

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No.05 of 2018**

- State Of Chhattisgarh Through The Superintending Engineer, Mahanadi Reservoir Projects Dam Circle, Water Resources Department, Rudri, District Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

---- Appellant/Applicant**Versus**

- M/s Mahalingashetty And Co. Ltd. 64, Vishweshwar Nagar, Hubli 580032 Karnataka, Chhattisgarh, Karnataka

---- Respondent/Non-applicant**For Appellant :**

Shri Amrito Das, Additional AG with Ms. S. Harshita, Panel Lawyer

For Respondent/s:

Shri V. R. Rao, Senior Advocate with Shri Ashok Mishra and Shri Rakesh Gupta, Advocates

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order**Per Manindra Mohan Shrivastava, J.****01/10/2020**

1. This appeal is directed against order dated 30-08-2017 passed by the Commercial Court (District Level) Raipur, whereby the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 (In short "the Act of 1996"), has been rejected and thereby refusing to interfere with the award dated 30-01-2015 passed by the Arbitration Tribunal, which awarded Rs.5,89,10,770/- with cost of Rs.25 lacs in favour of the respondent-Contractor.
2. Relevant factual matrix giving rise to the dispute and further proceedings are that the Government of Madhya Pradesh invited bids for construction of civil structure in the nature of barrage over a river, in response to which, the

respondent-Contractor submitted its tender, which was accepted and agreement was executed between the parties for construction of barrage over the river. The cost of the work was estimated at Rs.6.9 crores. Work order was issued on 11-08-1983 and the due date for completion of work was fixed as 15-06-1986. However, dispute having arisen, a claim of Rs.84.62 lakhs was raised by the Contractor and as dispute could not be settled, arbitration clause was invoked. The claim was finally rejected by the Superintending Engineer on 29-06-1985. On 09-07-1985, the respondent-Contractor notified the Chief Engineer requesting for nomination of Arbitrator. On 28-08-1985, the Chief Engineer informed the respondent regarding constitution of Madhya Pradesh Arbitration Tribunal and advised to apply before the Tribunal for adjudication, but the respondent filed an application for appointment of Nominee Arbitrator before the District Court, Raipur on 24-11-1987. However, that was withdrawn on 05-10-1988 with liberty to approach the Arbitration Tribunal and finally, the respondent filed an application of its claim before the Madhya Pradesh Arbitration Tribunal on 30-06-1989. The Government filed its reply to the statement of claim and the matter remained pending. Upon re-organization of State of Madhya Pradesh under Madhya Pradesh Re-organization Act, 2000 (In short "the Act of 2000"), separate State of Chhattisgarh was carved out and the Madhya Pradesh Arbitration Tribunal continued to exercise its jurisdiction in respect of newly created State of Chhattisgarh and Madhya Pradesh both for a period of two years. In view of the provisions contained under Section 74 of the Act of 2000, the Madhya Pradesh Arbitration Tribunal ceased to have jurisdiction to deal with the cases which arose from the area falling under the territory of newly created State of Chhattisgarh, after the expiry of period of two years. In the State of Chhattisgarh, till that period, no Arbitration Tribunal was constituted. In these State of Affairs, when Madhya Pradesh Arbitration Tribunal

ceased to have jurisdiction and no Arbitration Tribunal was constituted for the State of Chhattisgarh, the respondent invoked arbitration clause towards constitution of Arbitration Tribunal. The Arbitration Tribunal was constituted in the State of Chhattisgarh on 21-05-2004 comprising of one Presiding Arbitrator and two members.

In the meantime, the Arbitration Tribunal was also constituted in the State of Chhattisgarh, though the proceedings remained pending before the Madhya Pradesh Arbitration Tribunal. The records of proceedings which were pending before the Madhya Pradesh Arbitration Tribunal, were transferred to the Chhattisgarh Arbitration Tribunal. However, by that time, the respondent had already invoked arbitration clause leading to constitution of Arbitration Tribunal, vide order dated 28-11-2005, Chhattisgarh Arbitration Tribunal disposed off the proceedings which were transferred to it on the ground that the parties had already commenced proceedings before the Arbitration Tribunal and the Arbitrator is already seized of the matter. This order was passed with the consent of the parties.

3. However, thereafter, the appellant started raising objections with regard to jurisdiction of the Arbitration Tribunal as also limitation which was not accepted and rejected. Finally, award came to be passed. Amongst various grounds, the appellant challenged the legality and validity of the award by moving an application under Section 34 of the Act of 1996 on the ground of jurisdiction and limitation also. That application was rejected leading to present appeal.

4. Assailing legality and validity of the award as also the order passed by the Commercial Court, first submission of learned counsel for the appellant is that the very constitution of Arbitration Tribunal and the arbitration proceedings before it, are without jurisdiction, nonest and consequently, the award is also void. Award has been passed by the authority lacking jurisdiction to draw

arbitration proceedings towards adjudication of dispute and passing of award. He would argue that the dispute between the parties was already raised before the Madhya Pradesh Arbitration Tribunal by the respondent-Contractor, by filing an application in the year 1989 which remained pending. Even though, upon re-organization of State of Madhya Pradesh, after two years, the Madhya Pradesh Arbitration Tribunal ceased to have jurisdiction, the proceedings remained pending awaiting transfer upon constitution of Arbitration Tribunal in the State of Chhattisgarh under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (In short “the Act of 1983”), which was also adapted by proper notification for the State of Chhattisgarh. In view of the provisions contained under Section 20 thereof, no Court or any other Tribunal had any jurisdiction to deal with the dispute, which was subjected to arbitration proceedings. Even if, no Tribunal was constituted in the State of Chhattisgarh and the Madhya Pradesh Arbitration Tribunal ceased to have jurisdiction after a period of two years, by operation of law, nevertheless, in the eyes of law, there existed provision for constitution of Tribunal in the State of Chhattisgarh under the Madhya Pradesh (now Chhattisgarh) Madhyastham Adhikaran Adhiniyam, 1983. He submits that even though, the appellant constituted Arbitration Tribunal with its own nominee, such conduct of further participation in the arbitration proceedings, even if amounted to acquiesce, would not come in the way of challenging award on the ground of patent, inherent lack of jurisdiction of the Arbitration Tribunal. In support of his submission, learned counsel for the appellant placed reliance upon the decisions in the case of ***Supdt. of Taxes, Dhubri and Ors. vs. Onkarmal Nathmal Trust and Ors.***¹, ***P. Dasa Muni Reddy vs. P. Appa Rao***², ***Sushil Kumar Mehta vs. Gobind Ram Bohra (Dead) through his Lrs.***³,

1 AIR 1975 SC 2065

2 AIR 1974 SC 2089

3 (1990) 1 SCC 193

Chiranjilal Shrilal Goenka (Deceased) through Lrs. vs. Jasjit Singh and Ors.⁴, A. R. Antulay vs. R. S. Nayak and Ors.⁵ and Madhya Pradesh Rural Road Development Authority and Ors. vs. L. G. Choudhary Engineers and Contractors⁶.

5. Next submission of learned counsel for the appellant is that the respondent's claim was otherwise barred by limitation, because the respondent having exhausted in house remedy upon rejection of his claim by the Superintending Engineer on 30-06-1985, ought to have approached the Arbitration Tribunal within three years as provided under Article 137 of the Limitation Act, but the application was filed beyond the period of three years and even if the period during which, the proceedings before the District Court remained pending until withdrawn, the application before the Arbitration Tribunal was beyond three years, Limitation Act being applicable, in view of the decision in the case of ***State of M.P. vs. Anshuman Shukla⁷***, the application before the Arbitration Tribunal in the State of Madhya Pradesh was otherwise barred by limitation. He also placed reliance upon the decision in the case of ***State of M.P. and Ors. vs. Anshuman Shukla⁸*** and decision of Full Bench of High Court of Madhya Pradesh in the case of ***Telecommunication Consultants India Ltd. vs. Madhya Pradesh Rural Road Development Authority and another*** in A.R. No.02/2016 on 03-10-2018.

6. Third submission of learned counsel for the appellant is that the application filed by the respondent before the Arbitration Tribunal itself was not maintainable as the respondent had invoked arbitration clause in violation of procedure prescribed under clause 56 of the General Conditions of Contract. It is contended that even before the decision of Executive Engineer and

4 (1993) 2 SCC 507

5 (1988) 2 SCC 602

6 (2018) 10 SCC 826

7 (2014) 10 SCC 814

8 (2008) 7 SCC 487

Superintending Engineer, the respondent-Contractor invoked arbitration clause by sending its nominee as early as on 20-07-1984, therefore, the invocation of arbitration clause is pre-mature and therefore, all consequential proceedings were vitiated.

7. The last submission put forth by the learned counsel for the appellant is that the learned Arbitration Tribunal committed patent illegality and perversity which must shock the conscience of the Court as it has awarded interest ignoring relevant proceedings of law, settled legal positions and principles propounded by the Hon'ble Supreme Court in the case of ***Vedanta Ltd. vs. Shenzhen Shandong Nuclear Power Construction Co. Ltd.***⁹. He would further contend that in view of the provisions contained in Section 3 of the Interest Act, the interest could be awarded on the rate not exceeding current rate of interest. Section 34 of CPC will have no application and as such, only a reasonable rate of interest consistent with the relevant provision out to be levied and as such, imposition of interest is against the Public policy of India.

8. Per contra, learned counsel for the respondent would argue that the respondent has been contesting for its claim before the government and thereafter, before the Arbitration Tribunal since 1984-85 and the appellant has been raising technical objection. He would argue that as far as the aspect of jurisdiction is concerned, the same is liable to be rejected at the threshold. This issue was considered and decided by this Court while deciding an application under Section 11(6) of the Arbitration Act vide its order dated 08-12-2006 and this very objection on the aspect of jurisdiction were considered and rejected, against which, a Special Leave Petition was preferred, which was also dismissed. Therefore, now issue of jurisdiction is not open to challenge after passing of award in the garb of challenge to award under Section 34 of the

9 (2018) SCC Online SC 1922

Arbitration Act. He would submit that otherwise also, arbitration proceedings were instituted in accordance with law. An application was filed before the Arbitration Tribunal at Madhya Pradesh on 30-06-1989. The applicable Act did not provide for any period of limitation and no objection to maintainability was raised at that point of time. During the pendency of aforesaid application, the Act of 1983 was amended to introduce a new provision, Section 7-B which provided that reference objection could be entertained within one year of the commencement of Chhattisgarh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990, irrespective of the fact whether the decision has not been made by the final authority under the agreement. Therefore, in any case, the application could be filed before the Arbitration Tribunal up to 24-04-1991 as Section 7-B was brought into effect with effect from 24-04-1990. He would next submit that as Superintending Engineer had rejected the application on 29-06-1985 under the scheme of the procedure of reference of the dispute to the arbitration, the Superintending Engineer was approached by moving an application on 09-07-1985 raising grievances, to which, the Superintending Engineer responded vide its letter dated 28-08-1985 and then application filed before the District Judge on 24-11-1987 was dismissed as withdrawn on 05-10-1988 with liberty to institute a case before the Madhya Pradesh Arbitration Tribunal. Viewed from another angle, the proceedings pending before the Madhya Pradesh Arbitration Tribunal were within limitation. As Tribunal ceased to have jurisdiction to deal with the arbitration proceedings arising from the territory of newly carved out State of Chhattisgarh and no Arbitration Tribunal was constituted in the State of Chhattisgarh, the respondent was left with no other remedy, but to invoke arbitration clause seeking constitution of Arbitration Tribunal. The Government itself constituted Arbitration Tribunal including its own nominee member and when upon transfer of case

from the Madhya Pradesh Arbitration Tribunal, the matter was listed before the Chhattisgarh Arbitration Tribunal which was constituted subsequent to invocation of arbitration clause and constitution of Arbitration Tribunal, the appellant did not raise any objection to the disposal of case by the Chhattisgarh Arbitration Tribunal vide order dated 28-11-2005 on the ground that the parties had already commenced proceedings before the Arbitration Tribunal. Having acquiesced in all those orders and proceedings, the appellant could not be heard saying that there was any delay on the part of the respondent in approaching the competent authority/Forum for adjudication of dispute to the mechanism of arbitration. He would argue that the application raising ground of limitation were rejected by the Arbitration Tribunal which included its nominees also.

9. Referring to the decision of the Single Bench of High Court of Chhattisgarh in the case of ***M/s Integral Construction Company vs. State of Chhattisgarh***¹⁰, it is argued that the invocation of arbitration clause was not barred under Section 20 of the Act of 1983 on the date when the arbitration clause was invoked because no case was pending before any Tribunal nor any Tribunal for the State of Chhattisgarh was constituted. Learned Senior Counsel appearing for the respondent would further submit that the order deciding question of limitation constituted interim award, so ought to have been challenged within three months as provided under Section 34(3) of the Act of 1996, placing reliance upon the decision of the Supreme Court in the case of ***Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products***¹¹. Learned Senior Counsel would further argue that even though, the respondent does not concede, limitation issue will have no application, because during the pendency of its claim, after final bills were prepared in the year 1997-98, new

10 Decided on 16-09-2005 (MCC No.69 of 2003 and other connected matters)

11 (2018) 2 SCC 534

claims were also added by the claimant. He would submit that in the year 1989, when the claim was initially made, in respect of overhead prolongation as on 30-06-1989, the issue of limitation will not arise in respect of subsequently added claims after 1997-98. The appellant had no objection on the issue of limitation also, when it filed its reply before the Madhya Pradesh Arbitration Tribunal in the year 1989. Further submission of learned Senior Counsel for the respondent is that the ground of challenge that the invocation of arbitration clause was pre-mature being in violation of procedure prescribed under Section 56 of the General Conditions of Contract, must pale into oblivion, because, in any case, the respondent filed an application before the Madhya Pradesh Arbitration Tribunal on 30-06-1989, which is subsequent to rejection of its claim by the Superintending Engineer way back in the year 1985.

10. On the interest part, learned Senior Counsel for the respondent submitted that the Arbitration Tribunal while awarding interest on a particular rate, has taken into consideration rate charged on the Contractor in the matter of providing machinery and mobilization advance and in view of the decision of the Supreme Court in the case of ***Bhagwati Oxygen Ltd. vs. Hindustan Copper Limited***¹², a possible view has been taken by the Arbitration Tribunal which is not open to challenge in view of the limited ground of challenge under Section 34 of the Act of 1996.

11. In the rejoinder argument, learned counsel for the appellant, referring to the provisions of Section 16(6) of the Act of 1996, argued that the interim award could be challenged at the time of challenging final award. He would submit that no appeal could be preferred against order rejecting objection to limitation and jurisdiction, in view of the provisions contained in Section 37(2)(a) of the Act of 1996. He has placed reliance in the case of ***SBP and Co. vs. Patel***

¹² 2005(1) Arb. WLJ 608 (SC),

Engineering and Ors.¹³ He has also placed reliance upon the decision in the case of **Secretary, State of M.P., Irrigation Department, Bhopal and others vs. Jaswant Singh Dhillon**¹⁴ to submit that the claim itself was not alive as the claimant approached the Tribunal beyond the period of limitation and therefore, merely because the Madhya Pradesh Arbitration Tribunal ceased to have jurisdiction and no Tribunal was constituted in the State of Chhattisgarh, the arbitration clause could not be invoked to seek constitution of Arbitration Tribunal for adjudication of dead claims.

12. We have heard learned counsel for the parties and perused the records.

13. A perusal of the award under challenge, passed by the Arbitration Tribunal, shows that the Tribunal has taken into consideration the background, in which, the matter finally came to be referred to the Arbitration Tribunal including the fact that earlier the claimant had approached Madhya Pradesh Arbitration Tribunal, which later on, ceased to have jurisdiction and that upon constitution of Chhattisgarh Arbitration Tribunal, subsequent to constitution of Arbitration Tribunal under the arbitration clause, matter was closed. The Tribunal further took into consideration that before it, objection to jurisdiction was taken, which was rejected on 31-01-2006 and that order has been annexed as Annexure-"A" with the award. It has also taken into consideration that an application was moved before the High Court for appointment of Member in the Arbitration Tribunal, consequent upon retirement of its member H. V. Rathore and the High Court was pleased to appoint a nominee Arbitrator. It also took into consideration that newly nominated arbitrator withdrew and then, the claimant approached the High Court under Section 11(6) of the Act of 1996 for appointment of the nominee Arbitrator on behalfss of State of Chhattisgarh whereafter an order was passed on 22-06-2007, appointing new nominee

13 (2005) 8 SCC 618

14 (1999) 2 MPLJ 122

Arbitrator. The Tribunal has also taken into consideration the fact that being aggrieved by the order passed by the High Court, Special Leave Petition was preferred before the Hon'ble Supreme Court and finally, the Special Leave Petition was dismissed by the Hon'ble Supreme Court on 26-09-2012. Para 27 of the award further shows that objection with regard to non-fulfillment of the conditions of Clause 56 of the General Conditions of Contract and also objection with regard to limitation were also raised.

14. As far as objection with regard to jurisdiction is concerned, there is no requirement to go into the merits of this submission, because this very aspect of jurisdiction of the Arbitration Tribunal was earlier raised before this Court in proceedings under Section 11 of the Act of 1996, which was rejected upon due consideration while appointing nominee Arbitrator vide order dated 08-12-2006 passed by the learned Single Judge of this Court in the case of Arbitration Application No.05/2006. A perusal of para 5 of that order shows that objection to the jurisdiction of the Arbitration Tribunal on the ground of Constitution of Chhattisgarh Arbitration Tribunal under Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1993 was raised, but the said objection was considered and rejected on following grounds:-

12. So far as the first objection of the respondent regarding constitution of the Arbitration Board based on the document of Annexure P-1 is concerned, the same cannot be accepted because after constitution of Arbitration Board which consisted of nominee of the State Government, nominee of the Director and nominee of the Central Water Commission, nominee of the Central Water Commission was the third arbitrator. Parties have entered into arbitration, they have submitted to the jurisdiction of the Arbitration Board and they were participating in the arbitration proceedings. The objection to jurisdiction of the Arbitration Board in view of the Act of 1983 was unanimously rejected by the Arbitration Board and the parties had agreed to the terms and conditions including the fee payable to the arbitrators and they were paid accordingly, therefore, constitution of Arbitration Board cannot be questioned by the State.

13. The second objection that Section 20 of the Act of 1983 prohibits appointment of separate arbitrator and the Arbitration tribunal constituted under the Act of 1983 has already taken cognizance of the dispute is concerned. From the admitted facts detailed in the proceeding paragraphs, it is manifestly clear that the Arbitration tribunal was seized of the matter till 31st October, 2002 by virtue of Section 74(1) of the M.P. State Re-Organisation Act, 2000 and thereafter, it was adjourned sine die as the State of Chhattisgarh after reorganisation did not constitute the Tribunal under the Act of 1983 and the same was constituted only on 1st March, 2005, even after the constitution of Tribunal, the Tribunal was non-functional and it became functional only after 02-09-2005. In the meanwhile, on the request for appointment of arbitrator by the applicant, the State agreed to the arbitration as per terms and conditions of the agreement and three membered Arbitration Board was constituted and the proceedings were commenced. As per Section 20 Sub-section 2 of the Act of 1983 the bar of Sub-section 1 of Section 20 is not applicable to the arbitration proceedings pending before the arbitrator or umpire or before any Court of authority under the provisions of the arbitration Act. In the instant case, even before the constitution of arbitration tribunal under the Act of 1983, the dispute was already referred by the parties to the Arbitration Board and the arbitration proceedings were going on, therefore, Section 20 Sub-section 2 of the Act of 1983 is squarely applicable.”

15. Later on, an occasion arose for seeking fresh order for appointment of Arbitrator under Section 11(6) of the Act of 1996, due to inability expressed by one of the members of the Arbitration Tribunal which led to passing of order dated 22-06-2007 in MCC No.111 of 2007. Earlier order dated 08-12-2006 and subsequent order dated 22-06-2007, both were challenged before the Supreme Court, aggrieved by the appointment of member in the Arbitration Tribunal mainly on the premise that constitution of Arbitration Tribunal was illegal and it had no jurisdiction to adjudicate upon claim. The Special Leave Petition was however dismissed vide order dated 26-09-2012 passed by the Hon'ble Supreme Court. The order of the Hon'ble Supreme Court reads thus:-

“We have heard Mr. Atul Jha, learned counsel for the common petitioner- State of Chhattisgarh , and Mr. S. B. Upadhyay, learned Senior counsel for the common respondent.

Delay condoned.

Having regard to the peculiar facts of the case which are noted in paragraphs 2, 3, 4, 5 and 6 of the impugned orders, we are satisfied that no interference is called for in the impugned orders.

Special leave petitions are dismissed.

Question of law is kept open.

In view of dismissal of the special leave petitions, pending interlocutory applications, if any, do not survive and stand dismissed.”

A perusal of the order passed by the Hon'ble Supreme Court makes it clear, having noted the facts of the case and also satisfied that no interference is called for in the impugned orders which included order dated 08-12-2006 passed by the learned Single Judge of this Court, deciding issue of jurisdiction.

16. The argument of learned counsel for the appellant is that as question of law was kept open, it amounted to granting liberty to the appellant to again raise issue of jurisdiction while challenging the award under Section 34 of the Act of 1996. This argument cannot be accepted on the face of order passed by the Hon'ble Supreme Court. There is no liberty granted to the appellant to raise issue of jurisdiction at later stage of arbitration proceedings or in case, the appellant is aggrieved by the award. On the contrary, satisfaction has been recorded that no interference is called for in the impugned order, leading to dismissal of Special Leave Petition. The observation that question of law is left open could not be taken recourse to by the appellant to re-adjudicate the issue of jurisdiction when the Supreme Court was not inclined to interfere with the decision of the Hon'ble Single Judge of this Court on the aspect of jurisdiction. At the most, it could be said that the question of law involved has not been settled by the Supreme Court in these proceedings. But, then, it binds the

parties inter se in the same proceedings and it is no longer open for the appellant to again re-agitate the issue of jurisdiction, after the said issue has been set at rest finally by the Hon'ble Supreme Court by dismissing Special Leave Petition.

17. As far as the issue of limitation is concerned, we find that the Arbitration Tribunal rejected this objection vide its order dated 23-04-2013. The main contention of learned counsel for the appellant has been that in house mechanism for redressal of grievance as per arbitration clause was exhausted at the department level with the passing of order of rejection of claim on 29-06-1985 by the Superintending Engineer.

18. The scheme of settlement of dispute as per clause 56 of General Conditions of Contract provided as below:-

“Settlement of Dispute as per the clause 56

If the contractor considers any work demanded of him to be outside the requirements of the contract or considers any drawings, record or ruling of the Executive Engineer on any matter in connection with or arising out of the contract or the carrying out of work to be unacceptable, he shall promptly ask the Executive Engineer in writing, for written instructions or decision. There upon the Executive Engineer shall give his written instructions or decision within a period of thirty days of such request.

Upon receipt of the written instructions or decision the contractor shall promptly proceed without delay to comply with such instructions or decision.

If the Executive Engineer fails to give his instructions or decision in written in a period of thirty days after being requested, or if the contractor is dissatisfied with the instruction or decision of the Executive Engineer, the Contractor within thirty days after receiving the instructions or decision of the Executive Engineer, appeal of Superintending Engineer who shall afford an opportunity to the contractor to be heard and to offer evidence in support of his appeal. This official shall give a decision within a period of thirty days after the contractor has given the said evidence in support of his appeal.

If the contractor is dissatisfied with this decision, the contractor within a period of thirty days from receipt of the decision shall indicate his intention to refer the dispute to Arbitration, failing which the said decision shall be

final and conclusive.”

A perusal of the aforesaid provision shows that even after the Superintending Engineer decides objection, if the Contractor is dissatisfied with this decision, then the Contractor is required to indicate its intention to refer the dispute to Arbitration within a period of 30 days from the receipt of the decision, failing which, the decision of the Superintending Engineer shall be treated to be final and conclusive. As an admitted fact, which is revealed from the records, the Superintending Engineer rejected the claim on 29-06-1985, the claimant notified Chief Engineer on 09-07-1985, well within 30 days of its intention that they are aggrieved by this decision and seeks to invoke arbitration clause. In response to which, on 28-08-1985, the Chief Engineer informed the claimant regarding constitution of Arbitration Tribunal and that he may approach the Arbitration Tribunal for adjudication.

19. It is relevant to note that when Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 was enacted, there existed no provision of limitation, within which, reference could be made to the Tribunal.

Section 7 provided for reference to the Tribunal that parties 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.

20. In view of the provisions contained under Section 24 of the aforesaid Act, the Tribunal has been conferred legal status and deemed to be a Civil Court. The provisions of limitation act being applicable, no limitation expressly provided residuary Article 137 of the Limitation Act will apply. An application before the Tribunal could be filed within three years. In the present case, after rejection of claim by the Superintending Engineer, the Claimant was required to give notice of its intention which was, in fact, given by the appellant-claimant on 09--07-

1985. In response to this, the Chief Engineer advised the respondent to approach the Tribunal. Thereafter, the Contractor approached the Tribunal. Further, as the respondent had already approached the District Judge by filing an application on 24-11-1987, which was later on permitted to be withdrawn on 05-10-1988, with liberty to approach the Tribunal, that period is also required to be excluded. Finally, the application was filed before the Tribunal on 30-06-1989. Apparently, it was within limitation, because upon exclusion of the period, during which, the application remained pending before the District Court, it would be less than three years.

21. The matter can be viewed from another angle. The Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1993 was subsequently amended and new provision under Section 7(B) now providing period of limitation was introduced, which reads as below:-

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 disputes 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.]

[(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.

Sub section 2 thereof allows filing a reference petition within one year of the date of commencement of Chhattisgarh Madhyasthan Adhikaran (Sanshodhan) Adhiniyam, 1990, irrespective of the fact whether the decision has or has not been made by the final authority under the agreement.

This provision allowed the aggrieved parties to approach the Arbitration Tribunal within the period prescribed therein. As the Amendment Act of 1990 had come into effect with effect from 24-04-1991, the aggrieved party could approach the Arbitration Tribunal up to 24-04-1991. If such a provision, allowed a party to approach the Tribunal by filing a reference petition till 24-04-1991, no objection on the ground of limitation could be raised against petitions which were already pending before the Tribunal filed prior to 24-04-1991. Viewed from this angle also, no exception could be taken to the maintainability of the proceedings before the Arbitration Tribunal on the ground of limitation.

Moreover, in view of judgment of the Hon'ble Supreme Court in the case of ***Indian Farmers Fertilizer Cooperative Limited*** (supra), decision on limitation constitute interim award, not being under Section 16 of the Act of 1996, it was held:-

30. "In our view, therefore, it is clear that the award dated 23rd July, 2015 is an interim award, which being an arbitral award, can be challenged separately and independently Under Section 34 of the Act. We are of the view that such an award, which does not relate to the arbitral tribunal's own jurisdiction Under Section 16, does not have to follow the drill of Section 16(5) and (6) of the Act. Having said this, we are of the view that Parliament may consider amending Section 34 of the Act so as to consolidate all interim awards together with the final arbitral award, so that one challenge Under Section 34 can be made after delivery of the final arbitral award. Piecemeal challenges like piecemeal awards lead to unnecessary delay and additional expense."

Decision in the case of ***S.B.P. and Co.*** (supra) is already distinguishable in view of what has been stated in para 7 thereof, which is as below:-

7. We will first consider the question, as we see it. On a plain understanding of the relevant provisions of the Act, it is seen that in a case where there is an arbitration agreement, a dispute has arisen and one of the parties had invoked the agreed procedure for appointment of an arbitrator and the other party has not cooperated, the party seeking an arbitration, could approach the Chief Justice of the High Court if it is an internal arbitration or of the Supreme Court if it is an international arbitration to have an arbitrator or arbitral tribunal appointed. The Chief Justice, when so requested, could appoint an arbitrator or arbitral tribunal depending on the nature of the agreement between the parties and after satisfying himself that the conditions for appointment of an arbitrator under sub-Section (6) of Section 11 do exist. The Chief Justice could designate another person or institution to take the necessary measures. The Chief Justice has also to have the qualification of the arbitrators in mind before choosing the arbitrator. An arbitral tribunal so constituted, in terms of Section 16 of the Act, has the right to decide whether it has jurisdiction to proceed with the arbitration, whether there was any agreement between the parties and the other matters referred to therein.

22. In view of the aforesaid considerations, it cannot be said that the claim of the respondent was not alive claim. Unfortunately, a claim submitted before the Arbitration Tribunal in the year 1989, remained pending without any decision. Learned counsel for the respondent is correct in submitting that before the Madhya Pradesh Arbitration Tribunal also, no specific objection to the maintainability on the ground of limitation was raised and this situation was continued till Re-organization of State of Madhya Pradesh under the Madhya Pradesh Re-organization Act, 2000. As per the provisions contained under Section 74 of the Madhya Pradesh Re-organization Act, 2000, Madhya Pradesh Arbitration Tribunal continued to have jurisdiction over the matters of Re-organized States of Madhya Pradesh and Chhattisgarh both for a period of two years. However, after expiry of period of two years, as provided under Section 74 of the Madhya Pradesh Re-organization Act, 2000, Madhya Pradesh Arbitration Tribunal ceased to have jurisdiction. There was no other provision

either under the Madhya Pradesh Re-organization Act, 2000 nor any separate provision was made nor any particular notification has been brought to the notice of this Court that a provision for transfer of pending proceedings was made. Thus, the position obtaining as on 01-10-2002 was that there was no Arbitration Tribunal constituted and functioning in the State of Chhattisgarh to adjudicate the dispute arising out of arbitration matter covered under Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983. Though it is not in dispute that under the adaptation order, the Adhiniyam of 1983 also become applicable in the State of Chhattisgarh, nevertheless, the State of Chhattisgarh did not constitute any Arbitration Tribunal for the State of Chhattisgarh on or before expiry of period of two years. Therefore, the bar under Section 20 did not exist in the eyes of law. Section 20 of the Adhiniyam of 1983 creates bar of jurisdiction of the Civil Court from the date of constitution of the Tribunal. However, when there was no Tribunal for the State of Chhattisgarh after 01-10-2002 and the Tribunal where application was filed, ceased to have jurisdiction, no exception could be taken to the respondent-claimant reverting back to the arbitration clause under the agreement and seeking constitution of Arbitration Tribunal. It is not in dispute in the present case that the request for constitution of Arbitration Tribunal took place during the period when there was no Arbitration Tribunal constituted and functioning in the State of Chhattisgarh. The State did not take any objection regarding constitution of Arbitration Tribunal consisting of Chairman and nominated Members. Not only that, when Arbitration Tribunal was later on, constituted in the State of Chhattisgarh, the cases pending before the Madhya Pradesh Arbitration Tribunal stood transferred, but, in view of the invocation of arbitration clause for constitution of Arbitration Tribunal, the proceedings were finally disposed off, which order was passed by the Arbitration Tribunal on 28-11-2005. By that time, no objection

was taken. Again, when the matter was taken up by the Arbitration Tribunal, the State took somersault and started raising all kinds of objections.

23. In view of the above consideration, there is no merit in the contention that the Arbitration proceedings were barred by limitation.

24. The submission with regard to non-compliance of clause 57 pales into oblivion, because claimant approached the Madhya Pradesh Arbitration Tribunal in the year 1989, long after decision of the Superintending Engineer. In any case, as the award has been passed by the Arbitration Tribunal and challenge to jurisdiction has been turned down, the objection filed beyond the period of limitation does not merit acceptance.

25. The last submission with regard to rate of interest also does not merit acceptance because the view taken by the learned Arbitrator is a possible and plausible view. In fixing rate of interest, the Arbitration Tribunal relied upon the judgment of the Hon'ble Supreme Court in the case of ***Bhagwati Oxygen*** (supra), recorded following finding with regard to rate of interest :-

“Regarding payable rate of interest, AT relies on the judgment of Hon'ble Supreme Court in the case 2005(1) Arb. WLJ 608 (SC), *Bhagwati Oxygen Ltd. Vs. Hindustan Copper Ltd.* In this case, the Hon'ble Court has held that where an advance is given by the employer to the contractor on some interest, the Arbitration Tribunal can make an award of interest on the same rate. In this case, the Respondents had charged interest @14% p.a. from the contractor on the mobilization & machinery advances. This rate of interest, therefore, becomes contractual rate of interest. **AT accordingly awards payment of interest to the Claimant @14% p.a. simple on the awarded amount for the period from 01-10-1991 to the date of award. The amount of interest comes to Rs.4,55,40,798.00 (Rupees four crore fifty five lacs forty thousand seven hundred ninety eight only). The total awarded amount including interest as on the date of award thus comes to Rs.5,89,10,770.00 (Rupees five crore eighty nine lacs ten thousand seven hundred seventy only).**”

26. The relevant consideration made by the Supreme Court in the case of

Bhagwati Oxygen (supra), is as below:-

41. “In view of the aforesaid decisions, we hold that it was within the power of Arbitrator to award interest. As to the rate of interest, the contention of HCL is that it ought to have been at the rate of six per cent only. The learned counsel for HCL has strongly relied upon the decision of this Court in Nav Bharat Construction Co. In that case, interest was awarded by the Arbitrator at the rate of fifteen per cent. The said action was challenged by the State Government as well as the Contractor. The contention of the State Government was that the Arbitrator could not have awarded interest at the rate of fifteen per cent and it was exorbitant. The Contractor, on the other hand, urged that interest ought to have awarded at the rate of eighteen per cent. This Court held that it would be appropriate if interest at the rate of six per cent is awarded.

42. In our view, however, a relevant and germane factor weighed with the Arbitrator in awarding eighteen per cent interest that at that rate HCL had given advance to BOL. In view of the said circumstance, in our opinion, even that part of the award passed by the Arbitrator did not deserve interference and learned single Judge and the Division Bench were not right in reducing the rate of interest.”

27. That was also a case where rate of interest fixed by the Arbitrator was challenged on the similar ground as in the present case, the higher rate of interest awarded by the Arbitrator was accepted on the conditions that it was the rate, on which, advance was given. The view taken by the Arbitration Tribunal, therefore, is clearly a possible and plausible view and does not suffer from any patent illegality and perversity nor it can be said to be against the public policy of the State.

28. As all the four grounds raised before this Court are found to be without any merit and no other ground was put forth during argument, the appeal fails and it is hereby dismissed though without any costs.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor_)
Judge