

**HIGH COURT OF TRIPURA
AGARTALA**

Arb.P. No.03 of 2025

Sri Ramendra Narayan Bhattacharya, Contractor, S/o Late Ramatosh Bhattacharjee, resident of Boulapassa, Ward No.2, P.O & P.S Kailashahar, Unakoti, Tripura, PIN-799277

.....Petitioner(s);

Versus

1. The State of Tripura represented by the Executive Engineer, Water Resource Division No.VI, Pecharthal, Unakoti Tripura

2. The Chief Engineer, PWD (W.R), Govt. of Tripura, Kunjaban, Agartala, West Tripura

.....Respondent(s).

For Petitioner(s) : Mr. Suman Bhattacharjee, Advocate.

For Respondent(s) : Mr. Kohinoor Narayan Bhattacharyya, G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

09/04/2025

Heard Mr. Suman Bhattacharjee, learned counsel for the petitioner and Mr. Kohinoor Narayan Bhattacharyya, learned Government Advocate for the respondents-State.

2. Petitioner has invoked the jurisdiction of this Court under Section 11(6) of the Arbitration & Conciliation Act, 1996 as amended for appointment of an independent arbitrator in terms of Clause 22 of the agreement.

3. Learned counsel for the petitioner submits that petitioner was awarded the work of "Drilling and development of 12(twelve) Nos. Deep Tube Wells with contractor's Direct Rotary Drilling Rid and other accessories and equipments at different locations under W.R. Division No.VII, Pecharthal during the year 2016-17 (NABARD/SPA) 2nd Call", after being found to be the lowest bidder. Work order was issued on 12.01.2017 with instruction to start

the work immediately. Thereafter, a formal agreement was entered bearing No.09/CE/SE/EE/WRD-VII/PTL/2016-2017 between the parties. After issuance of the work order due to failure of the respondents in handing over clear site and non-supply of materials, the work could not proceed further. For months together, the site was not handed over to the petitioner because the department failed to acquire the land. As a result, petitioner had to face losses and damages on many counts. Suddenly, vide a letter dated 28.06.2017, the Executive Engineer has arbitrarily rescinded the contract though the department was responsible for non-completion of the work. Therefore, a dispute arose between the parties. Petitioner invoked the in house mechanism prescribed under Clause 22 of the agreement. Petitioner requested the Chief Engineer, PWD(WR), Tripura vide letter dated 11.03.2024 to appoint a sole Arbitrator in accordance with the Arbitration and Conciliation Act, 1996 (as amended). Since the Chief Engineer has failed to appoint an Arbitrator, petitioner has approached this Court for appointment of an independent and impartial Arbitrator in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996 (as amended) invoking Arbitration Clause 22.2 under the agreement.

4. Respondents have appeared and filed their counter affidavit. Learned Government Advocate Mr. Bhattacharyya submits that it is a fact that the work was stipulated to be completed on or before 27.01.2018 in place of 27.01.2017 as noted by the petitioner. Petitioner was given three sites for execution of the work of Water Resource Sub-Division within the jurisdiction of Executive Engineer, W.R. Division No.VII, Pecharthal, but he suspended the work since 23.03.2017 without assigning any reason. Therefore, no work could

be executed by the agency. Accordingly, no question of payment of salary arises to his staff. It is further stated that agency was communicated through different letters dated 18.04.2017, 04.05.2017 and 12.06.2017 by the Executive Engineer, W.R. Division No.VII, Pecharthal for starting the work, but he failed to resume the work. Petitioner wrote letters dated 12.05.2017 and 24.05.2017 asserting his illness as reason for not being able to carry out the work, but no documents in support were annexed. The department was therefore left with no other option but to rescind the contract on 28.06.2017 which was received by the petitioner on 13.07.2017. Petitioner has suddenly woken up from slumber and tried to invoke the arbitration clause. Petitioner failed to maintain reciprocal obligation as he abstained himself from working and keeping the work suspended indefinitely. Department was left with no other option than to rescind the contract for completion of the work by engaging a fresh agency. It is submitted that petitioner came for redressal of his grievance after lapse of six years. It is an admitted fact that limitation for claiming any amount for any damages is three years and it is also a fact that petitioner sought redressal before the learned Civil Judge (Jr. Division), Kailashahar, Unakoti Judicial District in Civil Misc.(Inj.) 09 of 2017 against the paper publication on 08.07.2017 inviting tender for the same nature of work. The prayer of the petitioner was rejected vide order dated 28.11.2017 [Annexure-R/1]. He is seeking reopening of the matter after six years. Such a claim is, therefore, barred by limitation.

5. Learned Government Advocate for the respondents-State submits that invocation of the arbitration clause therefore is ‘barred by *res judicata*’ since he has unsuccessfully agitated his cause of action in a civil proceeding.

6. Learned counsel for the petitioner has, in reply, placed reliance upon a decision of the Apex Court in the case of ***Aslam Ismail Khan Deshmukh v. Asap Fluids Private Limited and another*** reported in ***(2025) 1 SCC 502***. By referring to paragraph 43 and 47 of the report, he submits that the period of limitation in such case should run from the date of notice of invocation of the arbitration clause i.e. 11.03.2024. Therefore, the arbitration petition is not barred by delay.

7. Learned Government Advocate for the respondents-State Mr. Bhattacharyya has strongly objected to the prayer. He submits that if the petitioner’s cause of action could not be invoked in a proceeding beyond three years as per the Limitation Act, 1963, invocation of arbitration clause after six years of the rescission of the contract on 28.06.2017 is barred by limitation. Relying upon the same decision in the case of ***Aslam Ismail Khan Deshmukh*** (supra), paragraph 51 in particular, it is submitted that the referral Court can make a limited inquiry as to whether the claim is *ex facie* time barred or the claims have been discharged through “accord and satisfaction” or where the impleadment of a non-signatory to the arbitration agreement is sought, etc. The Apex Court has observed that otherwise some parties may take undue advantage of such limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time consuming and costly arbitration process. Therefore, the petition may be rejected.

8. I have considered the submission of learned counsel for the parties and taken note of the materials placed from record. I have also perused the decision rendered by the Apex Court in the case of ***Aslam Ismail Khan Deshmukh*** (supra) relied upon by both sides.

It is not in dispute that the agreement was rescinded on 28.06.2017 by the respondent-Executive Engineer, but the petitioner has invoked Clause 22 of the agreement which is the arbitration clause vide letter dated 11.03.2024 addressed to the Chief Engineer, PWD (W.R), Government of Tripura for appointment of a sole arbitrator in accordance with the Act of 1996 as amended and thereafter approached this Court on failure of the Chief Engineer to appoint an arbitrator. The institution of a suit for recovery of such claims beyond three years would be barred as per the provisions of the Limitation Act, 1963. In the present case, the arbitration clause has been invoked after six years without any correspondence in between this period. The contention of the petitioner that the period of limitation should start running from the date of the invocation of the arbitration clause, and not from the date of rescission of the agreement does not merit acceptance. The cause of action had become barred by limitation. The claim is, therefore, dead and not a live claim. The Apex Court in the case of ***Aslam Ismail Khan Deshmukh*** (supra) has held that the referral Court can undertake a limited inquiry to ascertain whether the claim is *ex facie* time barred or not.

9. In such circumstances, without getting into the other contentions raised by the parties, this Court is of the opinion that petitioner has invoked the

jurisdiction of this Court under Section 11(6) of the Act of 1996 as amended in a time barred claim. Such a plea should not be encouraged.

10. Accordingly, the instant petition is dismissed.

Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ



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