

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/LETTERS PATENT APPEAL NO. 352 of 2026
In
R/SPECIAL CIVIL APPLICATION/13217/2017
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In
R/LETTERS PATENT APPEAL NO. 352 of 2026

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GUJARAT WATER SUPPLY AND SEWERAGE BOARD
Versus
MUKESHCHANDRA HARSHADRAI VYAS (M.H. VYAS) THROUGH LEGAL
HEIRS & ORS.

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Appearance:

GANDHI LAW ASSOCIATES(12275) for the Appellant(s) No. 1
MS SHRUTI DHRUVE, AGP for the Respondent(s) No. 2,3
MR GUNVANT R THAKAR(3801) for the Respondent(s) No. 1.1,1.2

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CORAM: **HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA**

and

HONOURABLE MR.JUSTICE J. L. ODEDRA

Date : 06/05/2026

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

1. This appeal has been preferred against an order passed by one of us. The posting of this appeal by the Registry before us is wholly improper. It is inconceivable that an order passed by one of us can ever be posted before a bench in which one of us is a member. In other words, if this is permitted, it would amount to one of us being a part of the bench which is sitting in judgment over his own order.

2. The Registry appears to have placed reliance on two instructions, i.e. Judicial/1/2021 and Judicial/3/2023, to justify the posting of the matter before us. The

Instruction - Judicial/01/2021 sought to be discontinued the following practice:-

“The previous practice of not listing matters of learned Advocates intimated to the registry to be “not before a particular Judge” and the Registry directly getting nomination for such matters is not in the interest of the administration of justice.

*For better administration of justice, this practice will be discontinued with immediate effect. Henceforth all matters shall be listed before the appropriate Bench as per Roster and only upon judicial orders being passed of “**Not Before**”, that the same to be listed before another Bench duly nominated by Hon’ble Chief Justice.”*

3. As could be seen from the above, the earlier practice was to getting a nomination for posting the matters at the instance of learned advocates. The revised instructions were that the matter be placed before the appropriate Bench, which was required to pass a judicial order of “not before” and thereafter the matter is to be listed before another Bench as nominated by the Hon’ble Chief Justice. Obviously, these instructions can have no application in a case where the appeal is posted before a

Bench, comprising of two members, one of whom was the author of the judgment, which was impugned in the appeal.

4. It is inconceivable that a judgment rendered by a Judge can be decided by the very same Judge in appeal. It is, therefore, necessary to direct the Registry to post the appeal before a Bench in which the author of the judgment is not a member of the Bench.

5. Whenever a matter is to be posted before a Division Bench having the requisite roster and one of the members of the Bench has passed the impugned judgment, by default, the Registry is to post the appeal before another Bench after securing the orders of the Hon'ble Chief Justice.

6. The Registry shall henceforth follow this procedure.

(N.S.SANJAY GOWDA,J)

(J. L. ODEDRA, J)

Manoj Kumar Rai