



**IN THE HIGH COURT OF KARNATAKA,  
KALABURAGI BENCH**

**DATED THIS THE 19<sup>TH</sup> DAY OF APRIL, 2024**

**BEFORE**

**THE HON'BLE MR. JUSTICE C M JOSHI**

**CIVIL MISC PETITION NO.200003 OF 2022**

**BETWEEN:**

SHIVARAJ KAMSHETTY S/O VISHWANATHAPPA

...PETITIONER

(BY SRI AMEET KUMAR DESHPANDE SENIOR COUNSEL  
APPEARED FOR SRI DESHPANDE G. V., ADVOCATE)

**AND:**

1. THE MANAGING DIRECTOR  
KARNATAKA STATE AGRICULTURAL MARKETING  
BOARD,  
HEAD OFFICE, NO.16, RAJ BHAWAN ROAD,  
BENGALURU-560001.
2. THE SUPERINTENDING ENGINEER,  
KARNATAKA STATE AGRICULTURAL,  
MARKETING BOARD,  
HEAD OFFICE NO.16, RAJ BHAWAN ROAD,  
BENGALURU-560001.
3. THE GENERAL MANAGER  
KARNATAKA STATE AGRICULTURAL,





MARKETING BOARD, NEAR BUS STAND,  
BESIDE LIC OFFICE, GDA LAYOUT,  
MSK MILLS ROAD,  
KALABURAGI-585103.

4. THE EXECUTIVE ENGINEER  
MARKETING DEVELOPMENT PROJECT,  
APMC YARD, GUNJ AREA,  
KALABURAGI-585104.

...RESPONDENTS

(BY SRI GOURISH S. KHASHAMPUR, ADVOCATE FOR R1 TO R4;  
SRI KRUPA SAGAR PATIL, ADVOCATE FOR R3 AND R4 )

THIS CIVIL MISC. PETITION IS FILED U/S. 11(6) OF THE ARBITRATION AND CONCILIATION ACT, PRAYING TO APPOINT A SOLE ARBITRATOR AS PER THE PROPOSAL SHOWN ABOVE, TO ADJUDICATE THE DISPUTE BETWEEN THE PETITIONER AND RESPONDENT HEREIN, IN RELATION TO THE CLAIM OF THE PETITIONER TOWARDS THE AMOUNT FOR HAVING COMPLETED THE WORK OF CONSTRUCTION OF DIVISIONAL ADMINISTRATIVE OFFICE NEAR CENTRAL BUST STAND KALABURAGI FOR KARNATAKA AGRICULTURAL MARKETING BOARD AND TO PASS ANY OTHER APPROPRIATE ORDERS AS DEEMED NECESSARY.

THIS PETITION, COMING ON FOR FURTHER ARGUMENTS, THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

2. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1966 seeking to



appointment of an arbitrator to arbitrate the dispute arising between the petitioner and the respondents. The petitioner contends he is a reputed Class-I Contractor having experience of more than 35 years and the respondents had called for tenders for the work of construction of Building at Kalaburagi. The bid of the petitioner was accepted by the respondents and an agreement came to be entered between the petitioner and the respondents on 22.08.2011. the work was agreed to be executed by a total amount of Rs.109.00 Lakhs. The petitioner successfully completed the contracted work as per the drawings and specifications mentioned in the agreement. The excess work entrusted to the petitioner, which he agreed to complete, was approved by the respondents on 25.03.2014. Additional work were also approved by the respondents on 07.05.2015 and as such the total extent of the work executed was Rs.1,22,16,239/-. Thereafter, the final bill was submitted to the respondents on 28.09.2015 and there was delay on the part of the respondents due to the approval of the



extra works. There was dispute between the petitioner and the respondents in respect of the calculation of the dues and the 10% margin of profit etc., and the petitioner had made several correspondence in this regard between 2011 to 2017. Ultimately the petitioner issued a legal notice to the respondents on 16.05.2020 claiming a sum of Rs.2,53,22,934/- and the respondents issued reply notice on 16.06.2020. The petitioner had called upon the respondents to appoint the sole arbitrator as per Clause-4 of the Special Conditions of Contract Read With Clause 24 of the General Conditions of Contract and the respondents did not agreed for the appointment of the arbitrator and therefore the petitioner was constrained to approach this Court under Section 11 of the Arbitration and Conciliation Act.

3. On issuance of notice, the respondents have appeared through their counsel. The learned counsel appearing for the respondents would submit that claim of the petitioner is barred by time and therefore the



arbitration proceedings are not sustainable in law. He submits that all the claims by the petitioner were considered by the respondents and even then the petitioner has made false claim against the respondents and as such the petition is devoid of merits and therefore the same may be dismissed.

4. The provisions of Clause-24 of the General Conditions of Contract as mentioned in the petition read as below:

**"24. Procedure for resolution of Disputes:**

*24.1 If the Contractor is not satisfied with the decision taken by the Employer, the dispute shall be referred by either party to Arbitration within 30 days of the notification of the Employer's decision.*

*24.2 If neither party refers the dispute to Arbitration within the above 30 days, the Employer's decision will be final and binding.*

*24.3 The Arbitration shall be conducted in accordance with the arbitration*



*procedure stated in the Special Conditions of Contract."*

5. The fact that there was a condition for arbitration is not in dispute, the only question disputed by the respondent is that the claim is barred by time.

6. The judgment of the Apex Court in the case of **Secunderabad Cantonment Board vs. B.Ramachandraiah and Sons<sup>1</sup>**, holds as below:

*"20. Applying the aforesaid judgments to the facts of this case, so far as the applicability of Article 137 of the Limitation Act to the applications under Section 11 of the Arbitration Act is concerned, it is clear that the demand for arbitration in the present case was made by the letter dated 07.11.2006. This demand was reiterated by a letter dated 13.01.2007, which letter itself informed the Appellant that appointment of an arbitrator would have to be made within 30 days. At the very latest, therefore, on the facts of this case, time began to run on and from 12.02.2007. The Appellant's*

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<sup>1</sup> (2021)5 SCC 705



*laconic letter dated 23.01.2007, which stated that the matter was under consideration, was within the 30-day period. On and from 12.02.2007, when no arbitrator was appointed, the cause of action for appointment of an arbitrator accrued to the Respondent and time began running from that day. Obviously, once time has started running, any final rejection by the Appellant by its letter dated 10.11.2010 would not give any fresh start to a limitation period which has already begun running, following the mandate of Section 9 of the Limitation Act. This being the case, the High Court was clearly in error in stating that since the applications under Section 11 of the Arbitration Act were filed on 06.11.2013, they were within the limitation period of three years starting from 10.11.2020. On this count, the applications under Section 11 of the Arbitration Act, themselves being hopelessly time barred, no arbitrator could have been appointed by the High Court."*

7. Per contra, the learned counsel appearing for the respondent submits that the judgment of the Apex Court in the case of **M/s Uttarakhand Purv Sainik Kalyan Nigam Limited vs. Northern Coal Filed**



**Limited<sup>2</sup>**, as well as the judgment in the case of **Schlumberger Asia Service Ltd. Vs. Oil and Natural Gas Corporation Ltd.<sup>3</sup>**, also laid down that the question of limitation is also to be decided by the learned Arbitrator.

8. In that view of the matter, the issue of limitation is also part and parcel of the arbitrable point. Such view was also taken by the Apex Court in the case of **Bharat Sanchar Nigam Ltd. And another V/s M/s. Norte Networks India Pvt. Ltd<sup>4</sup>**.

9. Under these circumstances, the arbitrator has to be appointed to arbitrate the dispute that has arisen between the parties, in view of the Clause-24 of the General Conditions of Contract.

10. On a query by this Court, both the parties are agreeable for appointment of Smt. Premavathi M.Manogoli, District Judge (Retd.), Plot No.56, Teachers

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<sup>2</sup> AIR 2020 SC 979

<sup>3</sup> AIR 2013 SC 3778

<sup>4</sup> Civil Appeal 843-844/2021 Supreme Court





Colony, Near Jhanayogashram, Vijayapur as a sole arbitrator. Hence, the petition deserves to be allowed.

Hence, the following:

ORDER

The petition is allowed.

Smt. Premavathi M.Manogli is appointed as a sole arbitrator and parties are directed to appear before the arbitrator as soon as they receive the communication in this regard. The petitioner is directed to intimate the order of this Court to the learned arbitrator.

**Sd/-**  
**JUDGE**

SMP  
List No.: 1 Sl No.: 33  
CT: PK