
(1998) 05 GUJ CK 0010
In the Gujarat High Court

Sardar Patel University

APPELLANT

Vs

Patel and Co.

RESPONDENT

Date of Decision : 01-05-1998

Acts Referred:

Arbitration Act, 1940 — Section 14(2)
Companies Act, 1956 — Section 3
Constitution of India, 1950 — Article 12, 226, 32
Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 — Section 10, 12, 2, 2(1)(i), 2(1)(k)

Citation : (1999) 2 GLR 1264

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Judgement

N.N. Mathur, J.—Rule.

This revision application u/s 12 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as "the Act") is directed against the preliminary objection raised by the petitioner-Sardar Patel University that the Tribunal has no jurisdiction to decide the dispute between the parties.

2. The petitioner-University had given a contract to construct Gordhanbhai Hathibhai Patel Institute of Material Science Building to the respondent M/s. Patel and Co. A dispute arose between the parties in connection with the said work. Both the parties had appointed Arbitrator. The Arbitrators after considering the facts and evidence of the case declared their award dated 16-9-1992. On 19-9-1992 both the Arbitrators had submitted the award to the Civil Judge (S.D.), Anand, u/s 14(2) of the Arbitration Act, 1940 which was registered as Misc. Civil Application No. 54 of 1992. On coming into force of the Act, 1992 on 1-1-1994 the learned Civil Judge (S.D.), Anand transferred the said case to the Tribunal in view of the provisions of Section 21 of the Act, 1992.

3. Section 8 of the Act makes it obligatory for either of the parties to refer the dispute to the Tribunal for arbitration irrespective of the fact that the work

contract contains arbitration clause or not. Section 21 oust the jurisdiction of the Civil Court. It provides that on the commencement of the Act any dispute arising from a work contract and/or arbitration proceedings any such dispute before an Arbitrator Umpire, Court or Authority shall stand transferred to the Tribunal. Work contract has been defined in Clause (k) of Sub-section (1) of Section 2 of the Act which means contract made by the State Government or public undertaking with any other person for execution of any of its work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory or 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 the Official Gazette specify. The petitioner-Sardar Patel University is not admittedly State. Therefore, only question which arises for consideration in the present case is:

whether Sardar Patel University is a public undertaking within the meaning of Clause (ii) of Sub-section (1) of Section 2 of the Act.

4. It is contended by Mr. S. N. Shelat, learned Addl. Advocate General that the Tribunal has committed error in holding that the University is a body corporate controlled by the State Government and therefore, it is a public undertaking as per Section 2(1)(i) of the Act.

5. To appreciate the contention it will be convenient to read the definition of "public undertaking" as given in Sub-section (1) of Section 2 thus:

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

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

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

6. The University being not Company, obviously, Clause (i) cannot be attracted. So as also Clause (iii) is not attracted as there is no notification with respect to the University. Clause (ii) says that any Corporation established by or under a Central Act or a State Act and owned or controlled by the State Government. This excludes the Company as defined u/s 3 of the Companies Act, 1956 or a local authority. Therefore, the question is whether Sardar Patel University is a Corporation established by a Central or State Act and owned and controlled by the State Government, not registered under the Companies Act or a local authority.

7. In Halsbury's Laws of England "corporation" is defined as "a body of persons (in the case of Corporation aggregate) or an office (in the case of corporation

sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question". In Administrative Law by Justice C.K. Thakker the learned author has enumerated the following characteristics of a corporation created by or under the statute:

1. A corporation is established by or under a statute; nevertheless it possesses an independent corporate personality and it is an entity different from the Union or the State Government. It is a body corporate with perpetual succession and common seal. It can sue and be sued in its own name.
2. A corporation exercises its rights, performs its functions and discharges its duties and obligations entrusted to it by its constituent statute or charter by which it is created. Any action of a corporation, not expressly or impliedly authorised by the statute or charter is ultra vires and having no legal effect whatsoever.
3. A corporation can possess, hold and dispose of property.
4. Subject to the provisions of the Statute by or under which a corporation is created, such corporation is by and large an autonomous body. Even though the ownership, control and management of a corporation might be vested in the Union or State, in the eye of law, the corporation is its own master in day-to-day management and administration.
5. The constituent statute or charter may delegate the rule making power to a corporation. Such rules, regulations and bye-laws are enforceable and binding unless they are ultra vires the parent Act, Constitution of India or are otherwise bad in law.
6. A corporation created by or under a statute can be said to be an agency or instrumentality of the Government and "State" within the meaning of Article 12 of the Constitution and therefore, is subject to the jurisdiction of the Supreme Court under Article 32 and of the High Courts under Article 226 of the Constitution.
7. Employees of a corporation do not hold a "civil post" under the Union or the State within the meaning of Part XIV of the Constitution of India.
8. A corporation cannot be said to be a "citizen" within the meaning of Part II of the Constitution and therefore, it cannot claim benefits of those fundamental rights which have been enforced only on the citizens.
9. A corporation is liable for breach of contract and also in tort.
10. Since a corporation is neither a department nor an organ of the Government, the doctrine of "Crown privilege" cannot be claimed by it.

The learned author has classified the public corporation in four groups : (1) Commercial Corporations; (2) Development Corporations; (3) Social Services

Corporations; and (4) Financial Corporations. The Corporations which have been established for the purpose of providing certain essential services to the citizen on behalf of the Government are not commercial in nature and therefore, are not expected to be financially self-supporting. The object of such Corporation is to render social service and not to earn profits.

8. Sardar Patel University has been established under the Bombay Act 40 of 1955 as The Sardar Patel University Act, 1955. Section 3 of the Act provides a Chancellor, Vice-Chancellor and other officers of the University are constituted and declared to be one body corporate having perpetual succession and common seal. Section 8 makes a provision for officer of the University including the Chancellor, Vice-Chancellor, Deans of Faculties, Registrar and such other officers. Section 9 provides that the Governor of the State shall be the Chancellor of the University. Section 10 provides that the Vice-Chancellor shall be appointed by the State Government. Section 11A provides that Pro-Vice-Chancellor shall be appointed by the State Government. Thus, Sardar Patel University is a body corporate controlled by the State Government and therefore, in my view it is a public undertaking within the meaning of Clause (ii) of Sub-section (1) of Section 2 of the Act. In view of the aforesaid the University being a public undertaking the dispute between the petitioner-University and the respondent-contractor is a work contract within the meaning of Section 2(1)(k) and therefore, on commencement of the Act on 1-1-1994, the dispute pending before the Civil Judge (S.D.), Anand, rightly stood transferred to the Tribunal in view of the provisions of Section 21 of the Act.

9. In view of the aforesaid, I find no merit in this Civil Revision Application and the same is accordingly rejected. Rule discharged.