

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.128 of 2015

Shashikant Agrawal, aged about 49 years, S/o Matadin Agrawal, R/o Naya Baradwar, Tehsil Sakti, District Janjgir-Champa (C.G.)

---- Applicant

Versus

1. The State of Chhattisgarh, Through the Secretary, Town Administration and Development, Naya Mantralaya, Naya Raipur, District Raipur (C.G.)
2. Chief Municipal Officer, Nagar Panchayat, Naya Baradwar, Tehsil Sakti, District Janjgir-Champa (C.G.)
3. The Chief Engineer, Directorate, Town Administration and Development, (Engineering Cell) R.D.A. Bhawan, Raipur (C.G.)

---- Respondents/
(Non-applicants)

For Petitioner: Mr. Chandresh Shrivastava, Advocate.
For Respondents No.1 & 3: Mr. Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

ORDER (C.A.V.)

20/07/2016

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 17-11-2015 passed by the Chhattisgarh Madhyastham Adhikaran, Raipur (for short 'the Arbitration Tribunal') in Reference Case No.18/2013, whereby the reference petition instituted by the petitioner herein

has been rejected on the ground that it is barred by Section 7-B of the Act of 1983 as well as on merits.

2. Aforesaid challenge has been made on the following factual backdrop: -

2.1) The petitioner was awarded a contract by the Nagar Panchayat, Baradwar in which upon execution of work, the petitioner was paid Rs.12,24,094/- on 8-3-2010 retaining 5% of the amount i.e. Rs.64,500/- against which the petitioner invoked clause 28 of the agreement i.e. the arbitration clause and when the dispute was not resolved, he made a request to the Chief Municipal Officer, Nagar Panchayat, Baradwar on 11-1-2013 vide Exs.A-45 and A-46 and ultimately raised dispute on 25-4-2013 to the Chief Engineer vide Ex.A-47, and notice regarding appeal was served to the petitioner on 11-6-2013 and 29-7-2013, and thereafter, the reference petition was filed on 25-10-2013. The learned Arbitration Tribunal by its impugned award rejected the same holding that final payment was made on 8-3-2010 and as the cause of action arose on that day, the petitioner ought to have filed request as per the terms of clause 28 of the agreement, to the Chief Municipal Officer, Nagar Panchayat, Baradwar within fifteen days from the accrual of cause of action but the petitioner did not invoke the jurisdiction of the Chief Municipal Officer within the prescribed period of limitation and therefore, his reference petition is barred by limitation. The Arbitration Tribunal also after having held the

reference petition to be barred by limitation cursorily examined the claim on merits and held the petitioner not entitled for any relief against which this revision has been filed under Section 19 of the Act of 1983 as stated above.

3. Mr. Chandresh Shrivastava, learned counsel appearing for the petitioner contractor, would submit that the learned Arbitration Tribunal has committed grave legal error by dismissing the reference on the basis of limitation and merit. He would further submit that Section 7-B of the Act of 1983 prescribes limitation for admission of the reference petition for which the dispute is firstly required to be referred for the decision of the final authority under the terms of the works contract upon accrual of the dispute and thereafter, one year from the date of communication of the decision of the final authority, the reference petition is to be filed before the Tribunal. He would also submit that in the instant case, the question of limitation was considered by the Tribunal on 14-3-2014 and the petition was admitted for hearing after having satisfied that the reference petition is within limitation and thereafter, the Tribunal is precluded from reexamining the question of limitation particularly when the respondent Nagar Panchayat has not raised any such plea of limitation in the written statement to the reference petition. He would also submit that the learned Arbitration Tribunal has failed to consider the fact that in the works contract there is no concept of cause of action, here the

question would be the cause of arbitration. He would also submit that cause of arbitration accrued from the date when the claimant first acquired either a right of action or a right to require that an arbitration should take place upon the dispute concerned. He would lastly submit that in the present case, the dispute was firstly referred to the Chief Municipal Officer and thereafter, the Chief Engineer and thereafter, within the period prescribed under Section 7-B (1) (b) of the Act, the reference petition was filed and the Tribunal is absolutely unjustified in rejecting the reference petition as barred by limitation as well as on merits.

4. Mr. Neeraj Jain, learned Govt. Advocate appearing on behalf of the State of Chhattisgarh/respondents No.1 and 3, would support the impugned award.
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 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**¹, 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

¹ (1996) 2 SCC 216 : 1996 AIR SCW 351 : AIR 1996 SC 942

specified number of years from the date when the claim accrued.

Even if the arbitration clause contains a provision 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**², 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**³ 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

² (1993) 4 SCC 338 : 1994 AIR SCW 1335 : AIR 1994 SC 1615

³ AIR 1999 SC 3275

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 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**⁴, 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

4 AIR 2016 SC 861

the matter of **Dilip Construction Company, Baroda v.**

Hindustan Steel Ltd., Ranchi⁵ 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**⁶ 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. This discussion leaves me to consider the finding of the Arbitration Tribunal in this regard which is as under: -

“10. The petitioner has nowhere, in the petition nor in his affidavit filed in lieu of evidence stated as to when cause of action arose. As per measurement book No.50, marked as Article B a copy thereof marked as Exhibit P-28, shows that the petitioner has received the final bill of Rs.12,88,594/- on 08-03-2010. The calculation was made in the

5 1973 JLJ 696 : AIR 1973 MP 261

6 2012(4) M.P.L.J. 212

presence of the petitioner which is evident from the fact that the petitioner has signed the calculation made on 02-03-2010. It means the cause of action, if any arose in favour of the petitioner that was 08-03-2010 when he received the final bill. The petitioner if not satisfied with or aggrieved by the final bill made, he ought to have filed a request within 15 days to the CMO as per clause 28 of the agreement. The petitioner has not proved any document in order to prove that he had made any request within 15 days from the date of cause of action i.e. 08-03-2010. Though the petitioner has filed some copies of letters alleged to be written by him to the CMO which are annexed with the petition and marked as A-33, A-35, A-41, A-42, A-45, but these documents are not admitted by the respondents. It is therefore, the petitioner was required to prove these documents. It is therefore, these documents cannot be relied upon. However, for the sake of argument if we look into these documents, it is find that all these documents pertains to here 2010, 2011, 2013 first letter A-33 is of 23-10-2010. Assuming that this letter was made within 15 days then in such a situation if decision was not made by the CMO within 15 days from the receipt of this letter, the petitioner was required to file an appeal before the Chief Engineer after laps of 15 days. The petitioner has not filed any document to show that he had filed any appeal to the Chief Engineer nor has filed any document which may go to show that the period for disposing the request was mutually extended by both the parties. If we look to the Annexed A-45, though not admissible in evidence, it goes to show that this is a notice through an advocate to the CMO made on 11-01-2013 and the copy of appeal is of dated 01-04-2013. This reference petition has been filed on 25-10-2013 which goes to show that the petitioner has not filed is request to the CMO and appeal to the Chief Engineer within the prescribed period of limitation as per Clause 28 of the agreement. Thus we record a finding that the reference petition is barred by limitation.”

18. In the case in hand, the Arbitration Tribunal by its order dated 14-3-2014, in consonance with Section 7-B of the Act of 1983, admitted the petition for hearing. The order dated 14-3-2014

reads as follows: -

“याचिकाकर्ता द्वारा श्री संजय डडसेना अधिवक्ता

एडमिशन पर तर्क सुना गया।

याचिकाकर्ता विरोधी पक्षकारों को अपने खर्च पर विधिवत याचिका की प्रति एवं दस्तावेजों की प्रति के साथ नोटिस तामील कराये। तलवाना अदा होने पर विरोधी पक्षकार को रजिस्टर्ड सूचना पत्र जारी हो।

प्रकरण जवाब दावा हेतु दिनांक 06/05/2014“

19. Return was filed by the Nagar Panchayat and no such objection with regard to Section 7-B of the Act of 1983 was raised. Obviously, the petition had crossed the hurdle of Section 7-B of the Act of 1983 on the date when the impugned order was passed. Therefore, the reference petition could not have been dismissed by the Arbitration Tribunal on the ground of limitation after conclusion of hearing.
20. In the case in hand, entire final bill except 5% i.e. Rs.64,500/- was paid to the petitioner contractor on 8-3-2010, thereafter, the petitioner assailed his claim of Rs.64,500/- on 11-1-2013 by giving notice Ex.A-45 and also by notice to the Parishad (Nagar Panchayat) vide Ex.A-46 i.e. the reference made under clause 28 of the agreement which was not decided then appeal was made to the Chief Engineer vide Ex.A-47 dated 25-4-2013 and when the Chief Engineer did not decide the same, reference petition was filed on 25-10-2013.
21. The Arbitration Tribunal by its impugned award dismissed the

reference petition. The Arbitration Tribunal has taken the date of receipt of final bail 8-3-2010 as the accrual of cause of action for arbitration and thereby held that the petitioner ought to have filed request within 15 days to the Chief Municipal Officer, Nagar Panchayat as per clause 28 of the agreement. In the opinion of this Court, here the Arbitration Tribunal has clearly fallen into error.

22. The Supreme Court in catena of decisions cited herein-above has clearly held that cause of action is different from cause of arbitration and for that there must be a dispute. Thus, existence of dispute is an essential condition for the jurisdiction of an arbitrator and the jurisdiction of the arbitrator does not depend upon the existence of a claim or the accrual of cause of action but existence of dispute between the parties. When the petitioner made his claim on 8-3-2010, the claim was not denied. The petitioner made his claim vide Ex.A-45 by notice to the Chief Municipal Officer and notice to the Parishad Ex.A-46 made on 1-4-2013 and on getting no decision, he made an appeal to the Chief Engineer on 25-4-2013 and thereafter, hearing of the appeal was fixed on 11-6-2013 and 29-7-2013, but because of not getting decision within the time prescribed under Section 7-B (1) (a) of the Act of 1983, the reference petition was filed on 25-10-2013 within the period prescribed in proviso to Section 7-B(1) of the Act of 1983 which cannot be held to be barred by limitation by any stretch of imagination and

as such, the petitioner has invoked the jurisdiction of the Tribunal after approaching the final authority as provided under clause 28 of the works contract in accordance with the judgment of the Madhya Pradesh High Court in **Sanjay Dubey** (supra) and this is the reason why the Arbitration Tribunal on the earlier date of hearing (14-3-2014), heard the matter on admission and admitted the reference petition for hearing as prescribed under Section 7-B of the Act of 1983. This further strengthens the fact that the respondent Nagar Panchayat has raised no objection with regard to limitation of the reference petition. Thus, the Arbitration Tribunal is absolutely unjustified in dismissing the reference petition on the ground that final authority has not been approached as per the agreement within the period prescribed in the agreement. The learned Arbitration Tribunal after having held that the reference petition is barred by limitation at paragraph 12 of the award cursorily held that the reference petition is having no merit. Such a course is clearly impermissible in law. The learned Arbitration Tribunal, in all fairness, could not have held so after having held the reference petition to be barred by limitation. While deciding the merits of a claim, the claim has to be adjudicated on the basis of full appreciation and full elaboration of oral and documentary evidence brought on record. Such a dismissal of claim on merits after holding the reference petition to be barred by limitation and without discussing the pleadings and evidence at

length, cannot be countenanced.

23. 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 only. The Arbitration Tribunal is absolutely unjustified in dismissing the reference petition holding it beyond limitation and contrary to the well settled law particularly, ignoring the binding judgment of the Division Bench of this Court in **M/s. Uttam Construction Company** (supra).

24. As a fall out of the aforesaid discussion, the civil revision is allowed and the impugned award passed by the learned Arbitration Tribunal is hereby set aside in toto. The finding recorded by the Arbitration Tribunal on the question of reference petition being barred by limitation as well as on merits 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. Parties shall bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge