
(1997) 09 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No. 10146 of 1996

Arjanbhai Ukabhai and Co.

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 22-09-1997

Acts Referred:

Limitation Act, 1963 — Section 13, 17, 8(1)

Citation : (1997) 09 GUJ CK 0026

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Advocate : K.C. Sukhwani, for the Appellant; K.M. Mehta, for the Respondent

Judgement

R.K. Abichandani, J.—The petitioner seeks a direction on the Gujarat Public Works Disputes Arbitration Tribunal to decide Arbitration Reference No. 81 of 1996 on merits.

2. According to the petitioner it was awarded a contract for construction of 60 cm. thick upstream pitching on existing earth work in Falku Irrigation Project at Rajkot by agreement entered into in 1991, pursuant to which the work order was issued to the petitioner on 5-2-1991. According to the petitioner the final work was completed on 30-7-1992 though it was required to be completed on 4-8-1991. As per the agreement, the petitioner approached the Superintending Engineer who rejected the petitioner's claim on 19-12-1994. The Arbitration Tribunal came into existence from 1-1-1994 when the said Act was brought into force. Earlier the petitioner could have filed the suit within three years from the date of cause of action. On this basis the case of the petitioner is that he could file the Reference u/s 8(1) also within three years from the date of the Superintending Engineer's order dated 19-12-1994 rejecting his claim. Reference had been filed before the Tribunal on 17-10-1995 which according to the petitioner was required to be entertained notwithstanding the provisions of Section 8(1) which require a reference to be made within one year from the date when dispute arose.

3. The Tribunal by its order dated 17-4-1996 rejected the reference of the petitioner on the ground that it was time barred negating the petitioner's contention that the period prescribed for filing suits under the Limitation Act of three years would apply to such reference made in respect of disputes which had arisen before the coming into force of the said Act.

4. The learned Counsel for the petitioner contended that the petitioner could have filed the suit within three years from the date of the accrual of cause of action i.e. 19-12-1995 but because of coming into force the said Act from 1-1-1994, suit could not be filed since the jurisdiction of the Civil Court was barred by the provisions of Section 13 of the said Act. The learned Counsel therefore submitted that for no fault on the part of the petitioner he has remained without remedy. It was submitted that to avoid such injustice, in cases where the cause of action has arisen prior to coming into force of the said Act and suits could have been filed within three years, it should be held that provisions of Section 8(1) regarding limitation of one year applies only to disputes which have arisen after 1-1-1994.

5. u/s 8(1) a dispute between the parties is required to be referred to the Tribunal within one year from the date when the dispute has arisen. The Act came into force from 1-1-1994 from which date no suit could have been filed. Therefore, the petitioner could have filed the reference u/s 8(1) in which he could have made an application u/s 17 showing sufficient cause for not making the reference within one year from the date of dispute arises. u/s 17 the Tribunal is empowered to admit such belated reference where sufficient cause is shown. The petitioner, however, did not care to file the reference even within one year from the date on which the said Act came into force. In the reference filed u/s 8(1) on 17-10-1995 he did not show any sufficient case for extension of time and it appears that no such application invoking the jurisdiction of the Tribunal for extending time u/s 17 of the said Act was made. The period of Limitation prescribed under the Limitation Act was clearly not applicable to the references which are filed u/s 8(1) of the said Act since the said sub-provision prescribes its own period of limitation of one year which can be extended for sufficient cause by the Tribunal u/s 17 of the Act. So far limitation period is concerned, the provisions of the said Act are self contained.

6. There cannot be made any distinction so far limitation of period is concerned, between cases where the cause of action has arisen prior to the coming into force of the said Act and those where the cause of action has arisen after the Act came into force from 1-1-1994. If that is done an incongruous situation would arise, where, if the reference is made as regards the dispute that may have arisen much prior to the coming into force of the Act such as in the present case in 1992, it will be required to be entertained even beyond one year of the coming into force of the Act while the disputes that may have arisen on the day of the coming into force of the Act on 1-1-1994 cannot be entertained after one year. Reference was filed u/s 8(1) and therefore it must be governed by that provision

which does not distinguish between the cases where the disputes had arisen earlier and those where the disputes have arisen after the coming into force of the Act. At the most, where the disputes had arisen earlier, that could be put up as a ground for condonation of delay for showing sufficient cause u/s 17 and the Tribunal could decide whether the time should be extended. The Tribunal has therefore rightly held that if reference is to be filed under the provision of Section 8, it has to be done within one year from the date of the dispute. The Tribunal was also right in holding that, apparently, there was no reason for the petitioner to wait beyond 31-12-1994.

7. Under these circumstances, there is no substance in this petition and it is rejected. Notice is discharged with no order as to costs.

Petition dismissed