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**(1993) 07 GUJ CK 0011**  
**In the Gujarat High Court**

Union of India (UOI) and Others

APPELLANT

Vs

Gujarat Ambuja Cement Ltd.

RESPONDENT

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**Date of Decision :** 02-07-1993

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Railways Act, 1890 — Section 27A(1)(b)  
Railways Act, 1980 — Section 27A(1)(b)

**Citation :** (1993) 2 GLR 1822

**Hon'ble Judges :** S. Nainar Sundaram, C.J;S.D. Dave, J

**Bench :** Division Bench

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## Judgement

S. Nainar Sundaram, C.J.—The respondents in Special Civil Application No. 475 of 1990 reported in Gujarat Ambuja Cements Limited Vs. Union of India (UOI) and Others, are the appellants in this Letters Patent Appeal. The petitioner in the Special Civil Application is the respondent in this Letters Patent Appeal. Convenience suggests that we refer to the parties as per the nomenclature assigned to them in the Special Civil Application.

2. The petitioner established a cement plant at Mahuva in Saurashtra. For manufacturing cement, the petitioner requires huge quantities of coal and it is stated that they are being purchased from Bilaspur Collieries and other Collieries and the coal is transhipped by railway wagons to the site of the factory of the petitioner at Kodinar and the manufactured product of the petitioner, viz., cement, is being despatched to the various destinations by railway wagons. With regard to the inward traffic of coal and the outward traffic of cement, a controversy has arisen as to whether the petitioner could avail of the shortest route between Sabarmati, Khijadiya and Kodinar. The shortest route is:

Khijadiya - Visavadar - Talala - Prachi Road - Kodinar." The longest route is:

Khijadiya - Jetalsar - Junagadh - Veraval - Talala - Prachi Road - Kodinar.

The longest route is 213 Kms. and the shortest route is 139 Kms. The difference

between the longest route and the shortest route is 74 Kms. On the basis of Rule 125(1)(b) of the Goods Tariff No. 39, Part-1, Volume I, the petitioner would say that the goods are to be despatched only by the shortest route at the charges by the cheapest route. The said rule read? as follows:

125. Routing of goods traffic:

(1)(a) xxx xxx xxx (b) In the absence of specific instructions in writing from the sender or his authorised agent to the contrary, goods will be despatched by the shortest route at the charges by the cheapest route, i.e., the route by which the freight charges are at the lowest.

3. But the petitioner is asked to face the General Orders stated to have been passed u/s 27A(1)(b) of the Indian Railways Act, 1890 (hereinafter referred to as "the Act"). The import of the General Orders, would be that by virtue of the rationalisation happened thereunder, the carriage of goods would take place only by the route or routes specified thereunder. There are four General Orders and they bear the numbers 1 of 1987, dated 5-2-1987, made effective from 1-3-1987; 1 of 1989, dated 3-4-1989, made effective from 1-5-1989; 2 of 1989, dated 20-10-1989, made effective from 15-11-1989; and 1 of 1990, dated 10-5-1990, made effective from 18-6-1990. It must be noted here that, by General Order No. 1 of 1987, the rationalisation of the longest route did not happen and it was only by virtue of an amendment, dated 17-11-1989, the rationalisation of the longest route did happen. Section 27A(1)(b)(2) and (3) of the Act reads as follows:

27-A. Power of Central Government to give directions in regard to transport of goods, by Railway Administration:

(1) The Central Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, direct any Railway Administration:

(a) xxx xxx xxx (b) to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order.

(2) Any order made under Sub-section (1) shall cease to have effect after the expiry of six months from the date thereof, but it may be renewed from time to time.

(3) Notwithstanding anything contained in this Act, every Railway Administration shall be bound to comply with any direction given under Sub-section (1), and any action taken by a Railway Administration in pursuance of any such direction shall not be deemed to be a contravention of Section 28.

4. When we look into the express verbalism of Section 27A(1)(b) of the Act, there could not be any ambiguity in our mind that the Central Government has to form its opinion that it is necessary in the public interest, by general or special order, to direct the Railway Administration to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order. The

endeavour of the respondents is to bring in the General Orders within the ambit of Section 27A(1)(b) of the Act. The counter-endeavour of the petitioner is to demonstrate that these Orders were not, in fact, made by the Central Government. It will be fundamental if we first assess what has been the stand put forth by the parties on this aspect. There has been a specific plea taken by the petitioner that the General Orders are not those made by the Central Government. Though it has been asserted that these General Orders are, in fact, made by the Central Government, yet, the respondents, despite an issue being raised over the factum of the General Orders being made by the Central Government, have not disclosed before the Court any material that would go to demonstrate the making of the orders by the Central Government. The learned single Judge, analysing the relevant aspects as disclosed before him, found that these General Orders could be claimed to have been made only by the Railway Board; and they could not be stated to have been made by the Central Government. The learned single Judge, after holding that the General Orders could not be taken advantage of by the respondents to deny the petitioner the shortest route under the cover of the General Orders, also dealt with the other contentions relating to the formation of the opinion as enjoined by Section 27A(1)(b) of the Act and also the plea of promissory estoppel put forth on behalf of the petitioner. But, ultimately, the learned single Judge, obviously, having sustained the primary plea of the petitioner, did not consider it necessary to render any positive finding on these aspects. The learned single Judge declared that the General Orders could not be availed of by the respondents to deprive the petitioner the benefit of Rule 125(1)(b) of the Goods Tariff, which, in terms, permits the goods being despatched by the shortest route. The learned single Judge also declared that the respondents are bound to charge freight from the petitioner only on the basis of the shortest/cheapest route. The order of the learned single Judge also restrains the respondents from charging the petitioner freight on the basis of the longest route. The respondents were directed to refund to the petitioner the difference of freight between the longest route and the shortest route so far charged by them from the petitioner in respect of the bookings. As already noted, this Letters Patent Appeal is directed against the order of the learned single Judge.

5. We are bound, first, to concentrate upon the moot question as to whether, in fact, the Central Government made the General Orders, upon which alone the respondents rely for the purpose of thwarting the claim of the petitioner for availing of the shortest route. The pleadings, as already noted, by the petitioner on the point, are specific. Apart from bare assertion that the General Orders were, in fact, made by the Central Government, we are not shown any material, which would clinch the issue and persuade us to hold that the General Orders were, in fact, made by the Central Government. What is being relied on by Mr. R.P. Bhatt, learned Senior Counsel appearing for the respondents, is the recitals in the General Orders, which, according to him, are portent on this aspect and This Court must take note of such recitals and hold that the General Orders

emanated only from the Central Government, having been made by it is true that there are recitals saying: "In the opinion of the Central Government", and "The Central Government hereby directs". But, these bare recitals could not carry conviction to the mind of the Court on the moot point and could not form the basis for the Court to conclusively and positively hold that the General Orders were, in fact, made by the Central Government. The signatory to the General Orders is a Deputy Director of Traffic-Transport, Railway Board. It is not possible to hold that the said authority could be equated to the Central Government. Apparently, he is of the Railway Board. Here, Mr. R.R Bhatt, learned Senior Counsel appearing for the respondents, would submit that as per the Allocation of Business Rules, 1961, formulated under Article 77(3) of the Constitution of India, the Ministry of Railways ("Rail Mantralaya") has been allocated the business relating to the Railways. Be it so that the Central Government could act through the Ministry of Railways, but, certainly, the Railway Board could not act as the Ministry of Railways. There was an attempt on the part of Mr. R.R Bhatt, learned Senior Counsel appearing for the respondents, to say that the Railway Board is a part of the Railway Ministry of the Central Government. Such a concept we are not able to subscribe our support to and uphold. Similar argument was advanced before the Apex Court in the land in K.N. Shukla Vs. Navnit Lal Manilal Bhat and Another, and that was repelled by the Apex Court in the land in the following terms:

It was argued by Mr. Sen that the Railway Board is vested with the powers of Central Government in respect of administration of Railways and, therefore, it must be taken that the Railway Board itself is a part of Central Government. We are unable to accept this argument as correct. It is true that many important powers and functions of the Central Government in respect of administration of the Railways are exercised by the Railway Board, but it does not follow that the Railway Board is exercising those powers in their own right as part of the Central Government. On the other hand. Section 2 of the Railway Board Act, 1905 itself indicates that the Railway Board is an entity which is separate from the Central Government and the powers of the Railway Board are derived as a matter of delegation either absolutely, or subject to conditions by notification by the Central Government. In other words, the Railway Board is a separate body which derives its powers and authority, however, wide they may be only because of delegation of powers from the Central Government in respect of the administration of the Railways.

6. There, it has been categorically Opined that the Railway Board is a separate Body. There could be a delegation under Section 2 of the Railway Board Act, 1905. But, that was not at all the claim put forth by the respondents in their pleadings and it is not possible to look into such a theory. It is true that all official acts could be presumed to have been regularly performed. But, when the very factum of the performance of the act is being put in issue, certainly, the presumption does not come into play at all and it must be squarely established that the act, in fact, was performed by the authority empowered to act. As noted

above, apart from the bare assertion in the pleadings, the respondents have not ventured to place any material, much less a clinching one, to show that the General Orders, in fact, were made by the Central Government in accordance with the terms of Section 27A(1)(b) of the Act. The amendment on 17-11-1987 of General Order No. 1 of 1987, also suffers from the same infirmity as the present order. This is apart from the position that when the parent order itself goes, the amendment could not survive. As per our above discussion, we are obliged to hold that the respondents could not put forth the General Orders for the purpose of thwarting the claim of the petitioner to avail of the benefit of Rule 125(1)(b) of the Goods Tariff. Once we sustain this ground put forth by the petitioner, as done by the learned single Judge, then, there may not be any necessity to go into the other grounds, relating to the formation of opinion, and the plea of promissory estoppel put forth by the petitioner.

7. However, Mr. R.R. Bhatt, learned Senior Counsel, appearing for the respondents, would, submit that the petitioner must be held to have been acquiesced with the General Orders, because it availed of only the longest route and paid the freight and it is only in the field of asking for refund. As rightly contended by Mr. S.K. Ghosh, Learned Counsel appearing for the petitioner, there is no question of acquiescence, because that plea could relevantly arise and be looked into, when there are no General Orders coming in the way of the petitioner and both routes were available to the petitioner and the petitioner acquiesced to the proposal of the respondents to avail of the longest route. This argument appeals to us as sound. There was no option for the petitioner to avail of the shortest route in view of the General Orders staring in its face. Until and unless the General Orders are deleted, the petitioner had no other go, except to avail of the longest route made available to it by the respondents. Under these circumstances, it will be a misnomer to bring in a theory of acquiescence if the petitioner did avail of the longest route, which alone was made available to the petitioner by the respondents, and paid the charges therefor.

8. Then the learned Senior Counsel for the respondents would submit that This Court should not show any indulgence to the petitioner under Article 226 of the Constitution of India, because, the petitioner is guilty of laches. In answer, Mr. S.K. Ghosh, Learned Counsel for the petitioner, would submit that there was no plea of laches taken anywhere in the reply affidavits filed on behalf of the respondents to enable the petitioner to answer it and explain and this is eminently a question of fact to be analysed and assessed, on the petitioner being called upon to answer it, on proper pleadings put forth by the respondents, and even otherwise, this is not a case where we should take note of laches, if any, to deny reliefs to the petitioner when the General Orders are ex-facie illegal and without jurisdiction. When we analyse the pleadings put forth on behalf of the respondents, we find that no plea of laches has been taken by the respondents for the petitioner to offer explanation and even in the grounds of the Letters Patent Appeal, that has not found expression. Further, the General Orders relied on by the respondents are totally incompetent and illegal and we do not think we

should deprive the petitioner reliefs, which it is otherwise entitled to, on the jujube principle of laches.

9. Then, Mr. R.P. Bhatt, learned Senior Counsel, appearing for the respondents, would submit that the petitioner ought to have availed of the alternative remedy, as provided u/s 13 of the Railway Claims Tribunal Act, 1987. As rightly contended by Mr. S.K. Ghosh, Learned Counsel for the petitioner, here again, this plea was not specifically taken, based upon this statute as such. Even otherwise, when illegalities stare in the face of the Court in respect of the impugned proceedings, viz., the General Orders, we do not think, we should, after the writ petition has been admitted and decided by the learned single Judge, discountenance the pleas of the petitioner, which have been found to be tenable, on the principle of availability of any alternative remedy, assuming that it could serve the purpose of the petitioner effectively.

10. Mr. R.P. Bhatt, learned Senior Counsel appearing for the respondents, would then submit that the order of the learned single Judge covers only the General Orders 1 of 1987, 1 of 1989, and 2 of 1989 and the judgment of the learned single Judge does not frown upon General Order 1 of 1990 and hence, we should confine the reliefs accorded by the learned single Judge only to the first three General Orders, clarifying this petition. We have carefully gone through the order of the learned single Judge and we find that though reference in some places is to General Orders 1 of 1987, 1 of 1989 and 2 of 1989, yet, the discussion with regard to infirmities covers the General Orders, as a whole, coming in the way of the petitioner. It is not as if the petitioner has not challenged General Order 1 of 1990. Equally so, it is not as if the defence of the respondents did not cover and controvert the attack of the petitioner in respect of General Order 1 of 1990. The whole controversy centred around all the General Orders and it is not possible to dissect the controversy and confine it only to General Orders 1 of 1987, 1 of 1989, and 2 of 1989. When we read the order of the learned single Judge harmoniously and cogently, we are convinced that the grievances of the petitioner in respect of all the General Orders have been taken note of by him and this is quite evident from the relief portion, relatable to the refund, when it says that the refund shall cover the difference in freight between the longest route and the shortest route so far charged, meaning thereby, until the order of the learned single Judge made on 27-11-1992. This, practically, settles the issue. But, for deleting General Order No. 1 of 1990, the relief portion could not go thus far. The pleadings and. prayers being there, the reasonings given by the learned single Judge covering the relevant aspects and helping the petitioner to succeed on its primary ground of attack, the judgment of the learned single Judge must be held to cover all the General Orders. It is not a ground taken in the Letters Patent Appeal that the learned single Judge ought not to have ordered refund in respect of the period covered by General Order No. 1 of 1990, on the reason that he has not specifically dealt with that General Order. We do not think that we should permit the respondents to raise such technical pleas in the course of arguments on their behalf, and bog down our mind to technicalities to deny the

petitioner the reliefs granted by the learned single Judge.

11. Mr. R.P. Bhatt, learned Senior Counsel for the respondents, at the conclusion of this pronouncement of ours made in open Court, presented some papers before us and wanted us to look into them, saying that they do make out that so far as General Order 1 of 1990 is concerned, they do bear out that it was made by the Central Government. Mr. S.K. Ghosh, Learned Counsel for the petitioner, vehemently opposed this move on the part of the learned Senior Counsel for the respondents to produce the papers at this juncture, of course, not admitting that they bear out such a position. These papers not having been placed before the learned single Judge, before whom the whole controversy was open, we do not think, at this juncture, when we are concluding our pronouncement, we could permit the respondents, through their Senior Counsel, to request us to look into the factual implications of these papers, assuming they have any relevancy and acceptability on the point. Thus, we uphold the decision of the learned single Judge and dismiss this Letters Patent Appeal.

12. The respondents, the appellants herein, shall pay to the petitioner, the respondent herein, the costs in this Letters Patent Appeal.