

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 25.11.2016
Pronounced on 16.12.2016

Civil Revision No.130 of 2013

Ashok Kumar Mittal, S/o Late Shri P.L. Mittal, aged about 47 years, A-5 Class Constructor, R/o Station Road, Korba, Police Station-Kotwali, Korba, Civil & Revenue District Korba (CG) **---- Applicant**

Versus

1. State of Chhattisgarh, through the Secretary, Public Works Department, Mantralaya, D.K.S.Bhawan, Raipur, District Raipur (CG)
2. Executive Engineer, Public Works Department, Division Bemetara, District Durg (CG)
3. Superintendent Engineer, Public Works Department, Division Durg, District Durg (CG)
4. Chief Engineer, Public Works Department, Raipur Range, Raipur, District Raipur (CG) **---- Non-Applicant**

For Applicant:	Smt. Pritha Ghoshal, Advocate under the instructions of Shri Awadh Tripathi, Advocate.
For Non-Applicants/State:	Shri Vijay Bahadur Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay Agrawal
Order On Board

1. This is the revision filed by the Applicant under Section 19 (1) of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as 'the Act of 1983') against the order dated 05.02.2013 passed in Reference Case No. 01/2012 by the Arbitration Tribunal, Raipur, by which the reference of the Applicant has been rejected by holding that the same is not maintainable by virtue of the provisions prescribed under Section 7-B(1)(a) of the Act of 1983.

2. Brief facts of the case are that the work with regard to the construction of the degree college building at Berla with water supply, sanitary fitting and

electrification and approach road was provided to the Applicant by the Non-Applicants, vide agreement bearing No.46/DL/2009-10. The said work for the construction of degree college building was amounting to Rs.1,64,89,226/-. Pursuant to the said agreement, the work order was provided to the Applicant on 20.01.2010. According to the said agreement, the Applicant was required to complete the aforesaid work by 19.02.2011, and then the extended period by 30.07.2011.

3. Even upon the extension of the work order upto 30th July, 2011, the same has been terminated by Non-Applicant No.2 by its order dated 02.07.2011 in an arbitrary manner. Further, contention of the Applicant is that on the issuance of the work order, the Non-Applicant-authorities have not provided him the lay-out plan even after lapse of 45 days and even upon the repeated requests being made in this regard and abruptly, the State Government has terminated the Applicant's alleged contract/agreement vide order dated 02.07.2011.

4. Being aggrieved with the aforesaid termination order by the Non-Applicant-authorities, the Applicant had submitted an application/representation before the Superintending Engineer on 23.07.2011. However, the same has been rejected by the said authority vide its order dated 19.08.2011, affirmed further by the final authority, i.e. the Chief Engineer vide its order dated 2.2.2012.

5. After the rejection of the Applicant's claim as such by the aforesaid authorities, the Applicant had submitted its reference before the Arbitration Tribunal on 01.03.2013 well in time as required under Section 7-B(1)(b) of the Act of 1983. However, the same was also rejected by the Tribunal by its order impugned dated 05.02.2013 by holding that since the quantified amount was not mentioned by the Applicant while making a reference before the

Superintending Engineer and the Chief Engineer, therefore, reference of dispute as made by the Applicant is not maintainable as per the provisions prescribed under Section 7B(1)(a) of the Act of 1983.

6. The Applicant has questioned the aforesaid order in writ petition, being W.P.(C) No.918/2013, before this Court. However, vide order dated 16.07.2013, liberty was granted to the Applicant to file a statutory remedy of revision as prescribed under the Act of 1983, and accordingly, the Writ Petition was withdrawn with the said liberty.

7. Immediately after the aforesaid order being passed, the Applicant has filed this revision as per the provisions prescribed under Section 19(1) of the Act of 1983. Smt Pritha Goshal, the learned Counsel for the Applicant has argued that the order impugned as passed by the Tribunal is not at all sustainable as the issue with regard to mentioning the quantified amount was not required to be made either before the Superintending Engineer or before the Chief Engineer as per clause-28 of the works contract, and therefore, the rejection of reference by the Tribunal, is not sustainable.

8. Mr. Singh, learned Counsel for the State has argued that the reference as made without mentioning the quantified amount was not maintainable under Section 7-B(1)(a) of the Act, of 1983 and therefore, the order impugned deserves to be upheld.

9. I have heard learned counsel for the respective parties and perused the entire record carefully.

10. At the outset, a bare perusal of the order impugned would show that the reference of dispute as made by the Applicant has been rejected by the Tribunal merely on the ground that the quantified amount was not mentioned by the Applicant at the time of making a reference to the authorities,

therefore, not maintainable as per the provisions prescribed under Section 7-B(1)(a) of the Act of 1983. By holding so, the Tribunal has placed its reliance upon the Full Bench decision of the M.P. High Court rendered in the *State of Madhya Pradesh vs. Kamal Kishore Sharma* reported in **2006 (1) MPHT 565**.

11. The question, which emerges for determination based upon aforesaid facts and circumstances is as to whether the reference of dispute as made by the Applicant could be held to be not maintainable by virtue of the provisions prescribed under Section 7B(1)(a) of Act of 1983 ?

12. Certain provisions of the Act of 1983, particularly Sections 2(1)(d), 7 and 7-B are required to be examined in order to answer the aforesaid question. They all are being reproduced herein as under:-

“2(d) *dispute*” means claim of ascertained money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof;”

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 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 thereof.”

[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 (Sansodhan) Adhiniyam, 1990, a reference petition shall be entertained within one year of the date of commencement of Madhya Pradesh Madhyastham Adhikaran (Sansodhan) Adhiniyam, 1990 irrespective of the fact whether a decision has or has not been made by the final authority under the agreement.]

[(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. A close scrutiny of the aforesaid provisions would show that it nowhere provides for mentioning the quantified amount while referring the dispute to the Tribunal. What all that require is that the party to a works contract has to first approach the final authority for the decision of its reference before making it in writing to the Tribunal and the Tribunal would get its jurisdiction only if the dispute with regard to the ascertained money is of Rs.50,000/- or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof.

14. The combined reading of aforesaid provision as prescribed under Section 2(1)(d), 7 & 7B(1)(a) of the Act of 1983 would require that a “dispute”, if arises, then, it has to be referred first before the authorities concerned in the terms of works contract and only after availing the said remedy, the dispute could be referred to the Tribunal irrespective of the fact whether the works contract contains an arbitration clause or not. Interpretation of the

provisions prescribed under Section 7-B(1)(a) of the Act of 1983 would show that no reference shall be admitted by the Tribunal unless dispute is first referred for the decision of the final authority in a manner as provided under the terms of the contract. Thus, right of contractor to approach the Tribunal arises after he has approached final authority in terms of the works contract. If the contractor has failed to approach the final authority as provided under the terms and conditions of the works contract, reference petition will not be admitted by the Tribunal. A dispute to the final authority should be preferred in the manner prescribed under the works contract. It is, therefore, a *sine qua non* for a party to a works contract to get his dispute decided finally by approaching the concerned authorities as per the terms of the works contract, else, it would be not maintainable by virtue of Section 7-B(1) of the Act of 1983 and that is the only requirement before approaching the Tribunal under Section 7 of the Act of 1983. Therefore, holding the Petition as not maintainable as such is wholly unsustainable.

15. Reverting back to the instant matter, since the Applicant's works contract itself was terminated even before the expiry of its extended period on 2.7.2011, therefore, the Applicant had approached the said authorities as per clause 28 of the works contract. The said clause is necessary for the purpose, is reproduced herein as under:-

“Arbitration Clause – Clause 28 – Except as otherwise provided in this contract all question and dispute relating to the meaning of the specification, designs, drawings and instructions herein before mentioned as to thing whatsoever in any way arising out of or relating to the contract designs, drawings specifications, estimate, concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the abandonment there of shall be referred to the Superintending Engineer for his decision, within a period of 30 days of such occurrence(s). There upon the Superintending Engineer shall give his written instructions and/or decisions, after hearing the contractor and

Executive Engineer within a period of 15 days of such request. This period can be extended by mutual consent of parties.

Upon receipt of written instructions or decisions of Superintending Engineer the parties shall promptly proceed without delay to comply such instructions or decisions, if the Superintending Engineer fails to give his instruction or decision in writing a period of 15 days or mutually agreed time after being requested and/or if the party(s) are aggrieved against the decision of the Superintending Engineer, the aggrieved party may within 30 days prefer an appeal to the Chief Engineer who shall afford an opportunity to the parties of being heard and to offer evidence in support of his appeal. The Chief Engineer will give his decision within 30 days, or such mutually agreed period.

If any party is not satisfied with the decision of the Chief Engineer, he can file the petition for resolving the dispute through arbitration in the arbitration tribunal.

A reference to the Arbitration Board shall be no ground for not continuing the work on the part of contractor. Payment as per original terms and conditions of the agreement shall be continued by the Executive Engineer in accordance with clause 8 above."

16. In pursuance to the aforesaid clause, the Applicant had approached the Superintending Engineer and then the Chief Engineer for the decision of his reference and only after the decision of the final authority, the petitioner has approached the Tribunal as per the provision enumerated under Section 7 of the Act of 1983. Besides, a bare perusal of the orders passed by the said authorities would show that the "dispute" as referred by the Applicant was rejected as the work could not be completed by him even in the additional time and not for want of mentioning the quantified amount. Consequently, from any angles, the rejection of Applicant's reference of "dispute" by the Tribunal cannot be held to be sustainable.

17. It is pertinent to be noted here that the reliance as placed by the Tribunal in the matter of "State of Madhya Pradesh vs. Kamal Kishore

Sharma” (supra) is totally misconceived. I have examined the said case-law carefully and found that no such reasonings with regard to the quantified amount as observed by the Tribunal in its impugned order was at all given in the said judgment. A close scrutiny of the said case-law would reveal that the reference of “dispute” before the Tribunal was held to be not maintainable as the contractor in the said matter had approached the Tribunal without first obtaining the decision of the final authority as required mandatorily under Section 7-B(1)(a) of the Act of 1983. However, that is not the question involved in the instant matter, therefore, reliance of the said case-law as made by the Tribunal is distinguishable. Be that as it may, this Full Bench decision has subsequently been overruled by the 5 Judge Bench decision in the matter of *Sanjay Dubey vs. State of Madhya Pradesh & another* decided on **17th September, 2012 in Civil Revision No.1343/2003**.

18. Thus, in view of the aforesaid discussions, the order impugned passed by the Tribunal while upholding the preliminary objection raised by the Non-Applicant/authorities cannot be held to be sustainable. I, therefore, set aside the same. The revision is therefore allowed. The order impugned dated 5.2.2013 passed by the Arbitration Tribunal in Reference Case No.01/2012 is hereby set aside and the matter is remitted to the said Tribunal. The parties are directed to appear before the Arbitration Tribunal, Raipur on 06.01.2017

19. Record of the concerned case be sent back forthwith to the concerned Tribunal.

20. There shall be no order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge