



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 16425 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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Approved for Reporting	Yes	No
	Yes	

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STATE OF GUJARAT THRO SECRETARY & ANR.

Versus

M/S. NARAN DANA SORATHIA

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Appearance:

MS NIRALI SARDA ASSISTANT GOVERNMENT PLEADER for the
Petitioner(s) No. 1,2

MR DHAVAL C DAVE SENIOR ADVOCATE WITH MR UDIT VYAS
AND MR JIGAR M PATEL(3841) for the Respondent(s) No.
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CORAM: HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 08/07/2026

JUDGMENT

1. Heard learned Assistant Government Pleader Ms. Nirali Sarda appearing for the petitioners and learned Senior Advocate Mr. D. C. Dave, appearing with learned Advocate Mr. Udit Vyas and learned Advocate Mr. Jigar Patel, for the respondent.



2. By way of this petition, the petitioner has prayed for quashing and setting aside the proceedings pending before the learned Sole Arbitrator, who is acting as the Arbitrator under the Arbitration and Conciliation Act, 1996.

3. The petitioner is a department of State of Gujarat, namely, Narmada Water Resources and Water Supply Department, which awarded a contract to the respondent, after inviting tenders, for the construction of the Earthen Dam, Waste Weir and Head Regulator for the Dholi Irrigation Scheme. In April 1980, a work order was issued in favour of the respondent, and the same was executed by the parties vide Agreement No. B/1 of 1980–1981. As per the work order, the work was to be completed within the stipulated period of three years from the date of issuance of the work order. The work was to commence on 19.09.1980 and was to be completed on or before 18.09.1983.



4. Upon disputes having arisen between the parties in relation to the aforesaid work, the respondent initially approached the District Court, Bharuch, by filing Special Civil Suit No.151 of 1992, seeking appointment of a Sole Arbitrator, and the Civil Court, Bharuch, vide order dated 30.10.1993, disposed of the suit and appointed one Mr. M. C. Desai as the Sole Arbitrator. However, the said Sole Arbitrator, Mr. M. C. Desai, never commenced the arbitral proceedings, and therefore, the respondent, vide letter dated 26.06.2010, i.e., after a period of almost seventeen years, requested the petitioner to appoint a Sole Arbitrator to resolve the dispute in question. Ultimately, vide order dated 26.06.2011, the petitioner appointed one Mr. R. D. Soni (Retired Secretary) as the Sole Arbitrator, and till the filing of the petition, six arbitration meetings were held.
5. Thereafter, in view of the judgment of the Hon'ble Supreme Court in the case of **Madhya**



Pradesh Rural Road Development Authority and Others v. L. G. Chaudhary Engineers and Contractors, reported in (2012) 3 SCC 495, wherein the Honourable Supreme Court held that disputes pertaining to or arising out of the execution of work contracts are mandatorily required to be referred to the Special Arbitration Tribunal constituted for that purpose under the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992, and therefore, the present petition came to be preferred, whereby the petitioner has prayed for quashing and setting aside the proceedings pending before the learned Sole Arbitrator, and though it is not stated in the petition, it was orally contended by the learned Assistant Government Pleader, Ms. Nirali Sharda, that the arbitration proceedings be transferred to the aforesaid Tribunal.

6. At the outset, the attention of the Court was drawn to the fact that the aforesaid decision in



the case of *L. G. Chaudhary (Supra)* was rendered in the year 2012, and thereafter, in view of the very recent judgment in the case of *Gayatri Projects Ltd. v. Madhya Pradesh Road Development Corporation Ltd., reported in (2025) 10 SCC 750*, the Hon'ble Supreme Court considered the ratio of the judgment in *L. G. Chaudhary (Supra)* and held that if, at the stage of filing the reply or at the stage of making an application under Section 16, no such application raising objection against the jurisdiction of learned Sole Arbitrator is made and the arbitration proceedings are already underway, then merely because the ground of lack of jurisdiction was introduced only after the decision in *L. G. Chaudhary (Supra)*, such ground cannot be said to constitute a strong or exceptional ground, and therefore, this Court, only on the basis of such ground, may not transfer the arbitration proceedings from the Sole Arbitrator to the Works Contract Tribunal.



7. Learned Senior Advocate Mr. D. C. Dave relied upon the aforesaid latest judgment, and learned Assistant Government Pleader Ms. Nirali Sharda could not dispute the aforesaid proposition of law. In view of the facts stated hereinabove, the observations made by the Hon'ble Supreme Court in the case of *Gayatri Projects Ltd. v. Madhya Pradesh Road Development Corporation Ltd., reported in (2025) 10 SCC 750*, in paragraphs 63, 66, 67, and 68, are reproduced as under:

"63. Thus, what can be discerned from the aforesaid is that although a plea of lack of jurisdiction, being a question of law, can be raised even for the first time in the proceedings under Section 34 as held in *Lion Engineering (supra)*, yet such a plea ought not to be allowed to be raised as it is deemed to have been waived in view of Section 4 of the 1996 Act as per *Pam Development (supra)*, unless the party makes out a strong and good reason for its failure to take such a plea before the arbitral tribunal as per *GAIL(supra)*, and as per the dictum of L.G. Chaudhary (2) (*supra*) any failure to raise the issue of applicability of the M.P. Act, 1983 before the Arbitral Tribunal is not a strong and good reason to permit raising such a plea in the proceedings under Section 34 of the 1996 Act.



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66. In view of the above exposition of law, what has been conveyed by this Court in L.G. Chaudhary (2) (supra) in so many words is that:

66.1. Where the arbitration proceedings are still underway, but no statement of defence has been filed, there it would be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of M.P. Act, 1983. The parties will also be at liberty to approach the High Court by way of a petition under Article 227 of the Constitution for seeking a transfer of the arbitration proceedings to the M.P. State Arbitration Tribunal under the M.P. Act, 1983.

66.2. Where the arbitration proceedings are still underway, but statement of defence has already been filed i.e., the relevant stage for raising an issue of jurisdiction is already crossed, there it would not be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of M.P. Act, 1983. Furthermore, in such scenarios since the arbitration proceedings have already commenced and made substantial progress, it would not be appropriate to transfer such proceedings to the M.P. State Arbitration Tribunal under the M.P. Act, 1983, and the better course of action would be to let the arbitration proceedings conclude.

66.3. As per L.G. Chaudhary (II) (supra) where the arbitration proceedings have concluded and an award has been passed, and if no objection to the jurisdiction in



view of the applicability of M.P. Act, 1983 was taken at the relevant stage then such an award cannot be annulled only on the ground of lack of jurisdiction.

66.4. Any award passed by an arbitral tribunal under the 1996 Act, where otherwise the M.P. Act, 1983 was applicable, such an award may be challenged or assailed in terms of Section 34 and thereafter Section 37 of the 1996 Act and other relevant provisions thereunder.

66.5. Any award passed by an arbitral tribunal under the 1996 Act, where otherwise the M.P. Act, 1983 was applicable, such an award must be executed in terms of the M.P. Act, 1983 and the relevant provisions thereunder.

66.6. Where the objection based on applicability of the M.P. Act, 1983 had been raised in the written statement or statement of defence, but the parties never took steps towards challenging the jurisdiction of the arbitral tribunal under Section 16 of the 1996 Act or where such plea of jurisdiction was turned down in view of the position of law that was prevailing prior to L.G. Chaudhary (II) (supra) i.e., such challenge to the jurisdiction was decided prior to the date of pronouncement of L.G. Chaudhary (II) (supra), then even in such cases, as per the decision of this Court in Modern Builders (supra), the award should not be disturbed or set-aside only on the ground of lack of jurisdiction.

67. In the present case at hand, we take note of the following circumstances emerging from the facts on record:



67.1. It is an admitted fact that at the time of constitution of the arbitral tribunal, the respondent never objected to the invocation of arbitration under the 1996 Act and both the parties proceeded to nominate their respective co-arbitrators.

67.2. On the date of invocation of the 1996 Act, and commencement of arbitration proceedings, as well as of the date when the arbitration proceeding concluded and the award in question passed, the erstwhile decision of this Court in VA Tech (supra) held the field.

67.3. The respondent herein never raised any objection to the arbitral tribunal's lack of jurisdiction during the arbitration proceedings either in its statement of defence or by way of an application under Section 16 of the 1996 Act.

67.4. Even when the award was challenged by the respondents, the initial petition filed by them under Section 34 of the 1996 Act also did not contain any objection as regards the lack of jurisdiction of the arbitral tribunal.

67.5. The ground of lack of jurisdiction was introduced by the respondents herein only after the decision of L.G. Chaudhary (II) (supra) by way of an application for amending the grounds of its petition under Section 34 of the 1996 Act, i.e., after the award had been passed.

68. Thus, the present case is squarely covered by the decision of this Court in L.G. Chaudhary (II) (supra), more



particularly the observations made in paras 6 to 9 thereunder, and as such once the award had been passed and no objection as to the jurisdiction of the arbitral tribunal had been taken at the relevant stage, then the award could not have been annulled by the High Court only on the ground of lack of jurisdiction."

(emphasis supplied)

8. In the instant case, it is an admitted position that upon filing of the statement of claim, reply has also been filed by the petitioner-State, and no objection with respect to the jurisdiction of the Arbitration Tribunal has been raised by the State Government. Not only that, the State has also not filed any application under Section 16 of the Act in the ongoing arbitration proceedings, and even in the petition, a specific averment has been made that the petitioner has preferred the present petition only after the judgment in the case of ***L. G. Chaudhary (Supra)***. In fact, upon perusal of the memo of the petition, the Court finds that the entire petition has been filed only on the basis of the decision in the case of ***L. G.***



Chaudhary (Supra), and no other ground has been canvassed.

9. In view of the fact that the decision in the case of *L. G. Chaudhary (Supra)* has been considered by the Honourable Supreme Court in its latest judgment in the case of *Gayatri Project Ltd. v. Madhya Pradesh Road Development Corporation Ltd., reported in (2025) 10 SCC 750*, the relevant paragraphs of which have already been reproduced in the foregoing paragraphs. Learned Assistant Government Pleader Ms. Nirali Sharda could not point out anything from the record to suggest that the petition was preferred on any other basis than relying upon the judgment in the case of *L. G. Chaudhary (Supra)*.

10. As can be seen from the observations made by the Honourable Supreme Court in the case of *Gayatri Project Ltd. v. Madhya Pradesh Road Development Corporation Ltd., reported in (2025) 10 SCC 750*, it is reported that in paragraph 63



of the said judgment, any failure to raise the issue regarding the applicability of the M.P. Act, 1983, before the Arbitration Tribunal is not a strong or good reason to permit raising such a plea in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. Thereafter, the Honourable Supreme Court has observed in paragraph 66.2 that, where the arbitration proceedings are still underway, but the statement of defence has already been filed, the relevant stage for raising an issue regarding jurisdiction has already closed. It is not open for the parties to raise an objection of lack of jurisdiction in view of the applicability of the M.P. Act, 1983 (in the instant case, the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992).

11. In view of the above, as the prayer made by the petitioner in the present petition is squarely covered by the decision of the Honourable Supreme Court in the case of *Gayatri*



Project Ltd. v. Madhya Pradesh Road Development Corporation Ltd. reported in (2025) 10 SCC 750, which is against the petitioner, the present petition fails and hence the same is required to be dismissed and same is dismissed accordingly.

12. At this stage, it was pointed out by learned Senior Advocate Mr. D. C. Dave that the arbitration proceedings before the Sole Arbitrator are at the stage where the oral arguments on behalf of the respondents (original claimants) have been concluded, and the matter is only pending for the purpose of oral arguments on behalf of the petitioner, which indicates that the arbitration proceedings have reached an advanced stage. Therefore, considering the overall facts and circumstances, as well as the settled legal position laid down by way of the judgment in the case of ***Gayatri Project Ltd. (supra)***, the present petition is required to be dismissed and is accordingly dismissed. Rule is discharged. No order as to



costs. The interim relief granted earlier vide order dated 07.01.2013 in favour of the petitioner stands vacated.

(NIRZAR S. DESAI, J)

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