

(2014) 03 GUJ CK 0043
In the Gujarat High Court

Case No : Letters Patent Appeal No. 303 of 2013 in Special Civil Application No. 3203 of 2001

Oil and Natural Gas Commission	Vs	APPELLANT
Baldev Babaji Thakore 13 and Others		RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 2 GLH 7

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Hemal K. Acharya, Advocate for the Respondent(s) Nos. 2, 4-7, 9-11 and 13-14, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard Mr. R.R. Marshal learned advocate for M/s. Marshal & Associates, Advocates for the appellant and Mr. Hemal K. Acharya learned advocate for the respondents.

2. By way of the present Letters Patent Appeal, the appellant original petitioner has challenged the judgment and order dated 3.10.2012 passed by the learned Single Judge in Special Civil Application No. 3203/2001, whereby the learned Single Judge was pleased to dismiss.

3. In the writ petition, the appellant herein -original petitioner has challenged the award dated 12.12.2000 passed by the Central Industrial Tribunal, Gujarat at Ahmedabad. In the writ petition, the Central Industrial Tribunal was not a party. The writ petition was essentially under Article 227 of the Constitution of India.

4. The Five Judges Full Bench of this Court in the case of Gujarat State Road Transport Corporation Vs. Firoze M. Mogal and 1 Another, has held as under:--

x) If the Special Civil Application is described as one not only under Article 226 of

the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal I for the first time in the Letters Patent Appeal will not change the nature and character of the proceedings before the learned Single Judge. By merely impleading such a Court or Tribunal for the first time in the L.P.A., the appeal could not be said to be maintainable, if the proceedings before the learned Single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution.

xi) If the learned Single Judge, in exercise of a purported power under Article 227 of the Constitution sets aside the order of Tribunal or Court below and at the same time, the essential conditions for issue of writ of certiorari are absent, no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself and such an order can be challenged only by way of a SLP before the Supreme Court.

xii) If a learned Single Judge, in exercise of a purported power under Article 227 of the Constitution modifies the order of Tribunal/Authority or Court below and thereby partly allows a petition to a certain extent, then in such circumstances, it could not be said that the Court exercised its certiorari jurisdiction and no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself.

5. In view of the aforesaid Full Bench decision, the present Letters Patent Appeal is not maintainable as the learned Single Judge has exercised jurisdiction under Article 227 of the Constitution of India. Hence, the present Letters Patent Appeal stands dismissed as not maintainable. Interim relief stands vacated. We, however, make it clear that we have otherwise, not gone into the merit and the dismissal of this appeal will not stand in the way of the appellant in seeking appropriate remedy before the appropriate forum in accordance with law.