishment, it is not for the Court to sit in a judgment over the action of the legislative body, unless such action is patently *ultra vires* the Constitution or the Statute."

28. The aforesaid decision has been applied and endorsed by this Court in the case of *Alembic Chemical Works Company* (supra) wherein it has been observed that :

"….while exercising powers under Sec. 10(2) of the Act, the Government acts in its quasi legislative sphere. When such action is quasi-legislative function, the Government is not required to afford an opportunity of being hearing to the petitioner."

29. In the case of *Gujarat Narmada Valley Fertilizers Co. Ltd.* (supra), which is relied upon by learned Advocate for the appellant, considering the facts and circumstances of that case, while referring to the aforesaid two decisions of this Court, the Court has allowed the petition and quashed the

notification. On perusal of the decision, it is found that while considering the advice of the State Advisory Board, the Government has not taken into consideration the parameters of Sec. 10(2)(c) of the Act. This fact has been weighed with the Court, and therefore, the Notification therein was set aside and the matter was directed to be remanded to the Government to decide the issue in accordance with law by taking into consideration, the relevant facts, which is required to be taken into account under Sec. 10 of the Act.

30. At this juncture, it is appropriate to reproduce Secs. 10(1) and (2) of the Act, which reads thus :

"10. *Prohibition of employment of contract labour :*

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-sec. (1) in relation to an establishment, the appropriate Government shall have regard to conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as :-

(a) Whether the process, operation or other work in incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business manufacture or occupation that is carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation : If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

31. A bare perusal of the aforesaid provision reveals firstly, that the appropriate Government is required to have consultation with the concerned Board for issuing a notification under Sec. 10 thereof, and that is the matter of procedure, by which in the form of constitution of the Board requiring representation of different interests to be part of the constitution of the Board. The Act ensure a fair procedure of taking into consideration all the affected interests through an effective consultation with the Board constituting of various interest in the matter. Sub-Section 10(2) of the Act provides relevant considerations which must go in a decision-making process. The relevant

factors required to be taken into account detailed in the statute are not exhaustive in the sense that the appropriate Government is not precluded from taking into consideration other factors which may have relevant bearing on the question of deciding whether the employment of contract labour is to be abolished or continued to be regulated in a particular field of activity of any industry or in any industry, but does lay down that the considerations enumerated under Clauses (a) to (d) are the minimum which must be accounted for in the decision making process of the appropriate Government before the notification is issued. It is apparent that exercise of authority in this regard is not on subjective satisfaction of the delegate authorized to exercise such power, but it depends on objective consideration of relevant factors stated in statute and in consultation with an Advisory Board.

32. If one looks at the provisions of Sec. 10 of the Act it becomes evident that all that the Section requires is that before exercising the powers under Sec. 10(2) of the Act, the Government should make consultation with the Central Board or the State Board as the case may be. Sub-section (2) of Sec. 10 of the Act requires that the appropriate Government "shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors." The other factors have been enumerated in Clauses (a) to (d) by prefacing the expression "such as". When the appropriate Government takes action under Sec. 10 of the Act and issues notification, it performs its duty as quasi-legislative function. Therefore, hearing is not necessary.

33. It is worthwhile to refer to the observations of this Court in the case of *Alembic Chemical Works Co. Ltd.* (supra), especially Para 4 which reads as under :

> "In the notification, it is not required to be stated that there was effective and meaningful consultation. When it is stated in the notification that the powers conferred under Sec. 10(1) of the Act is exercised after consultation with the said Contract Labour Advisory Board, it means that the consultation has been done as required under the law. This is the normal presumption. In this case, no material is there on the record to indicate that what is stated in the notification is incorrect. No such averment in the petition has been pointed out to us. In the notification, it is not necessary to state that there was effective and meaningful consultation. Once, it is stated that there was consultation, it has to be presumed that it was consultation as required under the appropriate provisions of the Act. Hence, the contention is rejected as having no merits."

34. It is worthwhile to refer to the observation of this Court in the case of *Gujarat Narmada Valley Fertilizers Limited* (supra), especially Paras 48, 49, 51 and 52 which reads as under :

"48. The character of State action bears and requirement of hearing the affected party as a part of duty to act Downloaded on : Thu Aug. 01 11:29:10 I.S.T. 2019 fairly depends on the object and subject of the action. Some indication to that principle we find in the pronouncement in *Union of India v. Cynamide India Ltd.,* AIR 1987 SC 1802. It was a case relating to fixation of price generally under the Essential Commodities Act. The manufacturer had challenged the Government order under the said Act being violative of principles of natural justice, as it affected the manufacturers already. The Court observed :

"It is true with the proliferation of delegated legislation, there is tendency for the line between legislation and administration to vanish into illusion. ..... The distinction between the has usually been expressed as one between the general and particular :

'A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirement of policy. Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders, or of making decisions which apply general rules to particular cases.'

49. With these premise, the Court further observed :

"that a price fixation measure does not concern itself with the interests of an individual manufacturer or produce. .... It is intended to operate in future. It is conceived in the interest of general consumer public. It is with reference to generality of application of price fixation order operating in future and its object being consumer protection, the fact that it incidentally affected the producer was held to be of no consequence in holding the act of price fixation of legislative in character not requiring a hearing. However, it was distinctly made out that where the action is directed against a particular or individual in giving effect to legislative policy already engrafted in statute, the activity partakes the character of administrative that may require adherence to requirement of fair procedure required of such action."

51. In *Renusagar's case* (supra), the Court was considering the nature of power exercisable by State of U.P. under Sec. 3 of the U.P. Electricity (Duty) Act, 1952. The Court said referring to *Cynamide's* case :

"It appears to us that sub-sec. (4) of Sec. 3 of the Act in the set up is quasi-legislative and quasi-administrative in so far as it has power to fix different rates having regard to certain factors and inso far as it has power to grant exemption in some cases, in our opinion, is quasi legislative in character. Such a decision must be arrived at objectively and in consonance with the principles of natural justice. It is correct that with regard to the nature of the power is exercised with reference to any

class, it would be in the nature of subordinate legislation but when the power is exercised with reference to individual, it would be administrative."

52. In *K. Sabanayagam's case* (supra) which is later in time than the two Bench decisions of this Court, Majmudar, J., speaking for the Apex Court said explaining in which form of legislation activity lay the delegated authority hearing will be required to be given :

'In a case of purely ministerial function or in a case where no objective conditions are prescribed and the matter is left to the subjective satisfaction of the delegate …… no such principles of fair-play, consultation or natural justice could be attracted. …. There may also be situations where the persons affected are identifiable class of persons or where public interests of State *etc.* preclude observance of such a procedure.

But there may be a third category of cases wherein the exercise of conditional legislation would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive the rival class of persons who otherwise might have already got statutory benefits under the Act and who are likely to lose existing benefits because of exercise of such a power by the delegate. In such type of cases, the satisfaction of the delegate has necessarily to be based on objective consideration of the relevant data for and against the exercise of such powers. This exercise is not left to his subjective satisfaction nor it is mere ministerial exercise.'"

35. Now, as held by the various pronouncements that the action under Sec. 10 of the Act is a quasi-legislative action, there is no need of observing principles of natural justice. In the instant case, the aforesaid discussion and narration of the proceedings would clearly indicate that the principles of natural justice cannot be said to have been violated so as to vitiate the proceedings before the authority.

36. On perusal of the impugned judgment of the learned Single Judge of this Court, it clearly transpires that the learned Single Judge has taken into consideration all the aspects of the case and has rightly dismissed the petition. Further, the grievance raised by the appellant cannot be redressed in the petition filed under Art. 226 of the Constitution of India. Appropriate remedy available to the workmen would be under the relevant labour laws.

37. In view of the aforesaid, the present appeal is liable to be dismissed and the same is dismissed. It is clarified that the workmen-Union will be at liberty to avail of the alternative remedy as may be available under the relevant law.

(NRP) *Appeal dismissed.*

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