

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.64 of 2016**

M/s Jalwa Stone Crushing Industries partnership firm having its office at P.O. Pandariya (Kabirdham) C.G., represented through the partner Mr. Khushal Chand Jain, aged about 64 years, S/o Late Shri Phool Chand Jain, resident of P.O. Pandariya (Kabirdham) C.G.

---- Petitioner**Versus**

1. The Secretary, Public Works Department, Mantralaya, Raipur, C.G.
2. The Executive Engineer, Division, Kawardha (Kabirdham) C.G.

---- Respondents

For Petitioner	:	Mr.Ashok Mishra and Mr.Abhijit Singh, Advocates
For Respondents	:	Mr.Vinod Deshmukh, Deputy Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**ORDER (C.A.V.)****13/07/2016**

1. Invoking Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter called as "Act of 1983"), the petitioner herein/contractor has called into question the legality, validity and correctness of the award dated 31.3.2016 passed by learned Arbitration Tribunal dismissing the reference petition of the petitioner for non-compliance of clause 29 (Arbitration clause) of the Contract Agreement.
2. The petitioner has challenged the rejection of its reference petition by learned Arbitration Tribunal on the following factual backdrop :-
 - (i) The petitioner herein filed an application under Section 7 of

the Act of 1983 claiming a sum of Rs.26,85,417/- and interest of Rs.3,44,,628/- from the respondents herein towards the work contract No.02/DL of 2002-03.

(ii) The respondents filed its return/written statement to reference petition opposing the same, but no plea with regard to limitation was raised in the return so filed.

(iii) By the impugned award, the reference petition was dismissed for non-compliance of clause 29 of the Contract Agreement within the time prescribed under Section 7B of the Act of 1983.

3. Mr.Abhijit Singh, learned counsel for the petitioner, would submit that learned Arbitration Tribunal has committed grave legal error in rejecting the reference petition for non-compliance of clause 29 of the Contract Agreement and further submit that the Tribunal has erred in holding that the limitation prescribed for invoking clause 29 of the Contract Agreement will commence from 21.7.2006 i.e. the date when security amount has become due for refund to the petitioner. He would further submit that provision under clause 29 of the Contract Agreement clearly provides that the party to contract can invoke clause 29 within the period of 30 days from the date of occurrence of dispute. The dispute cannot occur on the date when the petitioner attains entitlement to get refund of his deposits, but would occur only on the day when the demand for refund is refused by the authority designated in the contract or at least the date when the demand for exercise of such right is made by the petitioner i.e. as in this case on

18.9.2006. He would also submit that the petitioner after complying clause 29 of the Contract Agreement as in this case, the Chief Engineer has decided the appeal on 29.6.2007 and reference petition was filed on 22.8.2007 which was well within the limitation as per law laid-down by Special Bench of High Court of Madhya Pradesh in **Sanjay Dubey vs. State of MP & others**¹. He contended that dispute defined in legal parlance is assertion of right by one party and its denial by other party and denial can be in words and or conduct as well as the limitation would begin only from 18.9.2006 and the reference case was filed well within time, therefore, the learned Arbitration Tribunal is absolutely unjustified in rejecting the claim of the petitioner.

4. Mr.Vinod Deshmukh, learned counsel appearing for the respondents/State, would support the impugned order and submit that the Arbitration Tribunal has rightly dismissed the reference petition.
5. I have heard learned counsel for the parties, considered the rival submissions made herein and gone through the documents available on record with utmost circumspection.
6. In order to judge the correctness of the impugned award, it would be appropriate to notice Section 7-B of 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

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(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 been made by the final authority under the agreement."

7. Above stated provision Section 7-B of the Act was inserted into the Act of 1983 by the Legislature by the Madhya Pradesh Madhyastham Adhikaran (Sansodhan) Adhiniyam 1999. The Statement of Objects and Reasons of Sansodhan Adhiniyam 1999 states as under:-

"Statement of Objects and Reasons:- The working of MP Madhyastham Adhikaran Adhiniyam, 1983 for last few years has rendered certain difficulties which have come across during implementation thereof with a view to tide over the said difficulties and for efficient functioning of the Tribunal, it is proposed:-

(i) xxx xxx xxx

(ii) prescribe limitation which has not been so

far prescribed for admission of reference petition.

8. Thus, with the aforesaid objective, Section 7-B providing for limitation

was inserted in the Act of 1983. A careful perusal of the above-stated provision would show that the contractor is first required to approach the final authority under the terms of works contract for resolution of his dispute. Clause (b) of sub-section (1) of Section 7-B of the Act of 1983 provides that period of one year is required to be counted from the date of communication of decision of the final authority on claim preferred by the contractor. Proviso to clause (b) of sub-section (1) of Section 7-B (1) provides that if the final authority is unable to take decision within a period of six months from the date of reference to it, then claim petition can be filed by the claimant within one year of expiry of the said period of six months. Thus, by virtue of Section 7-B (1), the Tribunal shall not admit reference petition unless the dispute is first referred by the contractor to the named final authority under the Agreement within one year from the date of communication of decision of final authority or as per Section 7-B(1) of the Act of 1983.

9. The Special Bench judgment of five judges of the High Court of Madhya Pradesh while resolving the conflict between earlier two judgments in the matter **Sanjay Dubey** (supra) has held as under:-

“13. In view of the proceeding 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 as 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. "

- 10 The works contract in question contained clause 29 i.e. Arbitration clause, therefore, the jurisdiction of the Arbitration Tribunal is invokable after first referring the dispute to the final authority. In the case in hand, the dispute arose between the parties and the petitioner in accordance with clause 29 of the Agreement, made a claim to the Superintending Engineer on 30.9.2006 (Annexure A/4) for refund of security deposit. The aforesaid claim was not decided by the Superintending Engineer and the Executive Engineer by its memo

dated 17.10.2006 declined to make payment leading to making of an appeal to the Chief Engineer on 30.11.2006 (Ex.A/6) and the Chief Engineer vide order dated 29.6.2007 (Ex.A/7) dismissed the appeal. Thereafter, the petitioner filed reference petition under Section 7 of the Act of 1983 before the Arbitration Tribunal on 22nd August, 2007.

11. It is pertinent to note that the Statement of Objects and Reasons for enacting Section 7-B as well as the provision itself provides that limitation has been prescribed for admission of reference petition, as it states that "the Tribunal shall not admit a reference petition unless". "Admit" means, to allow to enter, grant or afford entrance, or permit to exercise a certain function or privilege. In legal parlance 'Admit' would mean to accept for consideration/final hearing.
12. This brings me to the factual backdrop of the reference petition. Reference petition was filed before learned Arbitration Tribunal on 22.8.2007. The Registrar submitted his report before the learned Chairman of Tribunal. The following order was passed by learned Chairman:-

"5/9/2007

This is a reference to the Tribunal which as per scrutiny report prime facie appear to be properly drawn up under rules. The case is assigned to the Bench comprising of myself (Chairperson) and Shri H.V. Rathod (Member) for further proceedings according to law.

Sd/-

(Justice R.B.Dixit)
CHAIRMAN "

Therefore, the matter was placed for hearing before the allotted bench. That bench passed the following order:-

“ 5/9/2007

Shri A.K.Mishra Advocate for petitioner.

Heard in motion.

It is a fit case for adjudication, hence admitted.
Issue notice to the respondent for filing the written statements, p.f. within three days.

List on 11/10/07

Sd/-
(H.V. Rathod)
MEMBER

Sd/-
(Justice R.B.Dixit)
CHAIRMAN “

13. Thereafter, learned Arbitration Tribunal has rejected the reference petition by impugned award holding as under :-

“15. From the above provision in the agreement the petitioner was required to refer the dispute within 30 days of the occurrence of dispute. As per the petitioner, the work was completed on 22-07-2003 and the period of maintenance for 3 years came to be completed on 21-07-2006. Thus the occurrence of dispute occurred on 21-07-2006 and, therefore, the petitioner was required to make his reference within 30 days from 21-07-2006 i.e. on or before 21-08-2006. Since the reference was made on 30-09-2006 to the Superintending Engineer, it is found that the petitioner has failed to comply the provision of clause 29 of the agreement in respect of the stipulated period contained therein, in time. Hence the instant reference petition is not maintainable for want of compliance of clause 29 of the agreement in time.”

14. By the impugned award, learned Arbitration Tribunal has held that the work was completed on 22.7.2003 and period of maintenance came to an end on 21.7.2006 and thus, occurrence of dispute occurred on

21.7.2006 and therefore, the petitioner was obliged to make his reference within 30 days from 21.7.2006 i.e. on or before 21.8.2007, whereas the reference was made to the Superintending Engineer on 30.9.2007, therefore, the petitioner has failed to comply with the provisions of clause 29 of the Contract Agreement and reference petition is not maintainable.

15. By virtue of Section 7-B of the Act of 1983, question of limitation for filing reference petition would arise only after the dispute of the claim submitted by the contractor in terms of clause 29 of the Agreement. Clause 29 of the Agreement clearly provides that the party to contract can invoke this clause of the Agreement within a period of 30 days from the date of occurrence of dispute i.e. dispute defined under legal parlance is assertion of right by one party and its denial by other party. The dispute cannot occur on the date on which the petitioner becomes entitled to claim refund of his earnest/security deposit, but the dispute arises only when the demand for refund is refused by the authority designated in the contract.
16. In the case in hand, the petitioner's work contract was completed on 22.7.2003 and 50% of the earnest money was required to be returned to the petitioner on 22.7.2005 and remaining amount was required to be deposited on 21.7.2006 as per Special Condition of the Agreement, but no such payment was made leading to the request by the petitioner on 18.9.2006 to the Competent Authority, but neither payment was made nor reply was delivered. The petitioner raised

claim on 30.9.2006 (Ex. A/4) to the Superintending Engineer and when the Superintending Engineer did not decide the same, the petitioner made an appeal to the Chief Engineer and then the Chief Engineer rejected the appeal on 29.6.2007 giving rise to cause of arbitration and the reference petition was filed within one month from the date of rejection i.e. 29.6.2007 by the Chief Engineer, whereas the period under Section 7-B (1) (b) of the Act of 1983 is one year and as such, the Arbitration Tribunal is absolutely unjustified in dismissing the claim by holding that the dispute would occur on the date the petitioner becomes entitled to refund of its deposit. The learned Arbitration Tribunal ought to have held that the dispute would occur on the date on which the demand for refund of security deposit was refused by the authority designated in the contract and as such, the order impugned deserves to be set aside.

17. It is pertinent to mention here that in the identical facts situation, the Division Bench of this Court speaking through Justice Abhay Manohar Sapre (as then His Lordship was) in Civil Revision No.165 of 2008 (M/s. Uttam Construction Company vs. State of Chhattisgarh and another), decided on 7.1.2013, set aside the order of the Tribunal by holding as under:-

“11. In our considered view, reading Section 7-B abid and applying the same to the undisputed facts of this case, it is clear to us that limitation to file the Reference Petition before the Tribunal would arise only after disposal of the claim admitted by the applicant to the final authority and the final authority communicates its decision on the said claim to the applicant in terms of the works contract. One cannot dispute that the applicant had submitted their claim to the final

authority in terms of the works contract. One cannot dispute that the applicant had submitted their claim to the final authority in terms of clause 29 of the works contract on 21.08.1996, whereas, it was decided by the final authority (Chief Engineer/Managing Director) on 18.02.1998, as would be clear from the letter of the State (Annexure C/3). The limitation will therefore start for filing the Reference Petition before the Tribunal from this date i.e. from 18.02.1998 or in any event when this decision was communicated to the applicant by the State. Since in this case, one year was to be computed from 18.02.1998, whereas, the applicant filed the Reference Petition on 20.02.1998, in our opinion, it was well within the period of limitation as provided under Section 7-B abid. In other words, limitation to file Reference Petition was available to the applicant up to 17.02.1999, whereas, the Reference Petition was filed on 20.02.1998. It was therefore well within the period of limitation. We cannot, therefore, subscribe to the reasoning of the learned Members of the Tribunal when they dismissed the Reference Petition filed by the applicant as barred by limitation.”

18. In view of the aforesaid discussion, it is held that the reference petition filed by the petitioner was perfectly within the period of limitation as provided under Section 7-B of the Act of 1983 and it was required to be decided by the Arbitration Tribunal on merits. The Arbitration Tribunal is absolutely unjustified in dismissing the reference petition holding it beyond limitation, which is plainly illegal and wholly perverse and contrary to the well settled law particularly ignoring the binding judgment of Division Bench of this Court in the matter of **M/s. Uttam Construction Company** (supra).
19. There is an additional reason for holding the order of the Arbitration Tribunal to be unsustainable in law. The learned Arbitration Tribunal on 5.9.2007 after due consideration and due application of mind admitted the reference petition under

Section 7-B (1) of the Act of 1983. The limitation is provided only for admission of reference petition. The learned Arbitration Tribunal having satisfied himself that reference is within limitation admitted the same for consideration by order dated 5.9.2007 cannot hold at later stage at the time of passing award on merits that reference petition is barred by Section 7-B (1) of the Act of 1983 as stage of admission has already been over as that would amount to re-opening of question of limitation which has already been considered and reference petition has been held to be within limitation for the purpose of limitation, therefore, at the final stage of reference petition, question of limitation under Section 7-B (1) of the Act of 1983 is now not available to be considered by the Arbitration Tribunal particularly when no such plea was raised by respondent-State in its reply filed before the Tribunal, as such the learned Tribunal has travelled not only beyond its jurisdiction but also against the pleading of parties, which is absolutely illegal and plainly arbitrary.

20. In the light of the aforesaid discussion, the civil revision is allowed and the award impugned is hereby set aside. The reference petition is restored to its file for hearing and disposal in accordance with law. The Arbitration Tribunal shall decide the reference petition on merits by affording an opportunity of hearing to all the parties concerned in view of the provisions contained in Section 7-B of the Act of 1983 within four months

from the date of receipt of certified copy of this order as the reference petition was filed on 22.8.2007. No order as to cost(s).

Sd/-

(Sanjay K Agrawal)
Judge

B/-