

**Part I of the ACA applies to statutory arbitrations under Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 except if there is any inconsistency between the two; power to order interim measures not inconsistent, hence powers under Section 17 ACA also available to the statutory tribunal (Supreme Court of India)**

*Update by Editor*

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**State of Gujarat and others v. Amber Builders**

**Court:** Supreme Court of India | **Case Number:** Civil Appeal No. 8307 and 8308 of 2019 | **Citation:** (2020) 2 SCC 540 | **Bench:** Deepak Gupta & Aniruddha Bose JJ | **Date:** 08 January 2020

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**A. Preface**

Section 2(4) of the Arbitration and Conciliation Act, 1996 (“ACA”) makes Part I of the ACA applicable to arbitration under any other enactment unless there is any inconsistency.<sup>1</sup>

Did Part I of the ACA apply to a statutory arbitration under the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (“the Gujarat Act”)<sup>2</sup>? This issue arose because it was argued that the tribunal formed under the Gujarat Act (“Tribunal”) had the power to grant interim relief to respondent Amber, and the High Court should not have entertained Amber’s writ petition under Article 226 of the Constitution of India. Hence, the specific question was whether the Tribunal had jurisdiction to order interim measures under Section 17 of the ACA (which falls in Part I)?<sup>3</sup>

**B. The relevant facts**

The State of Gujarat had a works contract with the respondent Amber Builders. A (very prolix) clause in the contract entitled the state to recover ‘any claim of damages’ it had ‘under the works contract’ by appropriating (some type of) sums due and payable to Amber ‘under any other contract.’<sup>4</sup>

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<sup>1</sup> Section 2(4), ACA: -“This part except sub-section (1) of section 40, section 41 and 43 shall apply [1] to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provision of this part are inconsistent with that other enactment or with any rules made thereunder.”

<sup>2</sup> The Gujarat Act was enacted in March 1992 to provide for the constitution of a tribunal to arbitrate disputes arising from works contracts to which the Government of Gujarat or a public undertaking is a party.

<sup>3</sup> The court notes that this is the “main question which arises for decision.”

<sup>4</sup> This is how the clause has been interpreted in the judgment. The clause extracted in the Supreme Court judgment reads as: “Any sum of money due and payable to the Contractor (including the security deposit returnable to the contractor) executing any Government work or work of any District Panchayat wholly financed as grant-in-aid under this contract shall be appropriate by any District Panchayat/Government and shall be set off against any claim of the Government/District Panchayat of Gujarat State by the District Panchayat of Gujarat State/Government for the payment of a sum of money arising out or under any other contract made by the contractor with the Government/District Panchayat of Gujarat State for the work wholly financed as grant-in-aid by Government of Gujarat State. When no such amount for purpose of the recovery from the contractor against any claim of the Government/District Panchayat of Gujarat State is available, such a recovery shall be made from the contractor as arrears of land revenue.”

In a notice sent to Amber, the state claimed a sum over one crore rupees and “threatened to withhold the payments from the security deposits and bills” of other contract(s).

The notice was challenged in the High Court in a writ petition under Article 226 of the Constitution of India. The High Court set the notice aside, holding that until the liability of Amber was determined and quantified by a court of competent jurisdiction, the amounts could not be recovered.<sup>5</sup>

### C. The court’s decision

The court first considered its “main question.” It noted the provisions of the Gujarat Act, including Section 8 (3) under which the Tribunal had the power to make interim awards; Section 13 which barred jurisdiction of civil courts; and Section 21 of the Gujarat Act which provided that the Arbitration Act, 1940<sup>6</sup> shall insofar as it is inconsistent with the Gujarat Act cease to apply.

The court concluded “on a conjoint reading and a careful analysis of the Acts together” that the Tribunal formed under the Gujarat Act can exercise powers under Section 17 of the ACA. It said, “this power is already vested in the tribunal under the Gujarat Act,”<sup>7</sup> and Section 17, ACA “compliments these powers.”

The court also considered if the Government had power under the contract to withhold money from Amber even if the Government’s demand was not crystallised (and was yet just a claim). Amber’s counsel had relied on *Gangotri Enterprises Limited v. Union of India and others*, (2016) 11 SCC 720.<sup>8</sup> The court said it was “duty bound to go in the correctness of the view laid down in *Gangotri*” since it was specifically relied upon. It then concluded that *Gangotri* was *per incuriam* because it was based on *Union of India v. Raman Iron Foundry*, (1974) 2 SCC 231,<sup>9</sup> but *Raman* was overruled already by a 3-judge bench decision in *HM Kamaluddin Ansari & Co. v. Union of India*, (1983) 4 SCC 417.<sup>10</sup>

[Note: – The court does not specifically set out any sequitur, but it should follow automatically that Government’s rights under the contract to appropriate is not contingent on determination/crystallisation of its claim.]

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<sup>5</sup> This is the Supreme Court’s version of what the High Court said.

<sup>6</sup> The then prevailing statute when the Gujarat Act was enacted. The court said in this case it was not disputed by parties that it will now mean the ACA of 1996.

<sup>7</sup> Referring to the Tribunal’s power to grant interim relief. It had been argued, relying on a prior order of the Tribunal, that the Tribunal had power to make an interim award, but that did not include a power to issue injunctions of the kind sought in the case (against the Government’s notice).

<sup>8</sup> 2-judge bench of Jasti Chelamewsar & **Abhay Manohar Sapre**, JJ.

<sup>9</sup> 2-judge bench of **PN Bhagwati** & PK Goswami, JJ.

<sup>10</sup> DA Desai, V Balakrishna Eradi & **RB Misra**, JJ- An assessment of these cases, and also on what point was *Raman* overruled is outside the scope of this update.