

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.101 of 2016**

M/s Bhullar Constructions, Darri Road, Korba, Chhattisgarh Through their authorised partner Mr. Jaswinder Singh Bhullar S/o Shri Harbant Singh Bhullar, aged about 49 years, R/o Darri Road Korba, PO: Korba, Police Station: Kotwali Korba, Tahsil: Korba, District Korba, Chhattisgarh, PIN – 495 677

---- Applicant**Versus**

1. The State of Chhattisgarh through: its Secretary, Public Works Department, Mantralaya (New Secretariat), Mahanadi Dwar, Naya Raipur, Raipur, P.O.: & PS: Mana Raipur, Tahsil & District: Raipur, Chhattisgarh PIN-492015
2. The Superintending Engineer, Raipur Circle, Public Works Department, Baloda Bazar, P.O. & Tahsil: Baloda Bazar, District: Raipur (Now District: Baloda Bazar), Chhattisgarh PIN – 493332
3. The Executive Engineer, Public Works Department, Baloda Bazar, P.O. & Tahsil: Baloda Bazar, District: Raipur (Now District: Baloda Bazar), Chhattisgarh PIN – 493332

---- Respondents

For Applicant	:	Mr.Raj Kamal Singh, Advocate
For Respondents	:	Mr.O.P.Sahu, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****08/09/2016**

1. Invoking Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter called as “Act of 1983”), the applicant herein/contractor has called into question the legality, validity and correctness of the order dated 31.3.2013 passed by the learned Chhattisgarh Madhyastham Arbitration Tribunal, Raipur (hereinafter called as “Arbitration Tribunal), by

which the applicant's Reference Case No.12/2008 has been rejected by learned Arbitration Tribunal on the ground that the applicant did not raise quantified claim before the Superintending Engineer within 30 days from the date of termination of its works contract as required under clause 29 (Arbitration clause) of the Contract Agreement.

2. The works contract granted to the applicant pertaining to Bhatapara-Lawan-Mahanadi Road vide Work Agreement No.39 DL/05-06 was terminated on 1.3.2008. According to the applicant, the said termination order was served to the petitioner on 18.3.2008 and against which, the applicant made quantified claim before the Superintending Engineer on 14.4.2008 stating inter-alia that such an order was served to him on 18.3.2008 as per paragraph 12 of the quantified claim. The said quantified claim was not considered by the Superintending Engineer within 60 days, by which the applicant preferred an appeal before the Chief Engineer on 12.6.2008. The Chief Engineer declined to entertain the applicant's claim on the ground that claim was not made before the Superintending Engineer within 30 days from the date of termination of works contract. Thereafter, the applicant filed reference petition before the learned Arbitration Tribunal on 5.12.2008, which was admitted for hearing on 23.7.2009 and ultimately, by order dated 13.3.2003 it has been rejected on the ground that quantified claim was not made

before the Superintending Engineer within 30 days from the date of termination of works contract and against that order, this revision petition has been filed.

3. Mr.Rajkamal Singh, learned counsel appearing for the applicant, would submit as under:-

(i) Order of termination of works contract was served to the petitioner on 18.3.2008 and the said fact has clearly been mentioned by the applicant in paragraph 12 of the quantified claim made on 14.4.2008.

(ii) The reference petition was admitted for hearing on 23.7.2009 and now the question of limitation cannot be reopened again.

(iii) Learned Arbitration Tribunal has already been held on 3.12.2009 and 27.7.2012 that question regarding limitation and maintainability will be considered at the time of final hearing and it could not be re-opened at later stage before hearing of reference petition on merits.

(iv) On 6.2.2013, learned Arbitration Tribunal granted time to the State for filing acknowledgment receipt of termination order dated 1.3.2008, but no such document was filed, yet learned Tribunal without making an enquiry on said point dismissed the reference petition, therefore, learned Arbitration Tribunal is absolutely unjustified in dismissing the reference petition on the ground that quantified claim was not made within 30 days from the date of termination of works contract.

4. Mr.O.P.Sahu, learned Government Advocate appearing for the respondents/State, would oppose the arguments and support the impugned order.
5. I have heard learned counsel appearing for the parties, perused the order impugned, considered their rival submissions made herein and also gone through the record with utmost circumspection.
6. It is not in dispute that works contract of the applicant was terminated on 1.3.2008. It is the case of the applicant that order of termination of works contract was served on the applicant on 18.3.2008, which the applicant has mentioned in its quantified claim dated 14.4.2008, filed by the applicant before the Arbitration Tribunal as Document No.35 (File C-1), in which in paragraph 12 it has been clearly mentioned that order of termination was served on it on 18.3.2008 and according to the applicant, it is within 30 days as required under clause 29 of the Contract Agreement. Since the quantified claim was not decided by the Superintending Engineer, the applicant preferred an appeal before the Chief Engineer on 12.6.2008. The Chief Engineer rejected the claim of the applicant on 17.6.2008 holding that quantified claim was not made before the Superintending Engineer within 30 days from the date of termination of works contract.
7. The Chief Engineer did not look into the fact that it is the case of

the applicant that order of termination was served to it on 18.3.2008 and quantified claim was made on 14.4.2008. Ultimately, the applicant filed reference petition before the Arbitration Tribunal on 5.12.2008, which was admitted on 23.7.2009 and therefore, the Arbitration Tribunal on dated 3.12.2009, 27.7.2012 and 13.12.2012 has clearly recorded that question of limitation and maintainability of reference petition will be decided at the time of final hearing, but rejected the reference petition by order impugned. Not only this, on 6.2.2013, the respondents/State sought and granted time to file acknowledgment receipt of order of termination dated 1.3.2008 and fixed the case for hearing on 7.3.2013, but on that day, no acknowledgment receipt was filed by the State Government and the reference petition was dismissed on 13.3.2013 upholding the objection raised by the Chief Engineer that quantified claim was not made within 30 days from the date of termination of works contract.

8. The Chief Engineer did not look and enquire the fact from the office of the Executive Engineer as to what date the order of termination was served to the applicant and straightway rejected the claim, though the Arbitration Tribunal has admitted the reference petition for hearing on merits on 23.7.2009 and further by order dated 3.12.2009, 27.7.2012 and 13.12.2012 has clearly recorded that question of limitation and maintainability of

reference petition will be decided at the time of final hearing, but yet again considered the matter on question of limitation and directed the counsel of the State Government to file acknowledgement receipt of the termination order, but yet no receipt was filed and the Arbitration Tribunal without securing acknowledgement receipt and without making an enquiry on the said question as to what date the applicant was served with the order of termination, dismissed the reference petition, upholding the objection of the State.

9. The only course open to learned Arbitration Tribunal was either to secure acknowledgment receipt of termination order dated 1.3.2008 to the applicant or could have decided the question of limitation as directed earlier twice after recording evidence of the parties, but learned Arbitration Tribunal did not follow its own order dated 27.7.2012, 13.12.2012 and 6.2.2013 and straightway dismissed the reference petition holding the dispute was not raised before the final authority within the stipulated time.

10. In the considered opinion of this Court, the Arbitration Tribunal has committed grave illegality in dismissing the reference petition without making any enquiry as to what date the applicant was served with the order of termination particularly when it is the specific case of the applicant from day one i.e. date of making quantified claim on 14.4.2008 that the

applicant has served with the order of termination only on 18.3.2008 and the applicant has made quantified claim within a period of limitation, ignoring its own order dated 23.7.2009 and further ignoring its earlier orders as on 3.12.2009, 27.7.2012 and 13.12.2012 postponing the determination of said question at the time of hearing, which is absolutely illegal and bad in law. It is expected from learned Arbitration Tribunal to maintain consistency in its proceedings.

11. For the foregoing reasons, the civil revision is allowed and the order 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 as the reference petition has already been admitted for hearing on 23.7.2009 and adhere to its earlier orders. No order as to cost(s).

Sd/-

(Sanjay K Agrawal)
Judge

B/-