



Reserved On : 01/05/2026
Pronounced On : 19/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/PETN. UNDER ARBITRATION ACT NO. 71 of 2024

=====

M/S. SOHAM CONSULTANCY SERVICES
Versus
LIMBDI NAGARPALIKA

=====

Appearance:
MR KEYUR K ACHARYA(6151) for the Petitioner(s) No. 1
MR HRIDAY BUCH(2372) for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT

1. Heard Mr. Keyur K. Acharya, learned advocate for the petitioner and Mr. Hriday Buch, learned advocate for the respondent.

2. A brief narration of the facts relevant to the controversy involved is as follows:

2.1 The petitioner is stated to be a sole proprietorship concern engaged in providing consultancy services to various local authorities and public bodies within the State of Gujarat. The respondent is a Nagarpalika constituted under the provisions of the Gujarat Municipalities Act, 1963.



2.2 The respondent issued a public notice dated 19.07.2018 inviting bids from eligible consultants for undertaking and completing certain development works, including construction of a shopping centre, completion of housing projects for economically weaker sections and water supply-related projects. The notice stipulated that bids were required to be submitted on or before 27.08.2018. Upon scrutiny of the bids received within time, the respondent, by communication dated 29.12.2018, informed the petitioner that its offer had been accepted and that an agreement would be executed in accordance with the applicable rules and regulations.

2.3 Thereafter, an agreement came to be executed between the parties on 30.05.2019. Pursuant thereto, the respondent issued a work order bearing Letter No. Limbdi Nagarpalika/Javak/P.W./Vashi No.314/2019 authorising the petitioner to undertake the assigned work. It is further stated that the process leading to such appointment was subsequently approved by the General Board of the respondent through Resolution No.5/202 dated 27.09.2019.

2.4 It is the case of the petitioner that, in discharge of its



contractual obligations, it prepared the following special projects:

- *“Completion of incomplete market project new estimates were prepared and submitted;*
- *Under the grant of Agavi Olakh Nu Kam development of Ram Sagar Lake was prepared and submitted;*
- *Under the project of water supply detailed D.P.R. was prepared of Vadod Dam and submitted to Nagarpalika;*
- *Under the scheme of Nal Se Jal water supply project was prepared and presented to Gujarat Urban Development Mission;*
- *Projects were prepared under Swarnim Jayanti Mukhya Mantri Saheri Vikas Yojna U.D.P. 78 2015-2018;*
- *Projects were prepared under Swarnim Jayanti Mukhya Mantri Saheri Vikas Yojna U.D.P. 88 2015-2018;*
- *14th NANA Panch 2018-2020;*
- *Swarnim Jayanti Mukhya Mantri Saheri Vikas Yojna U.D.P. 88 2019-20;*
- *Vyavsay Vera 2015-2020;*
- *Monsoon Grant Road Repairing - 2019;*
- *Monsoon Grant Road Repairing - 2020;*
- *M.P. Grant;*
- *M.L.A. Grant;*
- *JillaAayojan Grant;*
- *JillaVivekadhin Grant;*
- *Manoranjan Kar Grant;*
- *Nagarpalika Furniture Grant;*

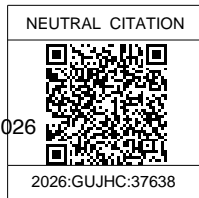


- *Swachh Bharat Mission Grant 2013-2019.”*

With a view to executing the aforesaid projects, the petitioner deployed three qualified engineers for preparation and completion of the assigned work. Upon completion of the services, invoices were allegedly raised and submitted to the respondent in terms of the contractual arrangement between the parties.

2.5 Subsequently, the aforesaid General Board Resolution came to be set aside by the Regional Commissioner of Municipalities in proceedings initiated at the instance of a third party. The petitioner contends that it was neither impleaded nor afforded an opportunity of hearing in the said proceedings and, therefore, the matter was decided without its participation. According to the petitioner, it remained unaware of the proceedings before the Regional Commissioner.

2.6 It is further the case of the petitioner that although the order of the Regional Commissioner was passed on 16.12.2020, the same was communicated to the petitioner



only on 03.02.2021. Aggrieved thereby, the petitioner preferred Appeal No.26 of 2021 before the Commissioner of Municipalities Administration, Gujarat State. The said appeal came to be dismissed by an order dated 21.05.2022.

2.7 The petitioner further asserts that after execution of the agreement and issuance of the work order, it carried out the consultancy work entrusted to it in terms thereof and raised bills aggregating to Rs.38,96,412.39/- towards the services rendered. It is the case of the petitioner that the bills were duly submitted to the respondent and, under the terms of the agreement, payment was required to be released within the stipulated period. However, despite repeated demands, the amount allegedly remained unpaid.

2.8 In view of the dispute relating to the alleged outstanding dues, the petitioner invoked the arbitration clause contained in Clause 7.0.0 of the agreement dated 30.05.2019. For the said purpose, a notice dated 10.12.2022 was addressed to the respondent by Registered Post seeking appointment of an arbitrator in accordance with the contractual mechanism. The petitioner contends that despite receipt of the said notice, the



respondent neither replied thereto nor took any steps for constitution of the arbitral tribunal. According to the petitioner, an amount of Rs.38,96,412.39/- continues to remain outstanding and payable by the respondent. Clause 7.0.0 of the agreement dated 30.05.2019 is reproduced below for the ready reference:

"7.0.0 ARBITRATION & JURISDICTION

1. Any dispute arising out of this agreement or to the meaning thereof shall be settled by the parties by arbitration, subject to the provision of the Indian Arbitration Act 1996 or any amendments thereof for the time in force. The venue of Arbitration shall be at Ahmedabad.

2. It is expressly understood by the parties to this agreement that this agreement shall be within the jurisdiction of the Court of Ahmedabad."

3. It is in the aforesaid circumstances that the petitioner has approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "**the Act, 1996**"). The case of the petitioner is that despite invocation of the arbitration agreement and service of notice, the respondent failed to nominate or appoint an arbitrator within the prescribed period contemplated under the Act, 1996. The petitioner thereby preferred the present petition



with the following prayers:-

“(A) This Hon'ble Court be pleased to appoint an Arbitrator as per Clause 7.0.0. contained in agreement dated 30.05.2019 under the provisions of Section 11 of the Act;

(B) Any other and/or further relief/s that may deem fit looking to the facts and circumstances of the case may be granted to the petitioner;

(C) Be pleased to award cost of this petition.”

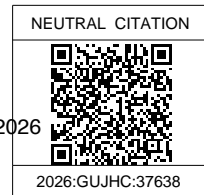
4. Mr. Keyur K. Acharya, learned advocate appearing on behalf of the petitioner, has urged that in terms of Section 2(1)(i)(iii) of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as '**the Act, 1992**'), a local authority would fall within the ambit of '**public undertaking**' only upon being specifically notified as such by the State Government by way of a notification published in the Official Gazette. Mr. Acharya submits that in the facts of the present case, Limbdi Nagarpalika has not been the subject of any such gazette notification, and consequently, the foundational jurisdictional prerequisite for invoking the Act, 1992 remains unsatisfied. It is therefore earnestly contended that the Act, 1992 has no application whatsoever to the present proceedings, and the petitioner cannot, in law, be directed or compelled to seek recourse before the Gujarat Public Works Contract Disputes Arbitration



Tribunal.

4.1 In further support of the aforesaid contentions, Mr. Acharya has placed reliance upon the decision of the Hon'ble Apex Court in ***Om Construction Co. v. Ahmedabad Municipal Corporation & Anr.***, reported in **(2009) 2 SCC 486**, wherein the Hon'ble Apex Court has categorically held that in the absence of applicability of the Act, 1992, there is no impediment in law to the appointment of an Arbitrator under the provisions of the Act, 1996, and the disputes between the parties may be adjudicated and resolved in accordance therewith. The Hon'ble Apex Court in **Om Construction Co. (Supra)**, has held as under:-

20. In this regard, we are inclined to accept the submissions of Mr. Gambhir notwithstanding the fact that the Ahmedabad Municipal Corporation had not been notified to be a "Public Undertaking" as defined in Sec. 2(1)(iii) of the Gujarat Tribunal Act, 1992. There is no dispute that the Ahmedabad Municipal Corporation is a local authority and it could assume the garb of a "Public Undertaking" only pursuant to a Notification published in that regard in the Official Gazette. On the other hand, even if Form B-I loses its relevance as far as the present contract is concerned, since the parties have agreed to resolution of their disputes by arbitration, the provisions of Sub-sec. (5) of the 1996 Act can be pressed into service to enable the parties to invoke the powers of the Chief Justice to appoint an Arbitrator. The stand taken by Mr. Divan is highly technical and is not in aid of resolution of the disputes between the parties by an



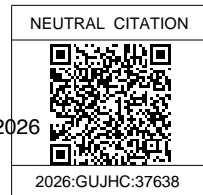
Arbitral Tribunal.

21. While recognizing the right of the appellant to approach the Chief Justice or the Designated Court u/s. 11(6) of the 1996 Act, the stand of the respondent Corporation has been that the party should be relegated to suit, which is quite contrary to the stand taken by it in the case of other employees.

22. Section 11 of the 1996 Act deals exclusively with the appointment of Arbitrators. Sub-sec. (2) provides that the parties are free to agree on a procedure for appointing the Arbitrator or Arbitrators but subject to Sub-sec. (6) which provides that if an agreed procedure had not been acted upon, the parties could approach the Chief Justice or his Designate for appointment of an Arbitrator. Sub-sections (3), (4) and (5) contemplate different situations in which the Chief Justice or his Designate could be requested to appoint an Arbitrator. In our view, in the facts of this case, the answer to the question thrown up in this appeal lies in Sub-clause (5) of Sec. 11 of the 1996 Act, which reads as follows :-

"(5) Failing any agreement referred to in sub-sec. (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him."

4.2 Mr. Acharya, learned advocate, has further submitted that the Agreement dated 30.05.2019 incorporates a binding arbitration clause which, in clear and unambiguous terms, stipulates that all disputes arising out of or in connection with the said Agreement shall be resolved by way of arbitration governed by the provisions of the Act, 1996, with the seat and



venue of arbitration designated at Ahmedabad. It is contended that the said clause constitutes a valid and enforceable arbitration agreement within the meaning of and in accordance with Section 7 of the Act, 1996.

4.3 Mr. Acharya has further drawn the attention of this Court to Clause 2 of the Agreement, appearing at Page No. '25' of the paper-book, which delineates the '**Scope of Work**' to be performed by the petitioner, and to Page No. 26 thereof, which sets out the '**Consultation Fees**' payable to the petitioner in consideration thereof. Mr. Acharya, learned advocate has urged that neither the aforesaid clauses nor any other provision of the Agreement, when read in its entirety, in any manner relates to, or contemplates, the execution of any work pertaining to construction, repairs, or maintenance, as sought to be canvassed by the respondent for the purposes of bringing the present dispute within the definitional scope of Section 2(1)(k) of the Act, 1992.

4.4 Mr. Acharya, learned advocate, has drawn the attention of this Court towards Clause '2' at Page No. '24' of the paper-book, submitting that the document itself refers to the



petitioner as a consultant who had submitted his tender for '**services**' to the respondent-Nagarपालिका, thereby reflecting the purely consultative nature of the engagement. Mr. Acharya has further submitted that the chart at Paragraph No. '3.7' of the petition, pertaining to bills raised, demonstrates that the petitioner has charged fees exclusively towards consultancy. Mr. Acharya next placed reliance upon Clause '2.1' of the Scope of Work at Page No. '25' of the paper-book, the relevant portion whereof is reproduced hereinbelow:

"The Consultant has to collect all kinds of data either through special services or through secondary sources for preparing reports or documents, or analysis of compliance or application or performance."

4.5 In light of the aforesaid submissions, Mr. Acharya, learned advocate, has urged that this Court ought to conclude that the dispute in question, having regard to the nature of the Agreement and the character of the services rendered thereunder, does not fall within the definitional ambit of Section 2(1)(k) of the Act, 1992, and accordingly, the jurisdiction of the Gujarat Public Works Contract Disputes Arbitration Tribunal cannot be invoked in the facts and



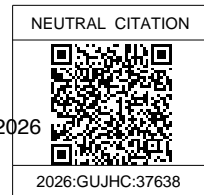
circumstances of the present case.

5. Per contra, Mr.Hriday Buch, learned advocate appearing on behalf of the respondent, has at the very outset raised a preliminary objection to the effect that the present petition is not maintainable before this Court and that the petitioner ought to be relegated to the Gujarat Public Works Contract Disputes Arbitration Tribunal constituted under the Act, 1992. In support thereof, counsel has advanced the following grounds:

(i) That by virtue of the Government Notification dated 16.12.2024, the respondent-Municipality stands squarely covered within the definitional ambit of a '**public undertaking**' as contemplated under Section 2(1)(i) of the Act, 1992; and

(ii) That the contract in question is indisputably a '**works contract**' within the meaning of Section 2(1)(k) of the Act, 1992, thereby attracting the exclusive jurisdiction of the Tribunal to adjudicate the disputes arising therefrom.

5.1 Mr. Buch, learned advocate, has specifically drawn the



attention of this Court towards recital No. 1 and Clause '2.5' of the Agreement dated 30.05.2019, to assert that the nature, scope, and execution of the work, as reflected in the aforesaid provisions, unequivocally establish that the contract in question is a '**works contract**' governed by and falling within the purview of the Act, 1992. Mr. Buch submits that a reading of the said provisions leaves no manner of doubt as to the true character of the Agreement. Recital 1 and Clause '2.5' of the Agreement dated 30.05.2019 are reproduced hereinbelow for ready reference:

"1. The Nagarpalika wishes to appoint a Consulting Engineer for preparing plans, Estimates, and completion of works For Grants and Loan Works, For Central Government & State Government Work, G.M.F.B Works, Solid Waste Projects, Water Supply Projects, Shri Nidhi Works, 14th Nana Panch Works, Aagvi Olakh nu Kam, Housing Projects, And All Swarnim Works, U.D.P Works and Swabhandol Works."

"2.5 The Consultant shall follow it up to get the project approved and project loan sanctioned from State Government or central Govt. as well as from the institute to which applied to, for the Infrastructure finance."

5.2 Mr. Buch, learned advocate, has next placed reliance upon the very pleadings at Paragraph No. '3.7' of the petition, which were also relied upon by Mr. Acharya, learned advocate on behalf of the petitioner, to submit that the petitioner itself



has, in its own pleadings, categorically averred in the present petition as under:

"The petitioner states that after Agreement was executed work order was issued and petitioner had undertaken the work as per work order. The bill was raised and submitted by the petitioner and as per the agreement it must be paid within 10 days by the Respondent."

5.3 Mr. Buch, learned advocate, has thus submitted that the present controversy is squarely and unambiguously covered within the definitional scope of Section 2(1)(k) of the Act, 1992, and consequently, the dispute cannot be referred to arbitration by way of appointment of an arbitrator under Section 11(6) of the Act, 1996, and has accordingly urged that the petitioner be relegated to pursue his appropriate remedy by instituting a suitable plaint before the Gujarat Public Works Contract Disputes Arbitration Tribunal, which alone possesses the requisite jurisdiction to adjudicate the disputes arising out of the present controversy.

ANALYSIS & REASONING:

6. First and foremost, the respondent-Nagarpalika seems to be covered by the Notification dated 16.12.2024. Further, from the admitted pleadings in paragraph No. '3.7' of the

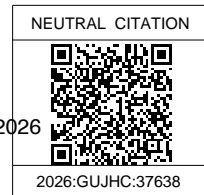


petition, it is seen that a “work order” has been issued in the petitioner's favour by the respondent-Nagarपालिका. Further, from the scope of work as can be ascertained from recital No. ‘1’ and clause No. ‘2.5’ of the Agreement dated 30.05.2019, the petitioner is responsible for “completion of works....”.

7. A conjoint reading of the “scope of work” and the understanding of the petitioner as to its own scope of work as reflected in the pleadings before this Court leave no manner of doubt that the amount which is sought to be claimed from the respondent-Nagarपालिका cannot be simply termed as “fees” but rather as “*consideration*” for a works contract.

8. In order to appreciate the wide and comprehensive scope and ambit of the expression “**works contract**” as employed under the Act, 1992, and to properly adjudicate upon the rival contentions advanced by the learned advocates appearing on behalf of the respective parties, it would be apposite to refer to the definition of “works contract” as enacted under Section 2(1)(k) of the Act, 1992, which reads as under:-

“(k) “Works contract” means a contract made by the State Government or the public undertaking with any



other person for the execution of any of its works relating to construction, repairs or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory or work shop 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, and includes-

(i) a contract made for the supply of goods relating to the execution of any of such works,

(ii) a contract made by the Central Stores Purchase Organisation of the State Government for purchase of sale of goods.”

9. The definition of works contract is very wide and comprehensive as held by this Court in the case of **GPC Infrastructure Ltd. v. Gandhinagar Municipal Corporation**, reported in **2025:GUJHC:56570**, which reads as under:-

34. However, it is nobody's case that in respect of these disputes there is any notification under Section 2(1)(k) notifying these disputes to be "works contract". Given the definition of Section 2(1)(k), the State Government by Notification has the power to specify such other works of the State Government to be including within the meaning of works contract, apart from those which are specifically stated in Section 2(1)(k). In a recent decision of this Court in **Bankers Cardiogy Pvt. Ltd. & Another Vs. Commissioner of Commercial Tax & Another**, reported in **2025 SCC OnLine Guj 3255**, it was observed as under:-

126. "Works Contract" is defined as per Explanation (ii) to section 2(23) of the VAT Act explaining the expression "works contract" and it is to be appreciated and understood in light of the constitutional meaning.

127. Clause (ii) of the Explanation to section 2(23)



stipulates that for the purpose of sub-clause (b) of the expression "works contract" means a contract for execution of works and includes such "works contract" as the State Government may, by notification in the Official Gazette, specify and therefore, as observed by the Hon'ble Apex Court in paragraph no.87 of the decision in case of Larsen and Toubro Ltd. (supra) that the distinction between contract for sale of goods and contract for work of services has almost diminished in the matters of composite contract involving both contract of work / labour and a contract for sale, for the purposes of Article 366(29A)(b) of the Constitution of India. Therefore "Works contract" includes any agreement for "fitting out" of any movable property. It is not confined to any genre of contract. Therefore, fitting out or implanting of items into the physiology or the body of a human patient for alleviation of pain or for improvement of the life of the patient in the course of medical/surgical procedure is required to be construed as "works contract", more particularly, when the petitioners have not been able to demonstrate how the definition of "works contract" is not attracted to the facts of the present case.

128. *An attempt has been made on part of the petitioners to distinguish the contentions raised on behalf of the respondents by canvassing that passing of property by principle of accretion is fundamental to "works contract" and human body is not a "property" and therefore, principle of accretion cannot apply to the treatment of patients because substantive civil law is divided into the law of property, the law of obligations and the law of status and there is a clear distinction between the legal treatment of "property" and of "persons". Reference was made to **Salmond on Jurisprudence** to submit that "persons" in chapter 10 are treated separately from "property" and the law does not treat persons as "property". It was also submitted that the "property" includes legal rights of a person, but such usage is obsolete in law as law has always treated persons and property separately which is also borne out from the provisions of the IPC by treating offences relating to persons and those related to property separately and even under the law of torts, torts relating to the person are treated separately from torts relating to property and therefore, to treat a live human body as a property is shockingly retrograde and harks*



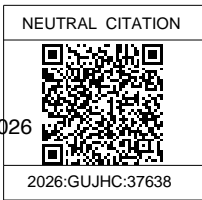
back upon the pre-colonial era when humans were treated as objects and were kept in captivity as slaves and therefore, medical treatment to the human being cannot be equated with treatment to a property and therefore the use of medicines, implants, stents, consumables, etc. for such treatment cannot be subjected to sales tax under clause (b) of Article 366(29A) of the Constitution, and the treatment of the human body cannot be equated to "works contract". Reliance placed on section 19 of the Transplantation of Human Organs and Tissues Act, 1994 which prohibits the commercial dealing in human organs an offence punishable was also cited to canvas that there is a legislative drift to not to tax and the right to deal is the substratum of any property/ proprietary right and when such right has been taken away by another legislation, it cannot be said that human body/organs is "property". These submissions and contentions raised on behalf of the petitioners are very attractive but the same are not tenable in view of the decision of Hon'ble Apex Court in relation to the "works contract" as it is not in dispute that petitioner hospitals render composite health services which include the use and supply of prosthetics, consumables, implant, stents, medicines, etc. while treating the human body and therefore it would fall within the ambit of Article 366(29A)(b) of the Constitution read with section 2(23) of the VAT Act. The argument of the petitioners that accepting the submission that composite health services offered by the Hospitals would fall within the meaning of words "contract" within the ambit of Article 366 (29A)(b) of the Constitution would be retrograde step in jurisprudence is, on the contrary, a retrograde interpretation of the dynamic constitutional ingredients under Article 366 (29A)(b) of the Constitution which takes the entire jurisprudence back to pre-Gannon Dunkerly days, apart from stretching the context of "persons" and "property" to a point of absurdity. Therefore, definition of "sale" in section 2(23) of the VAT Act and the definition of the "works contract" as per explanation (ii) makes it clear that it is of wide import as the rendering of services together with supply of prosthetics, implants, stents, consumables, medicines etc. used for treatment of indoor patient cannot be given a restricted meaning by excluding the same from "works contract" on the basis that "works contract" as a concept was originally confined to



*contracts relating to immovable properties alone. However, after the 46th Amendment to the Constitution, the definition of “works contract” was widened and it is broad based taking within its fold every possible and conceivable contracts involving transfer of property while providing services. Therefore, the definition of “works contract” can include hospital/ health/ Medical services including composite contracts where the provision of services also includes supply of goods along with medical service and the definition takes within its fold such services also and therefore, the respondent State was justified in proposing a demand to tax from the petitioner hospitals on supply of consumables, medicines, stents, implants, etc. for treatment of indoor patients and the reasons given in the decisions of five Hon’ble High Courts would have been acceptable in the era prior to the 46th Amendment to the Constitution as per the decision of Hon’ble Apex Court in case of **Gannon Dunerkerly** (supra) which has required the Parliament to introduce 46th Amendment to the Constitution so as to bring all genre of contents of services including the supply of goods within the purview of “works contract” as held by Hon’ble Apex Court in case of **Larsen and Toubro Ltd.** (supra).”*

35. It is thus clear that the definition of “works contract” is inclusive and expansive in nature and despite no specific Notifications, the disputes in question would be covered within the meaning of Section 2(1)(k) of the Arbitration Tribunal Act, 1992 particularly because the phrase “all other such works of the State Government or, as the case may be, of the public undertaking,” would include within its reach every conceivable concessionaire and/or agreement which form the subject matter of these petitions.

10. In such view of the matter, I am of the opinion that the present petition must fail and hence stands dismissed, however, with no order as to costs. The petitioner will be at liberty to approach the Tribunal with a reference under Section 8 of the Act, 1992 within a period of eight (8) weeks



from the uploading of the judgment and order.

11. If such a reference is filed within the period as aforesaid, then the time spent by the petitioner from the date of invocation of the disputes till the uploading of a copy of this judgment and order shall be excluded for the purposes of calculating the period of limitation within the meaning of Section 16 of the Act, 1992. Needless to clarify that the findings recorded herein are solely for the purpose of adjudication of the present petition. All rights/contention of the parties affecting the merits of the disputes are kept open.

BINA SHAH

(D.N.RAY,J)