

(2014) 08 GUJ CK 0025

In the Gujarat High Court

Case No : Letters Patent Appeal No. 817 of 2014 in Special Civil Application No. 28494 of 2007 With Civil Application No. 8327 of 2014 in Letters Patent Appeal No. 817 of 2014

Vishnukumar Babulal Parekh

APPELLANT

Vs

Gujarat State Road Transport Corporation

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 08 GUJ CK 0025

Hon'ble Judges : V.M. Sahai, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Vinod M. Gamara, Advocate for the Appellant; G.M. Joshi, Advocate for the Respondent

Judgement

V.M. Sahai, J.—We have heard Mr. Vinod M. Gamara, learned counsel appearing for the appellant and Mr. G.M. Joshi, learned counsel appearing for respondent.

2. This Letters Patent Appeal has been preferred by the appellant-original petitioner challenging the judgment and order dated 6.12.2012 passed by the learned Single Judge in Special Civil Application No. 28494 of 2007, whereby the learned single judge has dismissed the writ petition, wherein the award dated 8.1.2007 passed by the Labour Court, Ahmedabad in Reference (LCIDAT) No. 32 of 2006-Old Reference (LCA) No. 920 of 2001 was challenged.

3. The Five Judges' Full Bench of this Court in the case of Gujarat State Road Transport Corporation v. Firoze M. Mogal and another, 2014 GLH 1 rendered in Letters Patent Appeal No. 1149 of 2002, Dated: 26.12.2013, has held as under:-

"(M) (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 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 LPA, 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 Special Leave Petition before the Supreme Court.

To put it very explicitly, take a case where a petition is only under Article 227 of the Constitution of India, invoking superintending powers of the High Court and not under Article 226 of the Constitution of India. After examining the matter, if the court finds substance in the petition and sets aside the order of an authority, court or a tribunal, then against such an order, an LPA would not lie on the argument that since the court has set aside the order it has decided the matter on merits having found substance in the same.

To put it in other words, once a petition is under Article 227 of the Constitution of India, and while entertaining such a petition under Article 227 of the Constitution of India, if the court allows a petition by setting aside the order impugned, then against such an order no LPA would lie.

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.

However, if a learned Single Judge, in purported exercise of power under Article 226 of the Constitution of India, issues a writ of certiorari, although the same is not maintainable, an appeal under Clause 15 of the Letters Patent would nevertheless be maintainable against such order.

To put it in other words, take a case where a party on his own invokes supervisory jurisdiction under Article 227 of the Constitution of India, and in such a petition, the Court issues a writ of certiorari, then against such an order an LPA would be maintainable.

To put it explicitly clear, take a case where in a petition neither there is a prayer

for issue of a writ of certiorari nor the Tribunal/Authority or Court whose order is impugned is impleaded as a party respondent, and despite such being the position, if the Court proceeds to issue a writ of certiorari, then against such an order an LPA would be maintainable."

4. In view of the aforesaid Full Bench decision, the present Letters Patent Appeal is not maintainable. Hence, the present Letters Patent Appeal stands dismissed as not maintainable. 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. Interim relief, if any, stands vacated.

5. In view of dismissal of the present Letters Patent Appeal, Civil Application No. 8327 of 2014 also stands disposed of.