

HIGH COURT OF CHHATTISGARH, BILASPURCivil Revision No.88 of 2016

M/s. Madanlal & Partners through Rajesh Thakur age 48 years, S/o Shri G.P. Thakur R/o. 54, Anupam Nagar, Rajnandgaon, Dist. Rajnandgaon (CG)

--- Applicant

Versus

1. Executive Engineer, Public Works Department (B/R Division) Rajnandgaon, Distt. Rajnandgaon
2. Chief Engineer, Public Works Department (B/R Division) Rajnandgaon, Distt. Rajnandgaon
3. State of Chhattisgarh through Secretary, Public Works Department, Indrawati Bhawan, New Capital Complex, Naya Raipur, Distt. Raipur (CG)

--- Respondents

And

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--- Respondents

For Applicant:	Mr.Sudeep Johri, Advocate
For Respondents:	Mr.Ghanshyam Patel, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/04/2019

1. Since common question of law and fact is involved in these two civil revisions, they are heard together and are being disposed of by this

common order.

2. These civil revisions have been filed by the petitioner under Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 against the order dated 30.9.2015 passed by the Arbitration Tribunal, by which the Arbitration Tribunal has dismissed the reference filed by the petitioner as not maintainable as claim made does not fall within the meaning of “dispute” as defined under Section 2 (d) of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter called as “the Act of 1983”) not being ascertained amount.
3. Mr.Sudeep Johri, learned counsel for the petitioner, would submit that now the dispute raised and decided therein has been authoritatively decided by the Supreme Court in the matter of **Gangotri Enterprises Limited. v. Madhya Pradesh Road Development Corporation and Another**¹.
4. On the other hand, Mr.Ghanshyam Patel, learned Government Advocate for the respondents/State, would support the impugned orders.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. The Arbitration Tribunal in para-23 has held as under:-

“23. In view of the above, since the petitioner has not made claim for an ascertained money before the competent authority, and the declaration sought by the petitioner to the effect that the termination of contract should be under clause 14 not under clause 3 of the agreement be awarded, the petition filed by the petitioner is not maintainable.”

1 (2018) 16 SCC 296

Thus, learned Arbitration Tribunal held that ascertained money has not been claimed, therefore, it is not a dispute referable under Section 2(d) of the Act of 1985, which can be adjudicated by the Tribunal.

7. The Supreme Court in **M/s Gangotri Enterprises Limited** (supra) held as under:-

“2. Our attention has been drawn to the definition of “dispute” under Section 2(d) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (“1983 Act”) which is as follows:

“‘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.”

3. We consider it appropriate to clarify that the expression “ascertained money” as used in Section 2(d) of the 1983 Act will include not only the amount already ascertained but the amount which may be ascertained during the proceedings on the basis of claims/counter claims of the parties.”

8. The Full Bench of the Madhya Pradesh High Court in **Telecommunications Consultants India Ltd. v. Madhya Pradesh Rural Road Development Authority and another**² has followed the principle of law laid down in **M/s Gangotri Enterprises Limited** (supra) and held that even ascertained money includes the amount which may be ascertained during the proceedings on the basis of claim/counter-claim of the parties, as such, ascertained amount is not only claim raised, but also the amount determined.

9. Similarly **M/s Gangotri Enterprises Limited** (supra) has also been followed by the Full Bench of the Madhya Pradesh High Court in

² AIR 2018 MP 241

Shri Gouri Ganesh Shri Balaji Constructions 'C' Class Contractor v. Executive Engineer, PWD,³.

10. Since Their Lordships in **M/s Gangotri Enterprises Limited** (supra) have held that the expression “ascertained money” as defined in Section 2(d) of the 1983 Act will include not only the amount already ascertained but the amount which may be ascertained during the proceedings on the basis of claims/counter claims of the parties. In this context, the applicant has claimed ascertained money i.e. ₹ 1,17,000/- and ₹ 2,56,000/- respectively.
11. In view of above, the impugned orders dated 30.9.2015 (in both revisions) passed by the Arbitration Tribunal are hereby set aside. Reference Case Nos.12/2010 and 13/2010 are restored before the Arbitration Tribunal for hearing and disposal in accordance with law. The observation made by the Tribunal on merits of the matter is also set-aside as the Tribunal had rejected the reference petitions as not maintainable in view of definition of dispute.
12. The civil revisions are allowed to the extent indicated hereinabove. A copy of this order be sent to the Tribunal for hearing and disposal in accordance with law expeditiously.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-