

**IN THE INDUSTRIAL TRIBUNAL AHMEDABAD,  
SITTING AT KALOL & MAHESANA.**

**Order below Exh.43**

- (1). Heard the Ld. advocate for the applicant/ first party no.1 as well as Ld. representative/ advocate for the second party trade union and pursued the record. Applicant/ first party no.1 has preferred this application by citing to the order passed by Hon'ble High Court of Gujarat in Special Civil Application no. 10438/2025 dated 16.09.2025, to assign a new number to the present reference as terms of reference have been reframed by the Appropriate Government and has raised a preliminary contention that before deciding any terms of reference requested to first decide whether the contract executed between the establishment and first party no. 2 to 8 contractors is sham, bogus and on paper arrangement.
- (2). The second party has submitted the reply to this application at Exh.46 and denied the facts stated in the application and contended that in view of provisions of Industrial Dispute Act and judgment of Hon'ble Supreme Court delivered in Steel Authority of India, the application preferred by the first party no. 1 is not tenable as the Tribunal has power to adjudicate the dispute by considering the facts and circumstances of the case and to pass necessary order. Further, Hon'ble High Court has only verified the relief mentioned in demand no.1 and 2 and upheld the demand nos. 3 to 26. Further Hon'ble High Court has directed to take decision on demand no.1 and 2 but the other demands are independent. Further Hon'ble High Court has nowhere passed an order to decide the preliminary issue first. Further the first party has filed this application by interpreting himself the order of Hon'ble High Court but only Hon'ble High Court has power to clarify its order. Further Hon'ble High Court has no where passed any order that the Tribunal has no power to independently pass order on interim relief

application. Further preliminary issue can only be adjudicated where there is only the question of law and the issue which is raised in this matter is a mixed question of law and fact. Therefore, it can not be decided as a preliminary issue and for that requested to reject this application.

- (3). Ld. advocate for the first party no.1 and Ld. representative/ advocate for the sponsored trade union submitted their arguments. But the Ld. advocates for the first party nos. 2 to 8 neither want to file any reply to this application nor want to submit any sort of arguments. Ld. advocate for the applicant in his arguments submitted that the first party no.1 has been manufacturing transmission towers for high tension electric lines and for different types of work, independent and separate contracts have been executed between contractors having distinct entities. Further submitted that for different works, the contractors have been engaging the workmen and there is no control and supervision of the applicant/ first party no.1 on those workmen. Further attendance, salary, leave and other remunerations are being paid by the contractors independently and the first party no.1 has not been paying any wages to any of the workmen. Ld. advocate for the applicant further contended that the Hon'ble High Court of Gujarat in R/ Special Civil Application no. 12023/2024 in para 15 has held that before deciding any terms, which are referred the issue with regard to the declaration of the contract as a sham and bogus is required to be decided first and similar direction is given by Hon'ble High Court in Special Civil Application no. 10436/2025 for first to decide the issue with regard to whether the contract system in existence is sham, bogus or a paper arrangement. Therefore, Ld. advocate for the applicant urged to first decide the preliminary issue which pertains to demand no.1 and 2 and requested to allow this application. Ld. advocate for the applicant in support of his arguments cited the judgment of Hon'ble Kerala High Court in the matter between Kerala State Coir Corporation Ltd. and Industrial Tribunal, Alleppey & Ors, W.A. No.

264/1995.

Per-contra the Ld. advocate/ representative of the sponsored trade union in his arguments submitted that the preliminary issue can be decided in the matters in which there is dispute regarding pure question of law but in this matter the disputed issue is a mixed question of law and fact, which can not be adjudicated as a preliminary issue. Further submitted that Hon'ble High Court of Gujarat nowhere directed the Tribunal to first decide the preliminary issue. Therefore, requested to reject this application. Further submitted that the first party nos. 1 to 8 has not submitted the written statement and without submitting the written statement, the first party no.1 can not ask for any preliminary contention. Further Ld. representative of the sponsored trade union has submitted one application during course of his arguments vide Exh. 47 for directing the first party to submit the written statement first and urged that Hon'ble High Court has verified the reliefs and upheld all the demands and only directed to take a decision on demand no.1 and 2 but nowhere directed to first decide the preliminary issue. Therefore, requested to reject this application and further requested to adjudicate all the issues conjointly. Ld. Representative of the sponsored trade union in support of his arguments cited the following judgments of Hon'ble Courts.

- a. D.P. Maheshwari v. Delhi Administrative and Others, (1083) 4 SCC 293.
  - b. Manager v. Industrial Tribunal &1, Special Civil Application no. 9485 of 2017, Hon'ble High Court of Gujarat.
  - c. National Council For Cement And Building Materials v. State Of Haryana, 1996(0) GLHEL-SC 19340
- (4). I have gone through all the judgments of Hon'ble Courts, as referred by the parties in support of their arguments with due respect. In this pending dispute it is admitted fact that the terms of reference have been reframed by

the Appropriate Government and Hon'ble High Court of Gujarat in Special Civil Application no. 10436/2025 has directed this Tribunal to assign a new number to this pending dispute and in view of the order of Hon'ble High Court, this Tribunal has assigned the new number accordingly for adjudicating the dispute between the parties in terms of reframed terms of reference. Therefore, there is no need to pass any further order on request no. 1 of the applicant/ first party no.1.

- (5). The first party has raised the preliminary contention that in view of the order passed by Hon'ble High Court in Special Civil Application no. 10436/2025, before deciding any terms of reference requested to first decide whether the contract executed between the establishment and first party no. 2 to 8 contractors is sham, bogus and on paper arrangement. On perusal of the record it reveals that the first party had approached Hon'ble High Court of Gujarat twice. Firstly challenged the referral order of the Appropriate Government dated 18.05.2024 and secondly challenged the referral order dated 04.06.2025, wherein terms of reference have been reframed by the Appropriate Government. **Hon'ble High Court of Gujarat in R/ Special Civil Application No. 12023/ 2024 has held in para 15 as under;**

**“15. Therefore, the mute questions arise before this Court that even if industrial dispute exists, but whether by framing the terms, which are referred herein above the learned Tribunal would be able to decide the Reference in true and proper spirit. It appears that before deciding any terms, which are referred the issue with regard to the declaration of the contract as a sham and bogus is required to be decided first. If the contract is sham and not genuine, then the Workmen of the so called contractor can establish their case that they were always the employees of the principal employer and for claiming the appropriate service**

**condition. When such dispute is raised, it is not for abolition of the labour contract. Therefore, the provision of section 10 of CLRA Act will not bar either raising or the adjudication of the dispute. However, if the learned Tribunal comes to the conclusion that the contract is genuine then it is only the appropriate Government, which has the authority to abolish genuine labour contract in accordance with the provision of this section of CLRA Act, no court, including the industrial adjudicator has jurisdiction to do so. Therefore, unless and until the adjudication on the declaration of the contracts and bogus is done, no further relief which are claimed by the present respondent can be examined.”**

**Hon’ble High Court of Gujarat in above referred order observed that before deciding any terms, which are referred the issue with regard to the declaration of the contract as a sham and bogus is required to be decided first for deciding the reference in true and proper spirit .**

- (6). According to the arguments of Ld. representative of the second party trade union, the Tribunal has to adjudicate on all the demands/issues conjointly and can not adjudicate the preliminary issue first and referred to the judgments of Hon’ble Supreme Court delivered in the matter of D.P. Maheshwary (Supra) and National Council (Supra). I have gone through both the judgments with due regard. Hon’ble Supreme Court in D.P. Maheshwary (Supra) has observed that it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all the issues in dispute at the same time without trying some of them as preliminary issues. Similarly, Hon’ble Supreme Court in National Council (Supra) has upheld the**

**order of Tribunal wherein the Tribunal had previously passed an order for deciding the issue at preliminary stage but later on decided to hear that issue along with other issues. But nowhere the Hon'ble Supreme Court has held that the Tribunal has no jurisdiction to adjudicate first on a preliminary issue if facts of any particular case require or when directions are given by Hon'ble High Court.**

- (7). On perusal of the record it reveals that previously dispute between AGMS Union as well as Gujarat Shramik Seva Sang on behalf of workmen and the contractors had been settled in the conciliation proceedings in the year 2022 and this dispute is raised later on by the workmen through another union namely Gujarat Mazdoor Sabha. Therefore, it appears that after considering the above refereed fact, Hon'ble High Court of Gujarat had passed an order for the reframing of the terms of dispute and later on in Special Civil Application no. 10436/2025 has passed an order to first adjudicate the issue with regard to whether the contract system in existence is sham, bogus or on a paper arrangement.
- (8). Ld. Representative of the second party trade union has cited one judgment of Honb'ble High Court delivered in the matter of Manager (Supra) and requested to adjudicate all the issues conjointly. Hon'ble High Court of Gujarat in Manager (Supra), has held that unlike Civil Procedure Code there is no statutory provision under ID Act to decide the issue of jurisdiction as preliminary issue and in appropriate cases, the specified authorities may take up certain pure question of law and jurisdiction as preliminary issue. On perusal of the record of this present dispute, it is not a case where there is a pure question of law and I agree with the arguments of Ld. representative of the trade union that only a pure question of law may be adjudicated as a preliminary issue. But in this instant case on hand Hon'ble High Court of Gujarat in Special Civil Application no. 10436/2025 has considered the decisions

**rendered by the Apex Court and has held in para 13 as under;**

**“..... for appropriate adjudication, the first issue with regard to whether the contract system in existence is sham, bogus or a paper arrangement is required to be decided, and thereafter the remaining demands are to be adjudicated by the learned Tribunal.”**

**Therefore, this Tribunal has no option to adjudicate the above referred issue as a preliminary issue. Further the above referred order is very clear and comprehensible, which requires no clarifications.**

**(9). Hon’ble Supreme Court in 2025 INSC 1175, General Manager, U.P. Cooperative Bank Ltd. v. Achchey Lal & Anr. has recently held that in industrial disputes, the determination of relationship between employer and employee is must and referred following few tests to determine employer employee relationship to be kept in mind while deciding matters arising from legislations like Industrial Disputes Act, 1947, The Factories Act, 1948 Etc.**

1. Control Test
2. Organisation/Integration Test
3. Multiple Factor test
4. Refinement of the multifactor test

Hon,ble Supreme Court in General Manager (Supra) further referred the following own previous judgments while determining the above referred tests as under:

To identify whether sham arrangements exist, this Court in Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N. reported in (2004) 5 SCC 514 ruled that piercing the veil was necessary. Whether the arrangement was a sham was not considered as a question of law. Such a determination must be adjudicated based on the evidence adduced in the court by either party and not merely

by referring to the provisions. The relevance of factors other than the control and integration to determine whether the workers are employees or independent contractors was brought out. The court examined the following factors

- a) who is the appointing authority?
- b) who is the paymaster?
- c) who can dismiss?
- d) the duration of an “alternative service”;
- e) the extent of control and supervision;
- f) the nature of the job, e.g. whether it is professional or skilled work;
- g) nature of establishment;
- h) the right to reject.

In *Sushilaben Indravadan Gandhi v. The New India Assurance Company Limited*, reported in (2021) 7 SCC 151, Hon’ble Supreme Court revisited the distinction between a contract of service and a contract for service and the multifactor test was reiterated, consisting of the following

- a) Control over the work and manner in which it is conducted
- b) Level of integration into employers' business
- c) Manner in which remuneration is disbursed to workers
- d) Economic control over workers
- e) Whether work being conducted is for oneself or a third party

**(10).** In this instant case on hand, Hon’ble High Court of Gujarat has directed this Tribunal to adjudicate the first issue with regard to whether the contract system in existence is sham, bogus or a paper arrangement and thereafter directed to adjudicate the remaining demands and it reveals that the first issue pertains to demand no. 1 and 2 of present dispute. If the second party trade union has any grievance against the above referred order then the union has no right to raise this objection before this forum. The dispute

related to demand no. 1 and 2 is a mixed question of law and fact and for that evidence from both sides is required. Therefore, first party no. 1 to 8 are hereby directed to submit their written statement on next date of hearing positively and thereafter parties to the dispute are directed to submit their evidence with regard to demand no. 1 and 2.

Accordingly the application preferred by first party no.1 is disposed of with aforesaid reasons. In view of this order the application vide Exh. 47 of second party shall stand disposed of.

Order passed and pronounced today on 03-11-2025.

Place: Kalol

Dated: 03-11-2025

Rajender Singh  
(Judge Code- GJ01085)  
Presiding Officer, Industrial Tribunal,  
Ahmedabad, sitting at Kalol & Mahesana