

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.36 of 2012

M/s Ajender Singh, a partnership firm registered under relevant laws having its registered office at C-117, Sector-1, Devendra Nagar, Raipur, C.G., represented Ajender Singh, aged about 52 years, son of Shri Dilip Singh, resident of C-117, Sector-1, Devendra Nagar, Raipur (CG)

---- Applicant

Versus

State of Chhattisgarh, through:-

1. The Secretary, Public Works Department, Mantralaya, Raipur (CG)
2. The Executive Engineer, P.W.D. (B&R), Division No.1, Raipur (CG)

---- Respondents

For Petitioner	:	Mr. A.K.Mishra, Advocate.
For Respondents	:	Mr. Satish Gupta, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/08/2016

1. Invoking Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (for short 'the Act of 1983'), the petitioner contractor has filed this revision questioning legality, validity and correctness of the award dated 5.1.2012 passed by the Chhattisgarh Madhyastham Adhikaran, Raipur (for short 'the Arbitration Tribunal') in Reference Case No.5/2010, whereby the reference petition instituted by the petitioner herein has been rejected on the ground that it is barred by limitation as provided in Section 7-B (2-A) of the Act of 1983 as well as on

the ground that no quantified claim was made by the petitioner. It has also been held that the Arbitration Tribunal has no jurisdiction to entertain the revision petition in the light of decision rendered by the Supreme Court in the matters of VA Tech Escher Wyass Flovel Limited vs. Madhya Pradesh State Electricity Board and another¹ and Ravikant Banshal Vs. Madhya Pradesh Rural Road Development Authority and another².

2. The aforesaid award has been challenged by the petitioner on the following factual backdrop:-
 - (i) The petitioner herein filed an application under Section 7 of the Act of 1983 claiming a sum of ₹ 7,39,006/- from the respondents herein.
 - (ii) The respondents herein filed the return/written statement to the reference petition opposing the same, but no such plea with regard to limitation was taken by the respondents.
 - (iii) By the impugned award, the reference petition was dismissed holding the reference petition to be barred by limitation and not maintainable in the eye of law.
3. Mr. A.K.Mishra, learned counsel appearing for the petitioner contractor, would submit that learned Arbitration Tribunal has committed grave legal error by dismissing the reference petition holding it to be barred by limitation under Section 7-B (2-A) of

1 (2011) 13 SCC 261

2 (2012) 3 SCC 513

the Act of 1983 and further erred in holding that the reference petition is not maintainable in view of the decision of the Supreme Court in the matters of VA Tech (supra) and Ravikant Banshal (supra), ignoring the decision of the Supreme Court in the matter of Madhya Pradesh Rural Road Development Authority and another Vs. L.G. Chaudhary Engineers & Contractors³.

4. Mr. Satish Gupta, learned Govt. Advocate appearing on behalf of the State of Chhattisgarh/respondents, would support the impugned award and submit that the Arbitration Tribunal has rightly dismissed the reference petition.
5. I have heard learned counsel for the parties, given thoughtful consideration to the facts of the present case, perused the award impugned and also gone through the records with utmost circumspection.
6. In order to understand the dispute between the parties, it would be advantageous to refer to the provisions of the Act of 1983. The Act of 1983 was enacted by the competent Legislature which came into force on 7th of October, 1983. Section 7 of the Act of 1983 deals with Reference to Tribunal. After few years, the Act of 1983 experienced some difficulties in its implementation by which the Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990 was passed with effect from 24-4-1990 by which some provisions including

³ (2012) 3 SCC 495

Section 7-B were inserted. The Statement of objects and reasons of the Sanshodhan Adhiniyam, 1990 would show that Section 7-B was inserted for efficient functioning of the Tribunal and thus, it was proposed to prescribe limitation which has not been so far prescribed for admission of reference petition. Accordingly, with effect from 24-4-1990, Section 7-B was introduced in the Act of 1983 which states as under: -

“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.”

7. A critical study of Section 7-B(1) of the Act of 1983 would show 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. In sub-section (1) of Section 7-B, the word “admit” has been used. In ordinary legal parlance, the word “admit” means accepted for consideration or final hearing. Thus, the dispute is firstly required to be referred to the final authority under the terms of the contract for resolution of dispute and upon resolution of dispute within a period of one year from the date of communication of the decision of the final authority, the reference petition is to be filed before the Tribunal and in case, 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. It is extremely important to note that this period of limitation has been prescribed for admission of reference petition and therefore this limitation is only confined to admission of reference petition and has nothing to do with the merits of the claim of the contractor / claimant / petitioner herein.

8. Section 7-B of the Act of 1983 came up for consideration before the Division Bench of this Court in Civil Revision No.165/2008 (M/s. Uttam Construction Company – Versus – State of Chhattisgarh and another) and the Division Bench vide order dated 7-1-2013 while considering Section 7-B of the Act of 1983 speaking through Justice Abhay Manohar Sapre (as then His Lordship was), observed as under: -

“(7) Mere perusal of the afore-quoted section

would go to show that the claimant is first required to approach the final authority under the terms of the works contract after getting a decision on their claim from the final authority. Sub-section (b) provides for one year limitation which is required to be counted from the date of communication of the decision taken by the final authority on the claim made by the claimant. Proviso to Section 7-B provides that if the final authority is unable to take decision within a period of 6 months from the date of submission of reference to it, then, a claim petition can be filed by the claimant within one year of the expiry of the said period of 6 months."

9. This consideration of true scope and object of Section 7-B of the Act of 1983 and the object of enacting the said provision would bring me to the question as to when the right of arbitration accrues in the context of the arbitration clause.

10. In the matter of **State of Orissa v. Damodar Das**⁴, the Supreme Court while considering Section 3 of the Limitation Act, 1963, held as under: -

"Russell on Arbitration by Anthony Walton (19th Edition) at pp. 4-5 states that the period of limitation for commencing an arbitration runs from the date on which the "cause of arbitration" accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned. The period of limitation for the commencement of the arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued:

"Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.

Even if the arbitration clause contains a provision

4 (1996) 2 SCC 216 : 1996 AIR SCW 351 : AIR 1996 SC 942

that no cause of action shall accrue in respect of any matter agreed to be referred until an award is made, time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause.”

11. Likewise, in the matter of **Panchu Gopal Bose v. Board of Trustees for Port of Calcutta**⁵, the Supreme Court regarding commencement of the period of limitation for cause of arbitration has held as under (para 11 of AIR): -

“The period of limitation for commencing an arbitration runs from the date on which the cause of arbitration accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration takes place upon the dispute concerned.

Therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.”

12. Aforesaid two decisions were considered by Their Lordships of the Supreme Court in the matter of **Steel Authority of India Ltd. v. J.C. Budharaja, Government and Mining Contractor**⁶ by holding as under in paragraph 29: -

“29. Applying the aforesaid ratio in the present case, right to refer the dispute to the arbitrator arose in 1979 when Contractor gave a notice demanding the amount and there was no response from the appellant and the amount was not paid. The cause of action for recovery of the said amount arose from the date of the notice. Contractor cannot wait indefinitely and is required to take action within the

5 (1993) 4 SCC 338 : 1994 AIR SCW 1335 : AIR 1994 SC 1615

6 AIR 1999 SC 3275

period of limitation. In the present case, there was supplementary agreement between the parties. Supplementary agreement nowhere provides that so-called right of the contractor to recover damages was in any manner saved. On the contrary, it specifically mentions that contractor was yet to execute a considerable portion of the work more particularly described in the schedule to the agreement. And that the contractor has agreed to complete the said balance work on the terms and conditions enumerated in the agreement. Now, in this set of circumstances, contractor cannot wait and approach the authority or the Court for referring the dispute to the arbitrator beyond the period of limitation. [Section 37](#) of the Arbitration Act specifically provides that provisions of the [Indian Limitation Act](#) shall apply to the arbitrations as they apply to proceedings in the Court.”

13. Thus, there is a distinction between “cause of action” and “cause of arbitration”.

14. Likewise, in a recently delivered judgment in the matter of **Rashtriya Ispat Nigam Ltd. v. M/s. Prathyusha Resources and Infra Private Ltd. and another**⁷, the Supreme Court has said that cause of action for arbitration arises when real dispute arises i.e. when one party asserts and other party denies any right, and observed as under: -

“..... Either ways the cause of action in favour of the respondent / claimant accrued, if any, is an imperfect right.”

15. In order to have a cause of arbitration there must be a dispute and it is well settled that unless there is a difference there cannot be any dispute. The High Court of Madhya Pradesh in the matter of **Dilip Construction Company, Baroda v.**

7 AIR 2016 SC 861

Hindustan Steel Ltd., Ranchi⁸ as held as under: -

“The existence of a dispute is an essential condition for the jurisdiction of an arbitrator. If there is no dispute, there can be no legal right to demand arbitration at all. Failure to pay does not necessarily constitute a difference or dispute. A dispute implies an assertion of right by one party and repudiation thereof by another. The jurisdiction of an arbitrator depends not upon the existence of a claim or the accrual of a cause of action, but upon the existence of a dispute.”

16.A Special Bench of the Madhya Pradesh High Court in the matter of **Sanjay Dubey v. State of M.P. and another**⁹ while dealing with the scope of Section 7-B of the Act of 1983 (Limitation for reference) has held that where the works contract contains an arbitration clause, the jurisdiction of the Tribunal can be invoked only after approaching the Authority as provided under the terms of the works contract, and observed in paragraph 13 (i) 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.”

17. The Arbitration Tribunal has held in paragraph 23 as under:-

“23. इस प्रकार उपरोक्त विवेचना के आधार पर हमारी राय में यह स्पष्ट है कि याचिकाकर्ता का यह निर्देश याचिका विवादित वर्क्स कांट्रेक्ट में कोई विवाद ही उत्पन्न नहीं हुआ है। याचिकाकर्ता द्वारा क्वांटीफाईड क्लेम पेश नहीं किया गया है एवं छत्तीसगढ़ माध्यस्थम अधिनियम की धारा 7(बी) (2-ए) के अनुसार अवधि वर्जित है और सर्वोच्च न्यायालय के निर्णयानुसार याचिकाकर्ता द्वारा जिस अनुबंध के संबंध में यह याचिका

8 1973 JLJ 696 : AIR 1973 MP 261

9 2012(4) M.P.L.J. 212

पेश किया गया है, वह अधिकरण के श्रवण करने के क्षेत्राधिकार में नहीं आती है। फलस्वरूप उपरोक्त कारणों से याचिकाकर्ता का यह निर्देश याचिका निरस्त किया जाता है। पक्षकार अपना अपना व्यय स्वयं वहन करेंगे। ”

18. It was held by the Arbitration Tribunal that the reference petition is barred by limitation under Section 7-B (2-A) of the Act of 1983 as well as on the ground that the petitioner has not made quantified claim, therefore, the Arbitration Tribunal has no jurisdiction in the light of decision rendered by the Supreme Court in the matters of VA Tech (supra) and Ravikant Banshal (supra).
19. In the case in hand, the work in question was completed on 20th June, 2005 and thereafter on 30.11.2009 respondent No.2 issued the notice for recovery of ₹ 42,56,000/-, against which, the petitioner made an objection on 24.12.2009 to respondent No.2, but respondent No.2 did not respond the same. Thereafter, the petitioner submitted an application to the Superintending Engineer as per clause 29 of the agreement (arbitration clause) on 29.12.2009, which was rejected by the Superintending Engineer on 18.1.2010. Against which, appeal was made to the Chief Engineer on 18.1.2010. The Chief Engineer rejected the appeal on 1.10.2010. Thereafter, the reference petition was filed on 11.3.2010, which was admitted by the duly constituted Bench of the Arbitration Tribunal on 31.3.2010 holding that reference petition to be a fit case for

adjudication and issued the notice to the respondents.

20. The fact remains that first time notice was issued to the petitioner on 30.11.2009 for recovery of Rs. 42,56,000/- and then application was made to the Superintending Engineer, which was rejected by the Superintending Engineer on 18.1.2010. Thereafter, an appeal was made to the Chief Engineer, the Chief Engineer (final authority) rejected the same on 1.2.2010 and thereafter reference petition was filed on 11.3.2010, which is apparently within the limitation as prescribed under Section 7-B (2-A) of the Act of 1983, which cannot be held to be barred by limitation in view of the discussion made hereinabove, therefore, that finding of the Arbitration Tribunal is hereby set aside.

21. The Arbitration Tribunal has also held that the petitioner has not claimed ₹ 42,56,000/- and only claimed ₹ 7,39,006/- from the respondents, therefore, the reference petition is not maintainable. Since, ₹ 7,39,006/- was recovered from the petitioner's security deposit, which held by the respondents against Agreement No.97-D.L./2008-09, therefore, the petitioner has rightly preferred the reference petition for recovery of ₹7,39,006/- and as such, it cannot be held that no quantified claim was made.

22. In this case, as noticed earlier, the Tribunal has dismissed the reference petitions only on the ground of availability of arbitration clause and resting its decision on the judgment of

the Supreme Court in VA Tech (supra) which was further explained by Ravikant Bansal (supra).

23. In order to consider the dispute raised at the Bar, it would be appropriate to notice the judgment of the Supreme Court in VA Tech (supra) paragraph 3 of which reads as follows: -

“3. Subsequently, Parliament enacted the 1996 Act. The 1996 Act only applies where there is an arbitration clause but it does not apply where there is none. The 1996 Act covers all kinds of disputes including the dispute relating to work contracts. In our opinion, the 1983 Act and the 1996 Act can be harmonised by holding that the 1983 Act only applies where there is no arbitration clause but it stands impliedly repealed by the 1996 Act where there is an arbitration clause. We hold accordingly. Hence, the impugned judgment cannot be sustained and we hold that the application under Section 9 of the 1996 Act was maintainable.”

24. The decision rendered by the Supreme Court in VA Tech (supra) was further explained / distinguished in Ravikant Bansal (supra) by the Supreme Court by holding as under in paragraph 3 of the judgment: -

“3. We are of the opinion that the aforesaid decision is distinguishable because in the present case the arbitration clause itself mentions that the arbitration will be by the Madhya Pradesh Arbitration Tribunal. Hence, in this case arbitration has to be done by the Tribunal.”

25. Thereafter, the Supreme Court in L.G. Chaudhary's case (supra) decided on 24-1-2012 relying upon its earlier decision in the matter of State of M.P. v. Anshuman Shukla¹⁰ held that the decision of the Supreme Court in VA Tech (supra) was

¹⁰ (2008) 7 SCC 487

rendered *per incuriam* and it has held in paragraphs 26, 41 and 42 as under: -

“26. It is clear, therefore, that in view of the aforesaid finding of a coordinate Bench of this Court on the distinct features of an Arbitral Tribunal under the said [M.P. Act](#) in Ashuman Shukla case (supra) the provisions of the [M.P. Act](#) are saved under [Section 2\(4\)](#) of AC Act, 1996. This Court while rendering the decision in Va Tech (supra) has not either noticed the previous decision of the coordinate Bench of this Court in Anshuman Shukla (supra) or the provisions of [Section 2\(4\)](#) of AC Act, 1996. Therefore, we are constrained to hold that the decision of this Court in Va Tech (supra) was rendered per incuriam.

41. It is clear from the aforesaid observations that in instant case the latter Act made by the Parliament i.e. the [AC Act](#), 1996 clearly showed an intention to the effect that the State law of arbitration i.e. the [M.P. Act](#) should operate in the State of Madhya Pradesh in respect of certain specified types of arbitrations which are under the [M.P. Act](#), 1983. This is clear from [Sections 2\(4\)](#) and [2\(5\)](#) of AC Act, 1996. Therefore, there is no substance in the argument of repugnancy and is accordingly rejected.

42. Therefore, the appeal is allowed and the judgment of the High Court which is based on the reasoning of Va Tech (supra) is set aside. This Court holds that the decision in Va Tech (supra) has been rendered in per incuriam. In that view of the matter the arbitration proceeding may proceed under the [M.P. Act](#) of 1983 and not under [AC Act](#), 1996.”

26. Therefore, dismissal of reference petition by learned Arbitration Tribunal on the basis of decisions rendered by the Supreme Court in the matters of [VA Tech](#) (supra) and [Ravikant Banshal](#) (supra) is also not sustainable in the light of later decision of the Supreme Court in the matter of [L.G. Chaudhary](#) (supra), which squarely applies to the facts of the present case.

27. As a fall out of the aforesaid discussion, the civil revision is allowed and the impugned award passed by learned Arbitration Tribunal is hereby set aside. The finding recorded by the Arbitration Tribunal on the question of reference petition being barred by limitation is perverse and contrary to record. The reference petition is restored to its original number for hearing and disposal in accordance with law on merits. The learned Arbitration Tribunal is directed to decide the reference petition within 4 months from the date of receipt of a copy of this order in view of the legislative mandate contained in Section 16(2) of the Act of 1983 and further in view of fact that the reference petition was filed on 11.3.2010. Parties shall bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-