

B. Patel and Co. and Vs. State of Gujarat

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Court : Gujarat

Decided On : Mar-13-2006

Reported in : (2006)3GLR2513

Judge : P.B. Majmudar, J.

Acts : [Arbitration Act, 1940](#); Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 - Sections 8 and 21; [Arbitration and Conciliation Act, 1996](#) - Sections 85(2); Arbitration (Protocol and Convention) Act, 1936; Foreign Awards (Recognition and Enforcement) Act, 1961; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 2 and 115

Appeal No. : Civil Revision Application Nos. 1541 to 1546 of 1996

Appellant : B. Patel and Co. and ;mangal Construction Co.

Respondent : State of Gujarat

Advocate for Def. : P.B. Sheth, Assistant Govt. Pleader

Advocate for Pet/Ap. : Ramnandan Singh, Adv. in Civil Revision Application Nos. 1541 and 1542 of 1996 and; R.R. Shah, Adv. i

Disposition : Application rejected

Judgement :

P.B. Majmudar, J.

1. Since common point is involved in all these matters, with the consent of parties, all these matters are taken together for final hearing.

2. In all these matters, arbitration proceedings commenced under the provisions of [Arbitration Act, 1940](#). The Arbitrator gave his award and for the purpose of execution, the same applications were submitted under the provisions of the [Arbitration Act, 1940](#) for enforcing the said award being Misc. Civil Application Nos. 10, 9, 3, 6, 4 and 5 of 1994 before Civil Judge, S.D., Mirzapur (upon transfer to Civil Judge, S. D., Gandhinagar re-numbered as 33, 32, 37, 40, 38 and 39 of 1995 respectively). At the stage when the applications were pending before the Civil Court, the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 came into force. In that view of the matter, an application was given by the State before the trial Court in each of the above matter for transferring the said proceedings to the Tribunal constituted under Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992. The learned Civil Judge, S.D., Gandhinagar accepted the said applications given by the State and passed an order under Section 21 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 transferring the aforesaid cases to the Tribunal. It is against that order that the petitioners herein have approached this Court by invoking the provisions of Section 115 of the Civil Procedure Code contending that the Civil Court is competent to decide the application for execution of the award and the Civil Court is competent to make the award of the Arbitrator as a rule of the Court.

3. On behalf of the petitioners learned Advocates Mr. R.N. Singh and Mr. R.R. Shah submitted that since the award was already declared by the Arbitrator before the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 came into force, the Civil Court was competent to proceed with the said proceeding as it was required to pass only final order by making the award of the Arbitrator a rule of the Court. Messrs. R.N. Singh and R.R. Shah relied upon the decision of the Apex Court in the case of U.P. State Sugar Corporation. Ltd. v. Jain Construction Co. : AIR 2004 SC4335 , wherein while interpreting the provisions of [Arbitration and Conciliation Act, 1996](#), the Apex Court found that the application for

appointment of arbitrator filed and the arbitral proceedings were set in motion prior to commencement of the 1996 Act, the provisions of the 1940 Act would apply and the provisions of the 1996 Act would not be applicable in such cases. In this behalf, the Apex Court referred to Section 85(2)(a) of the 1996 Act, which reads as under:

85. Repeal and savings : (1) The Arbitration (Protocol and Convention) Act, 1936 (VI of 1937), the [Arbitration Act, 1940](#) (X of 1940) and the Foreign Awards (Recognition and Enforcement) Act, 1961 (XLV of 1961) are hereby repealed.

(2) Notwithstanding such repeal,

(a) The provisions of the said enactment shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties, but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.

Considering the said aspect, the Supreme Court in the aforesaid judgment held that the proceeding under the Old Act were maintainable as proceedings commenced before the 1996 Act came into force.

4. However, so far as Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 is concerned, Section 21 provides for as under:

21. The provisions of the Arbitration Act, shall insofar as they are inconsistent with the provisions of this Act, cease to apply to any dispute arising from a works contract and all arbitration proceeding in relation to such dispute before an arbitrator, umpire, Court or authority shall stand transferred to the Tribunal.

5. In the case of *Sardar Construction Co. v. State of Gujarat* : [1999]1SCR233 , the Supreme Court considered Section 21 of Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 and has held as under:

the award in the present, though given prior to 1-1-1994 which is the date of commencement of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992, had not obtained finality at the time when the said Act came into force. Under Section 21 of the said Act, the provisions of the Arbitration Act shall, insofar as they are inconsistent with the provisions of the Act, cease to apply to any dispute arising from a works contract and all arbitration proceeding in relation to such dispute before an arbitrator, umpire, Court or authority shall stand transferred to the Tribunal. In the present case, the arbitration proceedings in relation to the dispute were pending before the Court, and hence, the High Court has rightly transferred these proceedings to the Tribunal. Under Section 8 of the said Act on reference to the Tribunal, the Tribunal has to make an award which shall be deemed to be a decree within the meaning of Section 2 of the Civil Procedure Code, 1908 and it shall be executed accordingly.

6. In the case of V. Laxmikant and Co. v. State of Gujarat and Anr. 2000 (2) GLR 1441, a Division Bench of this Court has held as under in Para 9:

9. From the above discussion, it is clear that according to the learned single Judge, even if the award was passed by Tribunal under 1940 Act, till such an award became rule of the Court or decree, the proceedings could be said to be pending, xxx xxx.

Considering the aforesaid aspect of the matter, the submissions of learned Advocate for the applicant to the effect that the ratio of the judgment of the Apex Court in the case of if. P. State Sugar Corporation. Ltd. v. Jain Construction Co. (supra) would apply to the present cases cannot be accepted, as no such saving clause is available under the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992. The point in issue, in view of the judgment of the Supreme Court in the case of Sardar Construction Co. v. State of Gujarat 1999 (3) SCC 144, is already been concluded. The proceedings pending before the Civil Court for enforcement of the award are also required to be transferred to the Tribunal in view of Section 21 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992.

7. Under the circumstances, it cannot be said that the learned Civil Judge has committed any error of law or of jurisdiction which is required to be corrected by this Court in these Revision Applications. The proceedings pending before the Civil Court shall now be transferred to the Tribunal and the Tribunal shall decide the same in accordance with law keeping in mind Section 8 of the Act which shall be deemed to be a decree meaning of Section 2 of the Civil Procedure Code.

8. All these Revision Applications are rejected. Rule is discharged. Interim Relief stands vacated forthwith. No order as to costs.

9. Considering the fact that the proceedings are very old, the Tribunal may dispose of the cases as early as possible, and in any event, within a period of six months from the date of receipt of the writ of this Court.

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