

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13928 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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KANJIBHAI KALUBHAI GAMARA

Versus

PRESIDENT

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Appearance:

1. Special Civil Application No. 13928 of 2003  
MR KALPESH N SHASTRI for Petitioner No. 1  
RULE SERVED for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 27/02/2004

ORAL JUDGEMENT

Nobody has appeared on behalf of the respondent though Rule is served and therefore, with the consent of Mr.K N Shastri the matter is finally decided.

2. The petitioner has preferred this petition for challenging the legality and validity of the award dated

06/08/03 passed by the Presiding Officer of the Labour Court, Surendranagar in Reference (LCS) No.108/2001, whereby the Reference has been dismissed, on the ground that neither the petitioner nor the representative of the petitioner remained present.

3. It is the case of the petitioner that he was serving with the respondent - Municipality as a Clerk since 1988 and his services came to be terminated on 19/11/1994. The petitioner raised the dispute under the Industrial Disputes Act, 1947 and the said dispute, ultimately, came to be referred to the Labour Court, Surendranagar for adjudication being (LCS) No.46/1995. Mr.Shastri has stated that the said Reference case was dismissed for default at one point of time and thereafter, it was restored and after restoration, it was re-numbered as Reference (LCS) No.108/2001. The statement of claim was filed and the defence statement was also submitted by the respondent. Thereafter, as stated earlier, at one point of time, the Reference was dismissed for default and the said dismissal of the Reference was on account of the absence of the petitioner herein, who was the applicant before the Labour Court. Thereafter, Miscellaneous Application No.31/2000 was submitted by the petitioner and the Reference was restored. After restoration of the Reference, it appears that on number of occasions, adjournments were sought and the petitioner did not remain present and as a consequence thereof, on 06/08/03, the Labour Court dismissed the Reference. The said order of the Labour Court is under challenge before this Court by this petition.

4. Mr.Shastri submitted that it was obligatory on the part of the Labour Court to decide the Reference on merits and it was not appropriate on the part of the Labour Court to dismiss the Reference in absence of the petitioner or his advocate. In support of the said contentions, Mr.Shastri has relied upon the decision of this Court in the case of Divisional Railway Manager, Western Railway, Rajkot V/s. Secretary, Paschim Railway Karmachari Parishad reported in 2002 (2) GLR 1164 and he submits that therefore, the Labour Court should be directed to decide the reference on merits.

5. The procedure for adjudication of the Reference is prescribed in the provisions of the Industrial Disputes (Gujarat) Rules, 1966. Rule 26-A of the Rules reads as under;

"26-A. Setting aside ex parte Orders, Awards and Reports.-

- (1) On an application made within thirty days from the date knowledge of an ex-parte order, award or report by the party concerned, the Board, Court, Labour Court, Tribunal or Arbitrator may, for sufficient cause, set aside, after notice to the opposite party, such order, award, or report as the case may be;
- (2) The Board, Court, Labour Court, Tribunal, or Arbitrator may, on sufficient cause being shown, extend the period referred to in sub-rule (1);
- (3) An application under sub-rule (1) shall be supported by an affidavit."

6. The aforesaid Rule expressly provides that if an application is made within 30 days from the date of knowledge of an ex parte order, award or report by the concerned party, the Labour Court may, for sufficient cause, set aside, after notice to the opposite party, such order or award or report, as the case may be and therefore, it is for the party who did not remain present against whom the matter proceeded ex parte, to move appropriate application to the Labour Court, by showing sufficient cause and to request for setting aside of the said ex parte order as per Rule 26-A of the (Gujarat) Rules.

7. The reliance placed upon the judgment by Mr. Shastri is ill-founded, in as much as, in the case of Divisional Railway Manager (supra), it was a matter pertaining to a Reference referred by the Central Government and the procedure was to be followed as per the Industrial Disputes Act (Central) Rules. In the said Central Rules, there is no Rule like Rule 26-A which is available in the Industrial Disputes (Gujarat) Rules and therefore, the said judgment is of no help to the petitioner.

8. It is well settled that when the jurisdiction of this Court under Article 226 of the Constitution of India is invoked by any party, by way of self-imposed restriction, this Court may decline to exercise the power under Article 226, if statutory remedy is available to the party concerned and the same is not resorted to or exhausted by such litigant. In the present case, the same thing has happened and the petitioner has not resorted to the remedy of Rule 26-A, of moving the Labour Court itself for setting aside of the ex parte award.

Therefore, I find that the petitioner should be relegated to the remedy of considering the matter for setting aside of the ex parte award.

9. In view of the aforesaid discussions, it appears that the following directions shall meet with the ends of justice;

(i) The petitioner shall move appropriate application to the Labour Court under Rule 26-A of the Industrial Disputes (Gujarat) Rules, 1966 within a period of Fifteen Days from today.

(ii) If such an application is made, the Labour Court shall decide the same in accordance with law, after hearing both the sides.

The petition is disposed of accordingly. Subject to the aforesaid directions Rule discharged. No costs.

(Jayant Patel, J.)

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