

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE VINAY SARAF
ARBITRATION REVISION No. 47 of 2022

BETWEEN:-

**RAMESH KUMAR MANSANI, ENGINEERS &
CONTRACTORS, S/O SHRI HUKUMAT RAI,
AGED ABOUT 60 YEARS, OCCUPATION:
GOVERNMENT CONTRACTOR, R/O
HEDGEWAR NAGAR RADIO COLONY CIVIL
LINE REWA (M.P.)**

.....PETITIONER

(BY SHRI RAVINANDAN DWIVEDI - ADVOCATE)

AND

- 1. MADHYA PRADESH RURAL ROAD
DEVELOPMENT AUTHORITY, A
SOCIETY REGISTERED SOCIETY
REGISTRATION ACT, 1973
VINDHYACHAL BHAWAN, 2ND FLOOR
BHOPAL THROUGH CHIEF EXECUTIVE
OFFICER M.P. RURAL ROAD
DEVELOPMENT AUTHORITY BHOPAL
-462004 (M.P.)**
- 2. THE RURAL ROAD DEVELOPMENT
AUTHORITY THROUGH THE GENERAL
MANAGER, PROJECT
IMPLEMENTATION UNIT SATNA (M.P.)**

.....RESPONDENT

(BY SHRI VIJAYKUMAR SONI - ADVOCATE)

Reserved on : 23.02.2024

Pronounced on : 16.04.2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Sheel Nagu pronounced the following:

ORDER

Revisional jurisdiction of this Court u/S.19 of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (for brevity 'Adhiniyam') is invoked assailing the legality and validity of award dated 19.05.2022 passed by M.P. Arbitration Tribunal, Bhopal (M.P.) in Reference Case No.12/2008 dismissing the reference petition preferred by petitioner u/S. 7 of Adhiniyam as not maintainable for having failed to follow mandatory provisions of Section 7-B(1) inasmuch as failing to avail in-house remedy under Clause 29 of the agreement within the stipulated time provided therein.

2. Learned counsel for rival parties are heard on the question of admission so also final disposal.
3. The Tribunal found that the petitioner-contractor failed to avail the in-house remedy by approaching the Chief Executive Officer of the Authority, within 30 days vide Clause 29 of the agreement, for raising dispute of termination dated 25.06.2004 within 30 days.

3.1 The Tribunal while rendering the aforesaid finding relied upon the Five Judge Bench decision of this Court in **Sanjay Dubey Vs. State of M.P. and another**, reported in **2012 (4) MPLJ 212**, which *inter alia* held thus :

“6. In view of aforesaid enunciation of law, it is apparent that in case where an agreement provides for clause like Clause 29, the jurisdiction of the Tribunal can be invoked only after approaching the authority as provided under the terms of the work contract. Section 7-B(1) in express terms provides that the Tribunal shall not admit a reference petition unless the dispute is first referred for decision of the final authority under the terms of the contract and that the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority. The proviso to sub-section (1) of section 7-B provides that if the final authority fails to decide the dispute within the period of six months from the date of reference to it, the petition to the Tribunal shall be made within one year of the expiry of said period of six months. Thus, it is necessary for an person aggrieved to approach the authority under the terms of the work contract before filing the reference petition. On fulfilment of the conditions mentioned in the terms of the works contract alone as provided in section 7-B(1) of the Act, the jurisdiction of the Tribunal can be invoked by filing a reference petition.

7. There may be cases where the works contract may not contain any provision for dispute redressal like the one provided in Clause 29 of the Agreement. In such a case, sub-section (2-A) of section 7-B of the Act will apply and an aggrieved person can approach the Tribunal within three years from the date on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract. It is pertinent to note that section 7-B(2-A) as it exists today has come into force w.e.f. 29-8-2005. The aforesaid provisions does

not have retrospective operation as the language employed therein does not even remotely suggest so, as has been held by the Full Bench in its order dated 27-10-2009.

9. The first part of Clause 29 of the agreement provides for a dispute resolution mechanism. It provides that the dispute has to be referred to the Superintending Engineer in writing for decision within a period of 30 days from such occurrence. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of 60 days of such request. If the Superintending Engineer fails to give his instructions in writing within a period of 60 days or mutually agreed time after being requested of, an aggrieved party may file an appeal to the Chief Engineer within 30 days and shall give his decision within a period of 90 days. Thereafter, an aggrieved person can approach the Tribunal within one year from the date of communication of decision of the final authority. If the final authority fails to decide the dispute within a period of six months from the date of reference to it, the petition to the Tribunal shall be made within one year of the expiry period of six months. The contention made on behalf of the applicants that in view of sub-section (2-A) of section 7-B, an aggrieved person can approach the Tribunal directly without approaching the authorities mentioned in Clause 29 of the agreement, cannot be accepted as the same would obliterate the provisions of sub-section (1) of section 7- B and would render the same otiose as it is well settled legal proposition that it is incumbent on the Court to avoid a construction if reasonably permissible on the language which would render part of the statute devoid of any meaning or application. [See: Rao Shiv Bahadur Singhv. State of U.P., AIR 1953 SC 394]

10. If the agreement is rescinded, two questions may arise for consideration. Firstly, which party to the

agreement is at fault and consequently, the claim for damages for breach of contract. Secondly, the claim with regard to payment of the amount of the final bill before rescission of the contract in accordance with the rates prescribed in the agreement. In the first case, the limitation would commence from the date when the agreement is rescinded whereas in the second case, the limitation would commence from the date when the final bill is prepared.

11. It was also submitted on behalf of the petitioners that the time limit prescribed in Clause 29 is not mandatory and therefore, the same need not be adhered to strictly. We are not inclined to accept the aforesaid submission as non-submission of timely claims is likely to result in disappearance or destruction of the evidence. A person cannot be permitted to approach the authority at any time which he chooses. It is also relevant to mention here that the applicants have entered into an agreement with the State Government with open eyes and they cannot be permitted now to contend that it is not necessary to adhere to the time schedule provided for redressal of their grievances under clause 29 of the agreement. Similarly, the contention that aggrieved person can approach the Superintending Engineer as well as the Chief Engineer within a period of three years as provided in Article 113 of the Limitation Act also cannot be accepted as it is well settled in law that provisions of Limitation Act apply to Courts only and the authorities under the agreement are admittedly not the Courts. [See: State of Jharkhand v. Shivam Coke Industries, Dhanbad, (2011) 8 SCC 656. For yet another reason, this submission cannot be accepted, as the Division Bench decision in Sermen India Road Makers Pvt. Ltd. v. State of M.P., 2005(3) MPHT 292 has been overruled by the Full Bench vide order dated 27-10-2009 and it has been held that it would not be correct to say that the claimant can raise the dispute

within three years before the final authority from the date of accrual of cause of action.

13. *In view of the preceding analysis, we proceed to state our conclusions as under:—*

- (i) Where the works contract contains a clause like Clause 29, the jurisdiction of the Tribunal can be invoked only after approaching the Authority as provided under the terms of the works contract.*
- (ii) However, subject to final adjudication of the issue by the Supreme Court as to whether Tribunal under the Act is a Court or not, in case where the dispute has arisen under an agreement prior to coming into force of section 7-B(2-A) of the Act which does not contain a clause like Clause 29, an aggrieved person has to approach the Tribunal within a period of three years from the date of accrual of cause of action.*
- (iii) Where the works contract does not contain any provision like Clause 29 and the dispute has arisen after coming into force of section 7-B(2-A) of the Act, in such a case, sub-section (2-A) of section 7-B of the Act will apply and an aggrieved person can approach the Tribunal within a period of three years from the date on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract.*

- (iv) *In a case where the agreement is rescinded, two questions may arise for consideration. Firstly, which party to the agreement is at fault and consequently, claim for damages for breach of contract. Secondly, the claim with regard to payment of amount of the final bill before rescission of the contract in accordance with the rates prescribed in the agreement. In the first case, the limitation would commence from the date when the agreement is rescinded whereas in the second case, the limitation would commence from the date when the final bill is prepared.*
- (v) *The dispute under Clause 29 has to be submitted within the time limit which has been prescribed in the clause. The dispute cannot be submitted to the Authorities mentioned in Clause 29 of the Agreement within a period of three years as the provisions of Limitation Act do not apply to the Authorities under the Agreement as they are not the Courts.*
- (vi) *Clause 29 of the Agreement is not violative of section 28(b) of the Indian Contract Act, 1872.”*
(emphasis supplied)

4. The law settled by the aforesaid Full Bench of this Court does not absolve the contractor from complying with the mandatory provisions stipulated u/S.7-B(1) of availing the in-house remedy contained in Clause 29, for taking advantage of three years limitation period prescribed under sub-

section (2-A) of Section 7-B of Adhinyam. Meaning thereby, that even for availing the longer period of limitation of three years prescribed u/S.7-B (2-A) for raising the dispute of termination of contract, the contractor is still obliged to approach the administrative authority stipulated in the in-house remedy under clause 29 by following the timeline provided therein.

5. In the instant case, the facts reveal that termination took place on 25.06.2004. Whereas the petitioner raised the dispute against termination on 16.09.2004 which was well beyond the period of 30 days prescribed in clause 29 for raising a dispute before the Chief Executive Officer of the Authority. Thus, the petitioner failed to adhere to timeline prescribed under clause 29 of the agreement and thus is disentitled to take advantage of the longer period of limitation of three years provided under Section 7-B (2-A).

6. In view of above, we do not find any illegality or impropriety or rampant irregularity in the impugned award passed by the Tribunal.

7. Accordingly, the present revision petition stands **dismissed**.

(SHEEL NAGU)
JUDGE

(VINAY SARAF)
JUDGE