

(2000) 10 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 9623 of 2000

Gujarat Housing Board and Another

APPELLANT

Vs

Arvind C. Patel

RESPONDENT

Date of Decision : 06-10-2000

Acts Referred:

Bombay General Clauses Act, 1904 — Section 2(26)
Companies Act, 1956 — Section 3
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 3(31)
Gujarat Housing Board Act, 1961 — Section 3(3)
Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 — Section 2, 2(1), 61
Land Acquisition Act, 1894 — Section 6

Citation : (2001) 21 GLH 646 : (2002) 1 GLR 153

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : Ketty A. Mehta, for the Appellant; B.S. Patel, for the Respondent

Final Decision : Allowed

Judgement

M.S. Shah, J.—Rule. Mr. B. S. Patel waives service of rule for the respondent. With consent of the learned Counsel for the parties, the matter is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the Gujarat Housing Board has challenged the judgment and order dated 31-7-2000 passed by the Gujarat State Public Works Contract Disputes Tribunal (hereinafter referred to as "the Tribunal") constituted under the provisions of Gujarat Public Works Contract Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as "the Act") rejecting Arbitration Reference No. 13 of 1999 only on the ground that the reference is not maintainable as the Gujarat Housing Board is not a public undertaking within the meaning of Section 2(1) of the Act.

3. The petitioner-Gujarat Housing Board (hereinafter referred to as "the Board")

had given a work contract to the respondent herein for construction of 48 H.I.G. tenements at Nagarvada, Vadodara. The tender was accepted on 28th July, 1994 and as per one of the terms of the tender the work was required to be commenced on 8-9-1994 and was to be completed on or before 7-3-1996, i.e.. within a period of 15 months. The Board granted extension of time-limit for a period of four months to complete the work contract and further extensions were also given upto 36 months, but the work was not completed. Since, the respondent did not execute the work in spite of extension of time, the Board levied compensation as per Clause 2 of the agreement. According to the Board, the respondent stopped and abandoned the work and the work was done only to the extent of 29.51% of the total work and hence, the Board invoked Clause 3 of the contract agreement and intimated the respondent vide letter dated 11-11-1997, that rescission of contract had taken place and work was thereafter entrusted to another contractor. The Board thereupon claimed amount being the difference between the price charged by the subsequent contractor and the price at which the respondent No. 1 had agreed to execute the contract and also loss of interest and for compensation the Board claimed total loss of Rs. 54,40,872/- and interest at the rate of 18% p. a., on the amount from the due date till its realisation.

4. The Board approached the Tribunal by preferring Arbitration Reference No. 13 of 1999 claiming the aforesaid amount with interest from the respondent. The respondent raised a preliminary contention before the Tribunal that the reference was not maintainable as the Gujarat Housing Board was not a "public undertaking" within the meaning of the Act. By the impugned judgment and order dated 31-7-2000 the Tribunal upheld the preliminary contention and rejected the reference. The Board and its Executive Engineer at Vadodara have challenged the aforesaid judgment and order of the Tribunal in [his petition. Notice for final disposal was issued and with the consent of the learned Counsel for Parties, the matter is taken for final disposal today.

5. Since everything turns upon interpretation of Section 2(1), it is required to be quoted at the outset :

Section 2(1) "Public undertaking" means -

(i) any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty-one percent of the paid-up share capital is held by the State Government or any company which is a subsidiary (within the meaning of the Act) of the first mentioned company;

(ii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 (I of 1956) or a local authority) established by or under Central Act or a State Act and owned or controlled by the State Government;

(iii) such class of local authorities as the State Government may by notification in the Official Gazette, specify";

6. It is the contention of the Board that the Board is a statutory Corporation established under the Gujarat Housing Board Act, 1961 which is a State Act and the Board is controlled by the State Government, and is therefore, a public undertaking as defined by Section 2(1)(ii) of the Act.

7. On the other hand, it is the contention of Mr. B. S. Patel, learned Counsel for respondent that the Board is a "local authority" within the meaning of Clause (ii) of Section 2(1). It is, therefore, not covered by the said clause and at the same time there is no notification in the Official Gazette by which the Gujarat Housing Board is specified as a local authority under Clause (iii), and therefore, the Gujarat Housing Board is not a public undertaking. Reliance is placed on the provisions of Gujarat Housing Board Act, 1961 and the provisions of Bombay General Clauses Act as well as on the decision of a Division Bench of this Court in *Ochhavlal Jethalal Desai v. State of Gujarat*, in 1967 GLR 359 and the judgment of the Apex Court in *State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another*, .

8. A bare perusal of the aforesaid definition of "public undertaking" clearly reveals that the disputes between the following public undertakings and the contractors in respect of execution of public works as defined in Section 2(k) of the Act shall be decided by the Tribunal and by no other authority :

(i) Any Company in which not less than 51% of the paid-up share capital is held by the State Government; (for brevity "a Government controlled Company")

(ii) Any Corporation established by or under a Central Act or a State Act and owned and controlled by the State Government; (for brevity a "statutory Corporation") which is not a local authority.

(iii) Such class of local authorities as the State Government may, by notification in the Official Gazette, specify, (for brevity "specified local authorities")

9. The preliminary objection of the respondent which has been accepted by the Tribunal and which is reiterated by Mr. B. S. Patel is founded on the premise that the Gujarat Housing Board is a local authority, but not covered by Clause (iii), and therefore, the Gujarat Housing Board is not a public undertaking. In support of the contention that the Gujarat Housing Board is a "local authority" Mr. Patel has relied on the following provisions of the Gujarat Housing Board Act, 1961 :

"3(3) For the purpose of this Act and the land acquisition law, the Board shall be deemed to be a local authority;

Explanation : The purpose of this Act referred to in sub-section (3) include the management and use of lands and buildings belonging to or vesting in the Board under or for the purpose of this Act and the exercise of its rights over and with respect to such lands and buildings for the purpose of this Act.

20. The Board may enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of the purposes of this Act.

24. Subject to the provisions of this Act and subject to the control of the State Government the Board may incur expenditure and undertake works as the State Government may by notification in Official Gazette specify for the framing and execution of such housing schemes as it may consider necessary from time to time or as may be entrusted to it by the State Government.

25(1) Notwithstanding anything contained in any other law for the time-being, a housing scheme may provide for all or any of following matters, namely :-

(a) to (d)

(f) the construction and reconstruction of building.

Section 61 contains the provisions for Board's funds."

On the basis of the aforesaid provisions and in view of the definition of "local authority" as contained in Section 3(3) of the Gujarat Housing Board Act, it is contended on behalf of the respondent that the Board is a "local authority" and reliance is also placed on the decision of the Division Bench of this Court in *Ochhavlal Jethalal Desai v. State of Gujarat*, in 1967 GLR 359 wherein it was held that the Agricultural Produce Markets Committee is a "local authority".

10. It appears to the Court that the legislature intended speedy disposal of disputes relating to works contracts of public bodies. Therefore, it gave a very expansive definition of "public undertaking" containing three categories :-

(i) any Company defined in Section 3 of the Companies Act, 1956 in which not less than 51% of the paid-up share capital is held by the State Government.

(ii) any Corporation established by or under the Central Act or State Act and owned or controlled by the State Government (not being a Government Company or a local authority);

(iii) such local authorities as the State Government may by notification in Official Gazette specify may by notification in Official Gazette specify.

In view of the provisions of the Gujarat Housing Board Act, 1961, there is no dispute about the fact that the Board is controlled by the State Government.

It clearly appears that when the legislature referred to any Statutory Corporation owned or controlled by the Government the other words in the bracket in Clause (ii) were intended to exclude companies falling in Clause (i) and local authorities which might otherwise also fall in Clause (iii). As far as Clause (iii) is concerned, only those local authorities which are notified by the State Government in the Official Gazette are to be considered as local authority falling within the third category of "public undertaking". The Act does not give any artificial or extended definition of "local authority". Hence, the expression "local authority" is to be confined to only those authorities which are entrusted with the duties of local self-Government like Municipal Corporations under the Bombay Provincial Municipal Corporations Act, Municipalities under the Gujarat Municipalities Act, 1963,

Panchayats under the Gujarat Panchayats Act, 1993 and the Notified Area Committees under the relevant statutes. Considering the fact that, that such local authorities are also Statutory Corporations and looking to the large number of such local authorities and the possibility that the Tribunal to be set up under the Act may not immediately be able to take up the disputes between contractors and all such local authorities, the legislature did in the first instance include all local authorities under the meaning of "public undertaking", but left it to the discretion of the Government to specify such local authorities as are to be included in the definition of "public undertaking". Hence, local authorities have been excluded from Clause (ii) pertaining to Statutory Corporations which are included in the definition of "public undertaking".

11. The expression "local authority" is not defined in the Act. Hence, reference is required to be made to the definition of "local authority" in the Bombay General Clauses Act, 1904 as contained in Section 3(26) which is in part mareria with Section 3(31) of the General Clauses Act, 1897 and which reads as under :

"Local Authority" shall mean a Municipal Corporation, Municipality, Local Board, Body of Port Trustees or Commissioners, or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund."

The local authority has thus reference to an authority which is intended to carry on self-Government over a specified local area. This is clear from the following observations which were made by the Apex Court in The Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation, :

"In interpreting the scope and extent of the expression "oiher authority" in the definition of "local authority" in Section 3(31) of the General Clauses Act the principle of ejusdem generis is applicable. The local authorities which are specifically mentioned in Section 3(31) of General Clauses Act clearly can be regarded as local bodies which are intended to carry on self-Governmem. It is for this reason that this definition states that such an authority must have control or management of a municipal or local fund. Municipal Committee, District Board, Body of Port Commissioners are entities which carry on Government affairs in local areas and they would give colour to the words "other authorities" occurring in Section 3(31). To put it differently, "other authority" referred to in Section 3(31) must be similar or akin to Municipal Committee, District Board or Body of Port Commissioners."

The functions of Gujarat Housing Board under the Act are not confined to any particular area, but its functions extend to construct housing colonies all over the State. It cannot be construed as an authority entrusted with local self-Government.

12. The decision in Ochhavlal Jelhalal Desai v. Stale of Government, in 1967 GLR 359 was concerned with the limited controversy whether the A.P.M.C., was a local authority within the meaning of the Land Acquisition Act, 1894 because the

notification u/s 6 of the Land Acquisition Act provided that the lands were permitted to be acquired at the instance of a local authority. After examining the provisions of the said Act the Division Bench came to conclusion that the A.P.M.C., was a local authority. After examining the provisions of the said Act, the Division Bench came to conclusion that the A.P.M.C., was a local authority. However, the said decision is of no relevance to the facts of the present case.

13. In view of the above discussion, this Court has no hesitation in holding that the expression "local authority" in Clause (ii) as well as in Clause (iii) of Section 2(1) of the Act has the same meaning as the expression "local authority" in Section 2(26) of the Bombay General Clauses Act and Section 3(31) of the General Clauses Act. Hence, the Gujarat Housing Board is not a local authority. Accordingly, the Gujarat Housing Board which is a Corporation established under Gujarat Housing Board Act, 1961 and is controlled by the State Government is a "public undertaking" within the meaning of Section 2(1)(ii) of the present Act.

14. There is one more aspect to be considered. Section 2(k) of the Act defines the works contract. The expression is defined to mean several works such as building, dam, canal, factory workshop "or of such other work of the State Government or, as the case may be, of the public undertaking as the State Government may by notification in Official Gazette specify," Here what may be specified by the State Government in the Official Gazette is additional items of works which are to be considered as works for the purposes of the Act. The words "as the State Government may by notification in Official Gazette specific" refer to the other works and the same do not refer to a public undertaking. The Government Companies specified in Clause (i) and the statutory Corporations (other than local authorities) specified in Clause (ii) of the definition of "public undertaking" are already covered by the expression "public undertaking" and it is only in case of local authorities that the notification in the Official Gazette would be required to be issued for covering them within the definition of "public undertaking" under the Act.

15. The petition is, therefore, allowed and the impugned order dated 31-7-2000 passed by the Tribunal is set aside. It is declared that the Gujarat Housing Board, a Corporation established under the Gujarat Housing Board Act, 1961 and controlled by the State Government is a "public undertaking" within the meaning of Section 2(1)(ii) of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992. The Tribunal shall accordingly hear and decide Arbitration Reference No. 13 of 1999 in accordance with law and as expeditiously as possible.

Rule is made absolute with no order as to costs.

16. Petition allowed