

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO. 9523 OF 1994.

Date of Decision:-18-10-1995.

For Approval and Signature

THE HON'BLE MR. JUSTICE N. N. MATHUR.

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judges ?

Mr. R.D. Dave, Advocate, for the petitioner.

Mr. S.R. Brahmabhatt, Advocate for the respondents.

Coram:-N.N. MATHUR, J.

Date:-18-10-1995.

Oral Judgment:-

Rule. Mr. S.R. Brahmabhatt, learned Advocate, waives service of rule on behalf of the respondents.

2. By way of this Special Civil Application the petitioner seeks to challenge the letter dated 16-9-1993 annexure 'G' whereby the respondents have refused to accept nomination of Mr. K.M. Rathod, named by the petitioner as his Arbitrator and also refused to continue arbitration proceedings.

3. The brief facts leading to the present Special Civil Application are that the petitioner is a

partnership firm and it is engaged in the business of construction work of the Government buildings. The petitioner firm obtained contract for construction of Container Freight Station for six cargo berth at New Kandala from the respondent no.1 under the letter dated of intent dated 24th February 1983. The agreement contained Clause 6.63 to the effect that the disputes between the parties will be resolved by the arbitration. The say of the petitioner is that this dispute arose with respect to the claims amounting to Rs.35,67,640/-. As per agreement the order was referred to the Arbitrator, one to be nominated by the petitioner and another to be nominated by the Chairman of the respondent no.1 Trust. The trust nominated Mr. S.R. Rangnathan, Superintending Engineer, Kandala Port Trust. The petitioner nominated Mr. B.P. Patel, retired Chief Engineer, Government of India, Ministry of Transport. During the course of the proceedings Mr. S.R. Rangnathan retired from his service and therefore in his place Mr. S.K. Kotak's name was nominated by the Trust. Subsequently, Mr. B.P. Patel also expressed his inability to continue as the Arbitrator on health ground as well as on the ground that he was going out of the country. The petitioner firm appointed Mr. M.H. Vakharia, retired Chief Engineer, Irrigation Department, Government of Gujarat, as a Joint Arbitrator. Mr. Vakharia did not accept the said offer as a Joint Arbitrator. The petitioner firm therefore gave the name of Mr. Kalyansinh M. Rathod, as a Joint Arbitrator in place of Mr. B.P. Patel. The matter for appointment of the arbitrator remained for a long time. The respondent trust under the communication dated 16-9-1993 informed the petitioner that the request for appointment of Mr. K.M. Rathod in place of Mr. B. P. Patel cannot accede on the ground that the petitioner has not shown any interest in finalization of the scheme during the period of six to seven years.

4. Mr. L.G. Vanjani, Superintending Engineer(Project) has filed the counter affidavit. It is stated that the entire proceeding has been delayed at the instance of the petitioner firm and therefore it was considered that no useful purpose is going to serve by continuing the arbitration proceeding. In view of it, decision was taken to terminate the arbitration proceeding. It is contended by the learned Advocate for the petitioner that the petitioner was not all responsible for delaying the arbitration proceeding. The learned Counsel for the petitioner pointed that the matter with respect to appointment of the joint arbitrator remained with the respondent port trust for a long time. He has also submitted that once there is a provision of arbitration the same cannot be terminated unilaterally. On the other

hand, the learned Counsel for the respondents submitted that the petitioner has an alternative remedy by way of filing a civil suit.

5. I have considered the rival contentions. It may be stated that the suit pertains to the bills of the petitioner submitted in the year 1986 was filed. The arbitrator was appointed in the same year and the proceedings have continued for almost six to seven years. In view of the matter, it is not expedient to terminate the arbitration proceeding.

6. In view of the aforesaid, the letter dated 16-9-1993 of the respondent is quashed and set aside. The respondent trust is directed to take decision with respect to appointment of a joint arbitrator within a period of four weeks from the date of receipt of the writ. The Arbitrator shall conclude the proceedings within a period of six months thereafter. Rule is made absolute, with no order as to costs. Notice discharged.

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