

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

C.R. No. 139 of 2006

Shriram Engineering Company, Represented through Shriram Dubey, Partner of Shriram Engineering Company, S/o. Shri P.K.Dubey, Aged about 36 years, R/o.1 Sundernagar, Raipur (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Water Resources Department, D.K.S.Bhawan, Mantralaya, Raipur (C.G.).
2. Executive Engineer, Water Resources Department, Mahanadi Reservoir Project, Division-2, Rudri, District Dhamtari (C.G.).

---- Respondents

&

C.R. No. 77 of 2007

1. State of Chhattisgarh, Through the Secretary, Water Resources Department, D.K.S.Bhawan, Mantralaya, Raipur (C.G.).
2. Executive Engineer, Water Resources Department, M.R.P. Dam Division No.2, Rudri, District Dhamtari (C.G.)

---- Petitioners

Versus

Shri Ram Engineering Company, Through its Managing Partner, Dhananjay Tiwari, Aged about 52 years, R/o. 248, Sunder Nagar, Mahadeo Ghat, Raipur, Tahsil & District Raipur (C.G.).

---- Respondent

&

C.R. No. 76 of 2007

1. State of Chhattisgarh, Through the Secretary, Water Resources Department, D.K.S.Bhawan, Mantralaya, Raipur (C.G.).
2. Executive Engineer, Water Resources Department, M.R.P. Dam Division No.2, Rudri, District Dhamtari (C.G.).

---- Petitioners

Versus

Shri Ram Engineering Company, Through its Managing Partner Dhananjay Tiwari, Aged about 52 years, R/o. 248, Sunder Nagar, Mahadeo Ghat, Raipur, Tahsil & District Raipur (C.G.).

---- Respondent

For Shriram Engineering Company : Ms. Fouzia Mirza, Advocate

For State : Mr. B.Gopakumar, Deputy A.G.

Hon'ble Shri Justice Goutam Bhaduri

Judgment

16.10.2015

1. The issue involved in all these three petitions are like in nature between the same parties, as such, they are being decided together as common question of facts and law involved.
2. The Civil Revision No.139/2006 is preferred against the award dated 30.05.2006 passed in Reference Petition No.5/2005. The Tribunal has dismissed the reference petition of Shriram Engineering Company and the challenge to this dismissal is in Civil Revision No.139/2006. In the same reference petition (5/2005), a counter claim was also preferred by the State Government, the respondents, which too was dismissed by same award. Consequently, a revision is also preferred by the State which bears Civil Revision No.76/2007.
3. Likewise, in another reference petition which was bearing No.18/2005, a counter claim of the State was dismissed by the award dated 30.05.2006. The State has preferred the Civil Revision which bears No.77/2007 against dismissal of counter claim. Therefore, all the three petitions are being adjudicated together.
4. Briefly stated facts are that the petitioner in C.R. No.139 of 2006 i.e. Shriram Engineering Company is a registered partnership firm engaged in a business of construction of irrigation works. The firm entered into a contract/ agreement

on 07.04.1984 for laying dam, cement concrete lining of Sondur Feeder Canal at Mahanadi Reservoir Project. The period of completion of work was 8 months excluding the rainy season from 15th June to 15th October. The project cost was Rs.16.29 Lakhs. As per the claimant, in order to do the job, the basic centre line and bench marks of the canal was to be provided by the respondents and it was pleaded that as per the general agreement in case of deficiency, if is pointed out, the petitioner was to be warned by notice in writing and after giving time and opportunity to rectify the same, the respondents could have taken any coercive steps. It was further contended that the work site was not handed over to the petitioner and the pre-cast tiles were supplied in the month of June, 1984 and as the rainy season intervened the delay was caused, which was at the behest of the respondents. The petitioner further contended that the layout excavation was given in the month of October, but since the error occurred with respect to the sill level of the head regulatory and canal bed-level, therefore, it required modification for proper drainage and specification was required. Subsequently, the drawing was modified in April, 1985 and, as such, the petitioner could not start the work because of the delay attributed on the part of the respondents. Thereafter, the petitioner applied for extension of time on 01.04.1985 and the respondents without granting any extension of time asked the petitioner to start the work, however, ultimately on 24.10.1984 a telegram was sent by the respondents to the petitioner to attend the office of the respondents for discussion but subsequently without adhering to the terms of agreement and giving notice, the contract was terminated. Consequently, the work could not be done without the stipulated period.

5. Learned counsel Fouzia Mirza for the petitioner would submit that without giving notice under clause 45 of the general agreement, the contract was terminated. It is further submitted that as per the evidence, the site was handed over late in July. The respondents failed to handover the site till July,

1984 and no layout for excavation of canal was given to the petitioner and only a part of the layout was given in the month of October, 1985. Subsequently, there was detection of an error of 80 cm in the sill level and no revised drawing was given to the petitioner and since no layout was given to the petitioner by the respondents, no tiles could be laid down. Therefore, it was for the fault of the respondents the delay was caused as necessary support was not provided at the ground level.

6. Learned counsel further submits that according to the law laid down in case of ***Union of India v. Madras Bar Association*** reported in **(2010) 11 SCC 1**, the constitution of the Tribunal itself was without any Technical Member and, as such, the finding which is arrived at by the Judicial Member is *prima facie* wrong since the nature of work required the technical expertise to evaluate the same and having not being done so, the Tribunal has acted with material irregularities. It is therefore submitted by the petitioner Shriram Engineering Company that the Tribunal should have awarded the amount claimed in view of the evidence led before it.
7. Per contra, the learned counsel for the State would submit that the rejection of the counter claim on the ground that the reference was not made to the final authority before making reference to arbitration is completely illegal. The State counsel would submit that the refusal to grant award to the petitioner Shriram Engineering Company is well merited, however, the rejection of the counter claim is illegal. It is contended that to invoke the counter claim, the State was not required to refer the dispute for decision to the final authority since the counter claim can only be made when a claim is preferred before the arbitrator. Therefore, in view of the provisions which governs, the counter claim right had accrued to the State only upon filing a claim. The counsel would submit that in the facts of this case, the Tribunal should have awarded the amount as per the counter claim made.

8. I have heard learned counsel appearing for the parties at length and perused the documents.
9. Initially, the revision preferred by Shriram Engineering Company bearing C.R.No.139 of 2006 is considered.
10. In order to appreciate the rival submission, it would be necessary to quote the relevant part of M.P. Madhyastham Adhikaran Adhiniyam, 1983. The M.P. Madhyastham Adhikaran Adhiniyam, 1983 (*for short "the Adhiniyam, 1983"*), came into force w.e.f. 01.03.1985. This was an Act to provide for the establishment of a Tribunal to arbitrate in disputes to which the State Government or a Public Undertaking wholly or substantially owned or controlled by the State Government, is a party and for matters incidental thereto or connected therewith. Section 2(b) of the Adhiniyam defines the Bench which means a Bench of the Tribunal constituted under Section 9.
11. The Arbitration Tribunal is constituted in terms of Section 3 of the Adhiniyam, 1983 for resolving all such disputes or differences pertaining to works contract or arising out of or connected with execution, discharge or satisfaction of any such works contract.
12. At Chapter III, Section 7 of the Adhiniyam, 1983 provides for Reference to Tribunal, which states that either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal. Section 7-A speaks about particulars on the basis of which, the reference petition is to be filed. Section 7-B speaks about the limitation which mandate 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 work contract and subsequently made within one year from the date of communication. In the State amendment of Chhattisgarh by Act No.29 of 1983, Section (2-A) is further inserted which has

enlarged the period of limitation. For ready reference, Section 7-A & 7-B of the Adhiniyam, 1983 are reproduced herein under.

“7-A. Reference petition. - (1) Every reference petition shall include whole of the claim which the party is entitled to make in respect of the works contract till the filing of the reference petition but no claims arising out of any other works contract shall be joined in such a reference petition.

(2) Where a party omits to refer or intentionally relinquishes any claim or any portion of his claim, he shall not afterwards be entitled to refer in respect of such claim or portion of claim so omitted or relinquished.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) disputes relating to works contract which may arise after filing of the reference petition may be entertained as and when they arise, subject to such conditions as may be prescribed.

7-B. Limitation. - (1) The Tribunal shall not admit a reference petition unless-

(a) the dispute is first referred for the decision of the final authority under the terms of the works contract; and

(b) the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority:

Provided that 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 of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where no proceeding has been commenced at all before any Court preceding the date of commencement of this Act or after such commencement but before the commencement of the Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990, a reference petition shall be entertained within one year of the date of commencement of Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990 irrespective of

the fact whether a decision has or has not been made by the final authority under the agreement.

¹[(2-A) Notwithstanding anything contained in sub-section (1), the Tribunal shall not admit a reference petition unless it is made 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 :

Provided that if a reference petition is filed by the State Government, such period shall be thirty years.]”

13. Section 19 of the Adhiniyam, 1983 confers the power of revision of High Court. It provides that aggrieved party may make an application for revision before the High Court and sub-section 2 of Section 19 of the Adhiniyam, 1983 carves down the jurisdiction to be exercised by the High Court in the limited sphere. Sub-section 2 & 3 of Section 19 of the Adhiniyam, 1983 is reproduced herein under.

“19. High Court's power of revision –

(1) ...xxx...xxx...xxx

(2) If it appears to the High Court that the Tribunal -

(a). has exercised a jurisdiction not vested in it by law; or

(b). has failed to exercise a jurisdiction so vested; or

(c). has acted in exercise of its jurisdiction illegally, or with material irregularity; or

(d). has misconducted itself or the proceedings; or

(e). has made an award which is invalid or has been improperly procured by any party to the proceedings, the High Court may make such order in the case as it thinks fit.

(3) The High Court shall in deciding any revision under this section exercise the same powers and follow the same procedure as far as may be, as it does in deciding a revision under Section 115 of the Code of Civil Procedure, 1908 (No.5 of 1908).

¹Subs. by M.P.Act No.1 of 2004 (w.e.f. 5-1-2004)

14. Therefore, the rival issue raised by the parties are tested in the touch stone of Section 7-B & 19 of the Adhiniyam, 1983. Admittedly, it is the supervisory jurisdiction which is to be exercised by the High Court according to the principles of Section 115 of CPC for the purpose of correcting jurisdictional error if any committed by the Tribunal in exercise of power under Section 19 of the Adhiniyam, 1983. Therefore, the approach has to be made keeping into principle of Section 115 of CPC not as a resort of remedy of appeal which unnecessarily leads to interference that in appeal interference can be made both on facts and law whereas in revision only errors relating to jurisdiction can be corrected or if any material irregularities exists on the face of the record.
15. In Civil Revision No.139/2006, which is preferred by Shriram Engineering Company, the perusal of the record would show that the reference was made by the petitioner on 01.10.1990, thereafter, after recording of evidence, the award was passed. Reading of the award, documents and evidence if are examined so as to find out whether any material irregularity exists, the evidence was perused. The Tribunal has evaluated the evidence of P.C.Tiwari who was the Executive Engineer and appeared on behalf of the petitioner. The order finds a reference that the said officer who deposed on behalf of the petitioner Shriram Engineering Company was the son-in-law of Narayan Prasad, who is one of the partner of the petitioner firm Shriram Engineering Company. The finding of fact is also recorded that this witness do not inform the department about his engagement with the petitioner firm nor attended the site through out the work period and therefore his evidence was completely discarded. The reasoning so assigned by the learned Tribunal do not appear to be wrong for the reasons stated.
16. While evaluating the documentary evidence Ex.D-8 i.e. letter dated 14.12.1984, which was in respect of excavation from 1140 to 1175 and 1200 to 1650, it is stated that the said excavation was not done for the Sub Grade

while the letter contains the word "Sub Grade", however, no protest was made by the petitioner firm in respect of the above layout of the Sub Grade. Furthermore, the document Ex.D-9 i.e. letter dated 19.01.1985, it was admitted that whether filling of drain was to be started or not, was not decided and the department had never asked to stop the work in absence of top level and further for excavation in respect of tounge, no separate bills were submitted for payment. The Tribunal has further found that the petitioner firm could construct only 26,500 tiles as against 1,36,000 tiles required to be completed within stipulated period and further observed that though the petitioner stated that the drawing and design were not supplied but no protest was made by the petitioner firm upto April, 1985 and thereby it cannot be sustained that due to delay of supply of drawing the work was held. The Tribunal after appreciation of the evidence has held that the necessary drawing for which the petitioner was making demand was already available with the agreement and therefore the earthwork was got done and since the work was not being carried out by the petitioner firm, as such, the work were transferred to another contractor except the work of curring tank and platform. Consequently, the finding was recorded that the petitioner firm only carried out the profitable work first and left the remaining work unfinished which was less profitable.

17. Further, evaluating the statement of PW-3, Dhanushlal Sharma, and PW-4, Y.N.Sharma, further fact has been observed that one Dhananjay Tiwari was the main proprietor of the petitioner firm who is son of the Executive Engineer, P.C.Tiwari, who deposed on behalf of the petitioner firm. The evidence of Y.N.Sharma was further not believed since though he claimed himself to be a technical adviser of the petitioner firm, but he failed to establish any link or appointment with the petitioner firm so as to prove his identity and it was found that he was only engaged in the work of excavation. It was further observed on the face of the evidence so led that it was proved that the

department never informed regarding stoppage of work due to change of drawings.

18. While examining the evidence led by the State namely P.R.Dhingra (DW-1) who was the then Executive Engineer, it was observed that during his period of tenure no work was going on and only manufacturing of some tiles were completed. The petitioner had only done the work of excavation. The Tribunal further observed by evaluating the evidence of DW-1 that the petitioner had left the work in the middle as some of the work was less profitable. Consequently, it leads to cancellation of the contract. The evidence is also on record that the remaining work left out by the petitioner firm was completed by the aid of other agencies.
19. The other witness R.C.Borekar, S.D.O. In-charge had deposed on behalf of the State that the agreement itself contained the necessary drawing and it was obligation of the contractor to raise platform and prepare curing tank at his own cost for manufacturing of the tiles. It was stated that the progress of the work done by the petitioner was very poor and therefore the contractor/petitioner was apprised with such situation many a times. Evaluating the other statement of one R.N.Shukla who was SDO posted at the work site from 07.04.1984 to 31.03.1985, it is observed that when the work order was issued no one turned up for taking up the same on behalf of the petitioner; consequently, a letter was written on 10.03.1985 to the petitioner and it is further contended that the work could not be held up for non-receipt of CNS test and the contractor had nothing to do with such internal matter of the department. It is further observed on the facts that an amount of Rs.1,72,815/- and 1,17,950/- was paid to the petitioner by way of machine advances and Rs.2,40,000/- as mobilisation advances and further an amount of Rs.1,73,000/- as machine advances, but the progress of work was very slow and the petitioner was paid three running bills.

20. Evaluating the evidence of another witness P.N.Singhal who worked upto 06.04.1985, it shows that no layout was required for manufacturing of tiles and curring tanks and the contractor/petitioner could not complete the work even up to September, 1984 and the contractor was never asked to stop the work at any point of time and the petitioner submitted his construction program after about seven months from the work order and therefore the petitioner himself was responsible for the delay caused. It has further been deposed by the witness that during the entire period, only 21.59 % of work was done by the petitioner contractor and he was paid for the earth moving through three running bills.
21. It was further observed that according to the statement of one Mahesh Kumar Sharma, the work order was issued by Ex.D-1 & Ex.D-2 on 07.04.1984 and the work was to be completed within eight months excluding rainy season from 15th June to 15th October, but even after the rainy season was over, the petitioner warned by the department to expedite the work through letter dated 10.05.1984, which was marked as Ex.D-21, as no authorised person was found on the spot. Subsequently, by letter dated 25.05.1984 (Ex.D-22), again information was given that no work is being done and thereafter by letter dated 13.09.1984 (Ex.D-23), it was apprised that after lapse of four months from the work order only excavation of five number of curring tank and four number of platform was completed. The petitioner firm as such was instructed to increase the progress of work by letter dated 14.12.1984 (Ex.D-24), and the similar warning were given through letter dated 12.01.1985 (Ex.D-25), 09.03.1985 (Ex.D-26) and 03.06.1985 (Ex.D-27). Further inspection revealed that only 26,500 tiles were casted as against 1,36,000 by the stipulated period of time, it was found that the contractor was not in a position to start any work in the canal to cover the canal with the sleeper and it was found unsatisfactory and was not in conformity to the construction program.

22. Subsequently, it is found by telegram dated 24.10.1985, Ex.P-10, that the petitioner was asked to attend the Divisional Office regarding renewal of bank guarantee and to return hypothecated machine i.e. truck and tractor and refund of other advances taken under the agreement. It was further made clear that the work was stopped and the labourers were not paid and as such the said communication Ex.P-10 may be treated as urgent and notice under clause 45 of the agreement. Similar notice was also served by the SDO by Ex.P-11 on 19.11.1985 and ultimately as no response was received from firm the rescission of the contract was made through memo dated 02.12.1985, Ex.P-14. Therefore, on careful consideration it can be inferred that rescission of the contract was found to be made after service of prior notice and therefore illegality could have been said to have committed by State. The finding of the Tribunal therefore appears to be correct.
23. With respect to the amount claimed, the Tribunal has calculated the same. It was found that Rs.5,74,088/- appears to be the entitlement of petitioner for the bank guarantee and for the outstanding work, but if the same is calculated against the advance given to the petitioner by the department of Rs.7,03,987/- calculated alongwith interest @ 12% p.a., the amount comes to Rs.9,01,090/-. Therefore, after deducting Rs.5,74,088/-, it was found that the petitioner owed a sum of Rs. 3,27,002/- to the State; consequently, no amount was awarded in favour of the petitioner.
24. Therefore, on evaluating the award over facts and evidence, it would go to show that all the findings recorded by the Tribunal are neither perverse nor illegal. Evaluating the evidence would show that it is not a case where something which is not stated have been considered or facts though on record were not considered. All the facts have been considered within the given parameters. The documentary evidence and oral evidence adduced by the petitioner and also on behalf of the State have been correctly evaluated. To interfere in such finding, considering the limitation laid down by Section 19

of the Adhiniyam, 1983 it would lead to irresistible conclusion that in revision such finding of fact cannot be interfered though a different view may be possible. Evaluating the statement and evidence would show that the Tribunal has not misconducted itself or in the proceedings. It cannot be termed also that the Tribunal has committed any material irregularity, as the evidence has been considered on the basis of facts which was available before it and no outside facts or evidence were surfaced to form such finding. Therefore, to conclude on the factual aspect of appraisal of the facts, the revisional jurisdiction of this Court cannot be exercised to dislodge the finding of fact of the Court below, as it is not found that such finding are perverse and arbitrary on appreciation of the evidence and the witness. In a result, the challenge to the appreciation of evidence cannot be entertained in view of the reasons stated in the foregoing paragraphs.

25. The another submission made by the learned counsel for Shriram Engineering Company is that the award passed is illegal since the Tribunal did not consist of any technical member. It is contended that the nature of the dispute was completely technical one and therefore in view of the spirit in the law laid down by the Hon'ble Supreme Court in case of ***Union of India v. Madras Bar Association*** reported in ***(2010) 11 SCC 1***, the award liable to be struck down cannot be appreciated. To find out the answer, the statute itself i.e. M.P. Madhyastham Adhikaran Adhiniyam, 1983 is examined as to whether the presence of Technical Member is necessary in the Tribunal or not.
26. Section 2(h) defines the Tribunal, which speaks that the Tribunal constituted under Section 3 and includes a Bench thereof constituted under Section 9. By making a reference to Section 3 of the Adhiniyam, 1983, it speaks of that the State Government shall by notification constitute an Arbitration Tribunal for resolving all such disputes or differences pertaining to works contract or arising out of or connected with execution, discharge or satisfaction of any

such works contract. Now further making a reference to Section 9 of the Adhiniyam, 1983, it gives the power to the Chairman that he may, for the convenient transaction of business constitute one or more Benches consisting of two or more numbers of members as he thinks fit. The definition of member is defined in Section 2(e), which speaks the member of the Tribunal appointed under Section 4. Section 4 prescribed the qualifications. Proviso to Section 9 further speaks that if the Chairman is not himself presiding on the Bench at least one member shall be a Judicial Member and also sub-section 2 & 3 of Section 9 gives the discretion to the Chairman to distribute business amongst the Benches and gives the power to the Chairman to change the composition of the Bench.

27. Therefore, reading of Section 3 and Section 9 of the Adhiniyam, 1983 would make it clear that the statute i.e. M.P. Madhyastham Adhikaran Adhiniyam, 1983 has not made mandatory to include a Technical Member in constitution of the Bench. It only speaks of that if the Chairman is not able to preside over and the Bench is constituted then one member has to be Judicial Member. Therefore, presence of a Judicial Member has been given much importance in the Bench. Reading the statute would make it clear that the argument advanced by the learned counsel for the petitioner Shriram Engineer Company cannot be sustained on the ground that the constitution of the Bench itself was bad for want of Technical Member and therefore the award also suffers.
28. Further, if Section 14 of the Adhiniyam, 1983 is perused, it reads that no proceedings before the Tribunal shall be rendered invalid and no award shall be called in question on account of any defect in the appointment of the Chairman or member or on account of any irregularity in the proceedings before the Tribunal or any Bench thereof, not affecting the merits of the case. For reference Section 14 is reproduced herein below.

“14. Proceeding and award not to be challenged under certain circumstances. - No proceedings before the Tribunal shall be rendered invalid and no award shall be called in question on account of any defect in the appointment of the Chairman or member or on account of any irregularity in the proceedings before the Tribunal or any Bench thereof, not affecting the merits of the case or the inherent jurisdiction of the Tribunal.

29. In the instant case, the petitioner Shriram Engineering Company has all through participated before the Tribunal in the long drawn proceeding wherein the witnesses were produced and cross examined at length. It would lead to show that the petitioner knowing full well the constitution of the Bench had participated in it without any protest or objection. It is only when the award is passed such sort of objection is raised which the statute do not permit. Reading the object of Section 14 would make it clear that the award shall not be subject of challenge on such ground about the defect of the constitution of Bench, more so when the statute do not contemplate inclusion of Technical Member necessarily, the argument which is advanced by the learned counsel is completely against the statutory provisions, hence cannot be accepted.
30. Therefore, the civil revision preferred by Shriram Engineering Company bearing No.139/2006 cannot be entertained for the reasons stated herein before. Accordingly, the same is dismissed.
31. Now turning to the Civil Revision No.76/2007 & 77/2007 preferred by the State, the facts are as follows. These revisions are preferred by the State as the counter-claim preferred by the State was rejected.

(i) Civil Revision No.76/2007

The instant civil revision arises out of Reference Petition No.5/2005 wherein award was passed on 30.05.2006. The records would show that the reference was filed by Shriram Engineering Company on 06.08.1990. Perusal of the order sheet of the Tribunal dated

22.04.1991 would show the counter claim was filed. The record also contains the reply to the counter claim which appears to have been filed on 28.06.1991. No separate counter claim was preferred as it would reflect that the return contained the counter claim.

(ii) Civil Revision No.77/2007.

The instant civil revision arises out of a Reference Petition No.18/2005. The records would show that the reference was filed on 23.04.1991 and reply to the reference was filed on 16.07.1992. The counter claim was preferred on 14.10.1992 and reply to the counter claim was filed on 19.01.1993.

32. Now if Section 7-B of the Adhiniyam, 1983 is examined, it makes a provision that in order to file a reference, at first dispute has to be referred to the decision of the final authority. Admittedly, in these counter claims made by the State, reference was not made to the final authority before making reference to the Tribunal. Now the question comes whether the counter claim can be entertained without referring the dispute to the final authority under the works contract.
33. Similar proposition came up for hearing before the Full Bench of the High Court of Madhya Pradesh in case of ***Ravi Kant Bansal, Engineers & Contractors v. M.P. Audyogik Kendra Vikas Nigam (Gwalior)*** reported in ***2006 (2) M.P.H.T. 264 (FB)***. The Court therein examined the provisions of Order 8 Rule 6 of CPC, which governs a counter-claim made by the defendant. The Adhiniyam, 1983 do not prescribes filing of such counter-claim by the opposite party. A counter-claim is a cross- reference by the opposite party and all the provisions of Adhiniyam and the Regulations is applicable to a reference will apply to the counter- claim and the other party will be entitled to file a reply to such a counter claim. Therefore, the nature of the counter-claim is a counter-reference under the Adhiniyam, 1983.

34. Section 7 of the Adhiniyam, 1983 provides for reference to the Tribunal which is quoted herein below :

“7. Reference to Tribunal – (1) Either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal.

(2) Such reference shall be drawn up in such form as may be prescribed and shall be supported by an affidavit verifying the averments.

(3) The reference shall be accompanied by such fee as may be prescribed.

(4) Every reference shall be accompanied by such documents or other evidence and by such other fees for service or execution of processes as may be prescribed.

(5) On receipt of the reference under sub-section (1), if the Tribunal is satisfied that the reference is a fit case for adjudication, it may admit the reference but where the Tribunal is not so satisfied it may summarily reject the reference after recording reasons therefor.

35. Sub-section 5 to Section 7 stated that on receipt of the reference under sub-section (1), if the Tribunal is satisfied that the reference is a fit case for adjudication, it may admit the reference but at the same time, the Tribunal has also power to dismiss the same summarily. Sub-section (1) of Section 7-B as quoted earlier in the preceding paragraphs speaks of in which case the Tribunal shall not admit a reference. It will be clear from clause (a) of sub-section (1) of Section 7-B of the Adhiniyam, 1983 that the Tribunal shall not admit a reference petition unless the dispute is first referred for the decision of the final authority under the terms of the works contract; and further clause (b) of sub-section (1) of Section 7-B states that within one year of such reference is made, the Tribunal may admit the reference. The proviso clause also been inserted giving power but clause (a) of sub-section (1) of Section 7-B is not been diluted. Therefore, it is clear that a reference of dispute cannot be admitted unless the same was referred for decision of the final authority

according to the works contract. In this case admittedly before making the counter claim, the dispute was not referred to the final authority by the State for decision.

36. In view of foregoing discussions and by application of the principles laid down by the Full Bench, the counter claim filed by the State cannot be entertained and the Tribunal was precluded of its power to entertain or admit the counter claim for want of reference to the final authority.
37. As a result, all the revisions i.e. the revision filed by Shriram Engineering Company as also the revision filed by the State having no merit are dismissed. No order as to costs.

Sd/-
(Goutam Bhaduri)
JUDGE

Ashok