

Gujarat Public Works Contracts Disputes Arbitration Tribunal Regulations, 1997

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Gujarat Public Works Contracts Disputes Arbitration Tribunal Regulations, 1997

In exercise of the powers conferred by Sec. 9 of the Gujarat Public Works Contracts Disputes Arbitration Act, 1992 (Guj. 4 of 1992), the Gujarat Public Works Contracts Disputes Arbitration Tribunal hereby makes the following regulations, namely.

CHAPTER 1

Miscellaneous

CHAPTER 2

Sittings and Office Hours

3. Working hours of the Tribunal :-

Except on Sundays, public holidays and Second and Fourth Saturdays, the working hours of the office of the Tribunal shall be from 10.30a.m. to 6.10 p.m.

4. Holidays :-

The Tribunal shall observe all the public holidays declared by the State Government for each calender year: Provided that the Chairman may make such variations as may be declared by him.

5. Attendance register :-

The ministerial staff of the Tribunal shall maintain an attendance register and shall put it up before the Registrar every day.

6. Daily sitting of the Tribunal :-

The daily sitting of the Tribunal for judicial work shall (except on Saturdays, Sundays and holidays unless specifically notified),

ordinarily be from 11.15 a.m. to 5.00 p.m. with recess of 45 minutes from 2.15 p.m. to 3.00 p.m.

7. Working of office when the Tribunal is on vacation :-

When the Tribunal is on vacation the office of the Tribunal shall remain open during such hours and on such days as the Chairman may notify.

8. Hours of cash transactions :-

The cash transactions shall commence at 11.00 a.m. and close half an hour before the closing hours of the Treasury : Provided that the Registrar may permit any transaction to be effected beyond the prescribed hours in exceptional circumstances.

CHAPTER 3

Presentation, Registration, Admission of References and Applications Including Review Applications

9. Reference to Tribunal :-

Reference in Form-A as prescribed in Rule 6 of the Rules shall be presented, to the Registrar or the officer authorised in this behalf, by the petitioner in person or by his duly authorised agent or Advocate during the working hours of the Tribunal.

10. Procedure on receipt of Reference :-

(1) As soon as a reference or review application is received in the office of the Tribunal, the same alongwith the affidavit and documents shall be scrutinised by such officer of the Tribunal, authorised in that behalf;

(2) In any defect or deficiency is found in the Reference or Review application, it shall be reported to the Registrar or an officer authorised in this behalf, who shall direct the petitioner to remove it within a specified time to be fixed by him.

(3) The reference or review application, if found in order or after removal of the defect or deficiency, if any, shall be registered, numbered and placed before the Chairman;

(4) The Chairman may having regard to the nature of the dispute, the amount involved and other relevant factors, if any, assign such Reference or Review Application to a Bench, for admission.

11. Admission of Reference :-

(1) The Bench to which the reference is so assigned shall on

admitting the reference cause notice thereof to be issued to the opposite party to show cause in the prescribed form and shall specify the date for appearance:

Provided that if the Tribunal is satisfied after due inquiry and after hearing both the parties and following due procedure that there is no ground for reference, nothing in this Regulation shall prevent it from rejecting the reference at any stage of the case, for reasons to be recorded in writing.

(2) Notice to the opposite party with a copy of the petition (Reference) shall be sent by registered A.D. post and it shall be treated as served until the contrary is proved;

(3) The opposite party, on or before the day specified in the notice for its appearance, may file a reply in writing duly signed by it or its authorised agent, alongwith an affidavit verifying the averments made in the reply.

12. Procedure Rules Applicable to the Tribunal :-

Rules 1 to 6 of Order 3 of the Code of Civil Procedure, 1908 shall be applicable to the proceedings before the Tribunal.

13. Documents :-

The reference shall be accompanied with all the documents, in requisite sets, in accordance with the rules prescribed, on which the petitioner relies to establish his claim and the written reply of the opposite party, shall likewise be accompanied, with all the documents, in requisite sets, on which he intends to rely upon, in defence or support of his case.

14. Copies of Reference :-

(1) The reference and written reply alongwith the documents shall be tendered in the form of paper-books, neatly typed on thick durable foolscap papers, in double spacing leaving a margin of two inches;

(2) The copies of reference and the written reply filed in the form of paper-books shall be properly stitched with pages duly numbered. The office may refuse illegible or badly typed copies illegible documents or xerox copies thereof. The office may refuse to accept such papers which are not typed as prescribed or which do not conform to the requirements of the rules or these regulations.

15. Undelivered notice or summons :-

If the postal article containing notice or the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the addressee or his agent had refused to take delivery of the postal article containing the notice or summons, as the case may be, when tendered to him, the Bench issuing it shall declare that the notice or the summons, has been duly served.

16. Substituted service :-

Where the Bench is satisfied that there is reason to believe that the addressee is avoiding the service or that for any other reason the notice or summons cannot be served by post, the Bench shall order the notice or the summons to be served by an advertisement in daily news paper, circulating in the locality in which the addressee is known to have last resided or worked or carried on business or in such manner as may be through fit.

17. Discovery, inspection and admission of documents :-

The rules under Order XI and XII of the Civil Procedure Code, 1908 shall be applicable to the cases before the Tribunal.

18. Framing of Issues :-

It shall not be necessary to frame issues but the Tribunal or the Bench may do so for the sake of expediency in a particular case.

19. Summons and attendance of witnesses :-

The Rules 1 to 21 of Order XVI and Rules, 1 to 7 of order XVI A of the Civil Procedure Code, 1908 shall be applicable in the proceedings before the Tribunal with necessary and suitable modifications therein with reference to Tribunal.

20. Summons how served :-

Every summons not being a summons delivered to a party for service, shall be served, as nearly as may be in the same manner as a summons to a defendant and the same rules regarding proof of service shall apply.

21. Summons given to a party for service :-

(1) The Tribunal may, on the application of any party for issuing a summons for the attendance of any person, allow such party to effect service of such summons on such person and shall, in such case, deliver the summons to such a party for the service;

(2) The summons served under this regulation shall be treated as

served by a serving officer. Where a summons is served by a party under this regulation, the party shall not be required to pay the fee otherwise chargeable for the service of summons, but the party shall have to file an affidavit to the effect that the summons is duly served.

22. Production of witness without summons :-

Any party to the Arbitration proceedings may, without applying for summons bring any witness to give evidence or to produce documents with the permission of the Tribunal.

23. Appearance of parties and consequences of non-appearance :-

Provisions of Rules 1 to 14 of Order IX of the Civil Procedure Code, 1908, shall be applicable to the proceedings before the Tribunal with modifications as may be necessary for the purpose.

24. Application for Review :-

(1) Every application for Review as provided under Section 11 of the Act shall be accompanied by a typed copy of the award or interim award or order, sought to be reviewed in requisite sets;

(2) When an application for review proceeds on the ground of discovery of fresh matter or evidence, the documents relied upon, if any shall be annexed to the application, with a list in Form No. 5 in Appendix H, schedule I of the Code of Civil Procedure together with an affidavit setting forth the circumstances under which such discovery has been made;

(3) It shall not be necessary for an Advocate who had filed a Vakalatnama at the original hearing to produce a fresh Vakalatnama in order to entitle him to apply for or to appear in the Review.

CHAPTER 4

Adjournments, Hearing and Award

25. Adjournments :-

The Tribunal or the Bench hearing the case may, if sufficient cause is shown or on its own motion at any stage of the proceedings, grants time to the parties or to any of them and may, from time to time, adjourn the hearing of the case.

26. . :-

In every such case, the Tribunal shall fix a date for further hearing

of the case and may make such order as it thinks fit with respect to the costs occasioned by the adjournment.

27. Hearing of the case :-

After written reply is filed by or on behalf of defendant, a date shall be fixed for settlement of points in dispute and the evidence which the parties shall adduce in support of their respective cases.

28. Final hearing :-

On settlement of the points for determination and the evidence the case shall be posted for final hearing.

29. Party to appear before other witness :-

Where a party himself desires to appear as a witness, he shall so appear before any other witness on his behalf is examined, unless he is allowed to appear as his own witness at a later stage.

30. Memorandum of evidence :-

It shall not be necessary to take down or dictate or record the evidence of a witness at length, but one of the Members, sitting to hear the case, while a witness is being examined, shall dictate to the deposition writer, a memorandum of the substance of what the witness deposed and such, memorandum shall be signed by all the Members of the Bench hearing the case and shall form part of the record.

31. Sequence of evidence :-

On the settling date, subject to Regulation 30, the sequence in which its evidence may be taken shall be decided by the Bench hearing the case:

Provided that the Bench hearing the case, may change the sequence of evidence and examination of a new witness, for reasons to be recorded in this behalf.

32. Power to order any point to be proved by affidavit :-

The Bench hearing the case, may at any time, order that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be read as evidence at the hearing, on such conditions as the Bench thinks reasonable.

33. Power to order attendance of deponent for cross-examination :-

Upon an application made by a party, evidence may be given by affidavit, but the Bench may at the instance of the other party

order the attendance of the deponent for cross- examination.

34. Power to inspect :-

The Bench may, at any stage of the proceedings, inspect any property or things concerning the dispute but on inspection, shall make a memorandum which shall form part of the record of the case.

35. Commission: Issue of Commission :-

The Bench may issue commission for examination of a witness or examination of accounts or local inspection or investigation or for any other purpose which may be considered necessary for the disposal of the case, on such terms and conditions as it thinks proper.

36. Proceedings and Report to be evidence :-

The proceedings and report, if any, of the Commission shall be the evidence in the case but where the Bench has reason to be dissatisfied with them, it may pass such orders as it thinks fit.

37. Award :-

The Bench, after the case has been heard shall pronounce its award, either at once or as soon thereafter as practicable on some future date, of which due notice shall be given to the parties or their pleaders. The award shall be signed by all the members of the Bench, who had heard the case.

38. Costs :-

(1) The costs of the reference or the application shall be in the discretion of the Bench; . (2) In its interim of final award, the Tribunal shall state who shall bear the costs and in what proportion, if any; (3) A Bill of costs, if any, shall be drawn up by the Registrar or any other officer authorised by the Registrar and the attached to the Award.

CHAPTER 5

Miscellaneous

39. Corrections of clerical or arithmetical mistakes :-

Clerical or arithmetical mistakes in award, interim award or orders or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Bench or the Tribunal, either on its own motion or on application made by any of the parties.

40. Constitution of the Bench or Benches :-

(1) The Chairman may, for the convenient transaction of business, constitute one or more Benches consisting of two or more Members of which at least one shall be a Judicial Member.

(2) The Chairman may, in his discretion, distribute business amongst the Benches and withdraw any case from one Bench and assign it to another, at any time;

(3) The Chairman may change the composition of any Bench as may be deemed fit.

41. Power to administer oath to deponents :-

(1) The Registrar or any other officer not below the rank of a Section Officer authorised in that behalf, shall have power to administer oath and solemn affirmation to the deponents making affidavits who may have to file affidavits before the Tribunal;

(2) The officer administering the oath or affirmation for the purpose of affidavits, shall satisfy himself that the language in which the affidavit is sought to be made is known to the declarant;

(3) If the language is not known or understood by the declarant, the officer administering the oath or affirmation shall, where the party is represented by an Advocate require the said Advocate to certify in writing below the affidavit that the contents of the affidavit are interpreted to the declarant in a language known to him and that the declarant has fully understood them;

(4) When the Officer administering the oath or affirmation is satisfied that the language of the document is known or understood by the declarant, or when the Advocate has certified that the contents have been interpreted to the declarant in a language known to him the oath shall be administered and the affidavit completed by the signature of the declarant below the declaration on oath, in the presence of the officer and the certification by the officer of the administration of the oath;

(5) The officer, before administering oath or affirmation and certifying the affidavit, shall satisfy himself as to the identity of the declarant who shall be either known to the officer, personally or identified before him by a person whom he personally knows. The manner in which the identification is made shall be certified by the officer administering the oath.

42. Affidavits :-

(1) Every affidavit to be used in the Tribunal shall be entitled "Before Gujarat Public Works Contracts Disputes Arbitration Tribunal, Ahmedabad."

(2) An affidavit relating to the proceedings pending in the Tribunal shall be entitled "In the matter of....." (State the proceedings and its number) and shall set out the names and description of the parties;

(3) Every affidavit containing any statements of facts shall be divided into paragraphs and every paragraph shall be numbered consecutively and as nearly as possible, shall conform to a distinct portion of the subject;

(4) The declarant shall state, what paragraphs or portion of his affidavit he swears or solemnly affirms to, from his own knowledge and what paragraphs or portion he swears or solemnly affirms to on his own belief stating the grounds of such belief.

43. Seal of the Tribunal :-

The Tribunal shall have an official seal which shall be kept in the custody of the Registrar.

44. Notice, Award etc. to be signed and sealed :-

Every Notice and every certificied copy of the Award or any other documents shall be signed by the Registrar or the authorised in his behalf, with the date, month and year of signing and shall be sealed with the official seal of the Tribunal.

45. Copies of documents on payment of fees :-

A person who is a party to a reference or application before the Tribunal, may apply to the Registrar for a certified copy of documents or statements produced, filed or made in the proceeding, reference or Application, and such copies may be supplied on payment of the prescribed fee.

46. Inspection and copies of documents :-

Any party to the proceedings or his agent, intending to have the inspection of the record of the proceedings shall make an application in writing to the Registrar stating the purpose for which such request is made, Such application shall be made on affixing appropriate court-fee stamp thereon.