

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 13.02.2026
Pronounced on 27.02.2026
Uploaded on 27.02.2026

Whether the operative part or full
judgment is pronounced: **Full judgment.**

Arb P No. 10/2023

M/s Sharma Construction Company, ...Petitioner(s)/Appellant(s)
Engineers and Contractors Jourian Road,
Near Church Akhnoor-1812201 (J&K)
through its Partner Sh. Mangu Ram
Sharma, aged 76 years S/o late Sh. Ram
Chand.

Through: Mr. R. K. Gupta, Sr. Advocate with
Mr. Udhay Bhaskar, Advocate
v/s

.... Respondent(s)

1. Union of India through Ministry of
Defence, Govt. of India, New Delhi.
2. Engineer-in-Chief, E-in C's Branch,
Directorate of Contract Management,
Integrated HQ of Ministry of defence
Army, Kashmir House, Rajaji Marg,
New Delhi.
3. Chief Engineer, Northern Command,
Pin 914698 C/o 56 APO
4. Chief Engineer, Udhampur Zone,
Udhampur P.O Garhi Pin 182121, C/o
56 APO.
5. Garrison Engineer (N), Akhnoor, Pin
181201.

Through: Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, GA

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

1. The petitioner-firm was allotted contract work for construction of “10 X above ground bunkers (50 Mt) each 01 X open WP AMN Shed and Allied infrastructure at 102 AP 10 INF DOU at Sunderbani” by respondent No. 4 vide acceptance letter No. 87360-A/74/E8 dated 30.10.2006.
2. It is stated by the petitioner-firm that despite certain breaches on the part of the respondent-department, it successfully executed the contract work on 23.05.2009, well within the stipulated contract period and respondent No. 5 issued the completion certificate dated 29.05.2009. The petitioner-firm further claims to have requested the respondent-department to take the joint measurements of the executed work and supply the abstract of measurable works, DO's, statement of recoveries, consolidated statement of credit and debits, statement of all paid RARs, to enable the petitioner-firm to prepare and submit the final bill but the aforesaid documents were not provided to the petitioner-firm for years together, therefore, the final bill could not be prepared. It is stated that while the final bill was still awaited, one of the walls (VIFT wall) constructed by the petitioner-firm in the aforesaid work collapsed in the year, 2010. A Court of inquiry was initiated by the department. The petitioner-firm participated in the Court of enquiry and submitted its reply to the department stating therein that the wall in question had fallen due to the defective design supplied by the department. It is also stated that all the stages of the work carried out by the petitioner-firm were duly checked and approved by the Engineer-in-Charge and G.E. at every stage of the work. While the Court of enquiry

was being conducted by the department, the petitioner-firm kept on requesting the department to prepare the final bill and make the balance payment of the executed work. The petitioner-firm claims to have subsequently gained the knowledge that nothing adverse was found in the Court of inquiry against the petitioner-firm, therefore, the petitioner-firm again requested the department to finalize the final bill and make the payment of the work executed by the petitioner-firm, but there was no response from the department.

3. The petitioner-firm vide its letter dated 26.10.2018 requested the department to furnish the desired documents for preparation of the final bill. It is averred that the department, being not satisfied with the result of the court of enquiry, initiated yet another departmental enquiry against the petitioner-firm and issued a fresh show-cause notice dated 31.12.2018. The petitioner firm vide its letter dated 14.01.2019 submitted its reply to the aforesaid show-cause notice and denied any omission or lapse on its part in execution of the contract work. Again, in the departmental enquiry, nothing was found adverse against the petitioner-firm. It is stated that during the Court of enquiry as well as departmental enquiry, the petitioner-firm had been regularly requesting the department for release of the payment of final bill and the FDR, but in vain. After its exoneration, the petitioner-firm vide its letter dated 26.07.2019, again requested the department to release the payment of the executed contract work within 30 days of the receipt of the letter, failing which the petitioner-firm shall be left with no option but to invoke condition 70 of IAFW-2249 for

reference of the claim to the Arbitrator. When the said letter evoked no response, the petitioner-firm vide its communication dated 19.02.2020, addressed to respondent No. 4, invoked Clause 70 of IAFW-2249 and requested for reference of the disputes/claims to the Sole Arbitrator for its adjudication. When respondent No. 4 failed to refer the claim of the petitioner-firm to the sole Arbitrator, the petitioner-firm, vide its letter dated 20.03.2020, requested respondent No. 2 for reference of the claims/disputes to the sole Arbitrator.

4. It is contended that after more than one year of receipt of the letters for appointment of the Arbitrator submitted by the petitioner-firm to the respondent Nos. 2 & 4, the Commandant HQ 135 Works Engineer vide his letter dated 06.05.2021 issued a convening order for the constitution of Board of Offers to ascertain the de-valuation statement in respect of the contract work executed by the petitioner firm. The petitioner-firm in terms of communication dated 01.06.2021, addressed to respondent No. 2, pointed out the harassment being meted out to the petitioner-firm at the behest of officers of the department as the convening order was passed pursuant to the letter dated 10.12.2019 issued by respondent No. 4 after 16 months of the said letter. The petitioner-firm claims to have objected to the constitution of the Board of Officer for ascertaining de-valuation statement. Thereafter, respondent No. 4 vide letter dated 01.06.2022, rejected the request of the petitioner-firm for appointment of independent Arbitrator made vide letters dated 19.02.2020 and 20.03.2020 on the

grounds that request for appointment of Arbitrator is time barred and that the petitioner-firm had signed the final bill without any protest.

5. It is urged that rejection of the request of the petitioner-firm for referring its claim to the Arbitrator is totally illegal and bad in the eyes of law because in the convening order dated 06.05.2021, Commander HQ 135 Works Engineer has clearly observed that final bill has been prepared but not yet paid. It is contended that in view of the pendency of the court of enquiry and department enquiry, the department did not take any decision with regard to the release of balance payment of the executed work and FDRs, therefore, the observations that the request for appointment of sole Arbitrator is time barred, is wholly incorrect and illegal and the conduct of the department itself goes to show that it was adopting all illegal means to deprive the petitioner-firm of its genuine claim.
6. The respondents have filed the response, stating therein that the petitioner firm's claim got crystallized on the date of completion of work and hence the first cause of action for appointment of arbitrator arose on 23.05.2009 and thereafter on 19.10.2010, when the final bill ought to have been paid. Further, third cause of action for appointment of Arbitrator arose on 26.07.2019, when the petitioner-firm served notice for reference of disputes to the arbitration under condition 70 of IAFW-2249. Accordingly, it is contended that the present petition for appointment of arbitrator has been filed on 03.04.2023 i.e. after 14 years of completion of work and more than 12 years after the due date of payment of final bill and more 3½ years after the notice for appointment of arbitrator was

served by the petitioner on the respondents and as such, the petition is not maintainable being time barred. It is also urged that as the petitioner-firm has signed the final bill and no claim certificate forming part of the final bill without any reservation and submitted undertaking letter dated 07.05.2019, wherein it is stated that it would not claim any interest on the delayed payment of final bill amount and there are no subsisting claims of the petitioner which are required to be referred to arbitration. It is also contended that retaining wall had collapsed due to the bad workmanship and use of spurious/substandard material by the petitioner and the petitioner was squarely held responsible for the lapse as is evident from the proceedings of the court of inquiry, which recommended to take action against the petitioner-firm by way of recovery of amount towards cost of defect attributable to firm and by reviewing its Class of Enlistment owing to the default attributable to it as mentioned in the court of inquiry. The petitioner's request for finalization of the bill and balance payment for the work executed, was not acceded to as huge recovery was likely to be affected from petitioner-firm owing to defective work executed by it. As the court of inquiry had not quantified the extent of recovery for defective work, a BOO was ordered on 06.05.2021 to prepare a devaluation statement and work out the amount of recovery due from the petitioner. Since at the given time, the recoveries from the petitioner were not crystallized, the final amount could not be determined. The said BOO submitted report working out the recovery, on account of devaluation for the work to the tune of Rs. 41,51,823.48/- which is under examination by

the Accepting Officer. As regards final bill, it was already signed by the petitioner, but its processing was withheld as huge recoveries were likely to be affected from the petitioner. It is further stated that Enlisting Authority did not take disciplinary action against the petitioner-firm and only warned the petitioner to be more careful in executing the work as per the contract provisions in future, but it did not imply that the recovery of defective work was not to be made from his final bill by the department.

7. Mr. R. K. Gupta, learned Senior Counsel for the petitioner, has submitted that when the findings of the Board of officers and court of inquiry proceedings were not submitted till 2021, this petition cannot be said to be barred by limitation. He particularly referred to convening order dated 06.05.2021 to assert that there is admission on the part of respondents that final bill could not be processed pending preparation of devaluation statement.
8. Mr. Vishal Sharma, learned DSGI, has submitted that the petitioner-firm invoked the Clause-70 of IAFW/2249 for referring the disputes/claims initially vide notice dated 26.07.2019, as such, the petition is time barred and even if the cause of action to file this petition is to be reckoned with reference to notice dated 19.02.2020, still the instant petition would be time barred, as the same was filed only on 03.04.2023.
9. In rebuttal, Mr. R. K. Gupta, learned Senior Counsel has submitted that assuming for the sake of arguments that cause of action to file the petition is to be reckoned from 30 days from the expiry of notice dated 19.02.2020, still the petition would be within time as due to Covid-19

pandemic, the Hon'ble Supreme Court of India vide its order dated 10.01.2022, passed in Misc. Application No. 21/2022, had directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation. As such, this petition cannot be said to be barred by limitation.

10. Heard learned counsel for the parties and perused the record.
11. The petitioner-firm invoked Condition 70 of IAFW-2249 (General Conditions of Contract) for the referral of disputes vide notice dated 19.02.2020. The respondents contend that both the underlying claims and the present petition for the appointment of an arbitrator are barred by limitation. Regarding the learned DSGI's contention that arbitration was invoked earlier on 26.07.2019, a perusal of that communication reveals it was merely a demand for payment. It stipulated that if dues were not released within 30 days, the petitioner would 'be left with no option' but to invoke Condition 70 of IAFW-2249. Crucially, vide letter dated 26.07.2019, no actual request was made for referral of the claims to an arbitrator; it was only through the communication dated 19.02.2020 that the petitioner formally invoked the arbitration clause.
12. Mr. Vishal Sharma, learned DSGI has argued that the petition, filed on 03.04.2023, is time-barred since the notice of invocation was issued on 19.02.2020. Notably, the respondents admit the contents of paragraphs 20 and 21 of the petition, but fail to specify when the notice dated 19.02.2020 was actually served upon them. This omission is significant, as the limitation for filing a petition under Section 11(6) of the Arbitration and

Conciliation Act, 1996 was triggered only upon the expiry of 30 days from the receipt of the invocation notice.

13. Be that as it may, even if assuming the period of limitation is to be reckoned when the notice dated 19.02.2020 was served, the limitation period to file petition under section 11(6) of the Act for appointment of arbitrator commenced during the period Covid-19 Pandemic and in view of the order passed by Hon'ble the Supreme Court of India order dated 10.01.2022, in Misc. Application No. 21/2022, the period of limitation from 15.03.2020 till 28.03.2022 shall stand excluded for the purpose of calculating the period of limitation. As such, the present petition cannot be dismissed on account of it being time-barred.
14. Regarding the respondents' contention that the petitioner's claims are time-barred, is left open to be adjudicated by the Arbitrator. As limitation is a mixed question of facts and law, it shall be considered on its merits alongside the rival claims and counter-claims of the parties during the arbitral proceedings.
15. In view of the above, this Court is of the considered view that, given the existence of a valid arbitration agreement and the respondents' failure to appoint an arbitrator despite due notice, the jurisdictional requirements under Section 11(6) of the Arbitration and Conciliation Act, 1996, stand fully satisfied. The serious disputes raised by the parties regarding their respective claims and counter-claims are matters, that must be referred to the chosen forum for adjudication. The disputes raised by the petitioner-firm arise out of the execution of the contract and are arbitrable in nature.

Accordingly, Mr. Satish Chandra, Additional Director General (Rtd) MES, R/o lane No. 04, Greater Kailash, Jammu 180011, is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties arising out of “*construction work of 10 X above ground bunkers (50 Mt) each 01 X open WP AMN Shed and Allied infrastructure at 102 AP 10 INF DOU at Sunderbani*”. The learned Arbitrator shall enter upon the reference after furnishing the disclosure as required under Section 12(1) of the Arbitration and Conciliation Act, 1996 and shall conduct the arbitral proceedings in accordance with the provisions of the Act.

16. The Registry shall send a copy of this order to the learned Arbitrator forthwith.

17. Disposed of.

JAMMU:
27.02.2026
Karam Chand

(RAJNESH OSWAL)
JUDGE

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No