

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 15549 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the 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
judge?

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STATE OF GUJARAT & 3 - Petitioner(s)
Versus
ANIL J JHATAKIA - Respondent(s)

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Appearance :

MR AMIT PATEL, ASST. GOVERNMENT PLEADER for Petitioner(s) 1 - 4.
NOTICE SERVED BY DS for Respondent(s) : 1,
MR ASHISH M DAGLI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/11/2008

ORAL JUDGMENT

1. **Rule.** Mr.Asish Dagli, learned Advocate
waives service of rule on behalf of the respondent.
With the consent of the learned Advocates appearing
on behalf of the respective parties, the petition is
taken up for final hearing today.

2. By way of this petition under Article 227 of the Constitution of India, the petitioners – State of Gujarat and others have prayed for an appropriate order quashing and setting aside the impugned orders dated 24.20.2005 as well as 17.02.2006 passed in Misc.Civil Application No.4 of 2002 by which the learned trial Court has allowed the said applications submitted by the respondent herein for appointment of arbitration and naming arbitrator.

3. Mr.Amit Patel, learned AGP appearing on behalf of the petitioners has submitted that dispute, if any, between the respondent and the petitioners was required to be decided and/or adjudicated upon by the Tribunal constituted under the Gujarat Public Works Contract Tribunal Arbitration Act, 1993. It is also submitted that even pending dispute before the Civil Court was required to be transferred to the said Tribunal. Therefore, it is submitted that the learned trial Court could not have passed the impugned orders referring the dispute to the arbitration and appointing arbitrator exercising powers under the provisions of the Arbitration and Conciliation Act, 1940 and/or Arbitration and Conciliation Act, 1996. Therefore, it is requested to allow the present Special Civil Application and quash and set aside the impugned orders.

4. Mr.Dagli, learned Advocate for the respondent has submitted that if at this stage the respondent is relegated to submit an appropriate

application before the Gujarat Public Works Contract Tribunal constituted under the aforesaid Act, question with respect to limitation might arise. Therefore, it is requested to make suitable observation and pass an appropriate order.

5. Considering the impugned orders and the provisions of the Gujarat Public Works Contract Tribunal Arbitration Act, 1993, it appears that dispute between the respondent and the petitioners were required to be adjudicated only by the learned Tribunal constituted under the aforesaid Act and even pending dispute / proceeding were required to be transferred to the said Tribunal. Under the circumstances, the learned trial Court has committed an error in allowing the said applications and referring the dispute to the arbitration and appointing arbitrator under the provisions of the Arbitration and Conciliation Act, 1940 and/or Arbitration and Conciliation Act, 1996. Under the circumstances, impugned orders passed by the learned trial Court deserves to be quashed and set aside with observation that it will be open for the respondent to approach the learned Tribunal constituted under the Gujarat Public Works Contract Tribunal Arbitration Act, 1993 for the dispute between the respondent and the petitioners and if the respondent approaches the Tribunal within a period of 1 (one) month, the learned Tribunal to decide and dispose of the same in accordance with law and on merits without raising any objection with respect to limitation.

6. For the reasons stated above, the petition succeeds. Impugned orders dated 24.20.2005 as well as 17.02.2006 passed in Misc.Civil Application No.4 of 2002 passed by the learned trial Court are hereby quashed and set aside with liberty in favour of the respondent to approach the Tribunal constituted under the aforesaid Act. If appropriate application raising the dispute is raised before the learned Tribunal constituted under the aforesaid Act within a period of 1 (one) month from today, in that case, the learned Tribunal to decide and dispose of the same in accordance with law and on merits without raising objection with respect to limitation as the parties were prosecuting before this Court and earlier before the learned Trial Court. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs. Direct service is permitted.

[M.R.Shah,J.]

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