

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Reserved for orders on :25/06/2021**

**Order passed on :14/07/2021**

**CR No. 70 of 2016**

- M/s R.D. Constructions, A-IV Class Contractor, Regd. Office At Shop No. 8, Behind D.O. Building, R.D.A. Complex Tagore Nagar, Raipur, through the partner Shri Satish Chhugani, S/o Shri K.L.Chhugani, R/o A-10, Gayatri Nagar, Raipur, Chhattisgarh, Chhattisgarh

**---- Applicant**

**Versus**

1. The State Of Chhattisgarh, through the Secretary, Public Works Department, Mantralaya, New Raipur, Police Station- Rakhi, Civil and Revenue District- Raipur, Chhattisgarh, Chhattisgarh
2. The Executive Engineer, North Bastar Division P.W.D., Jagdalpur, Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh

**----Respondents**

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For Applicant/petitioner – Shri Prateek Sharma, Advocate.  
For State/Respondents – Shri Alok Nigam, Govt. Advocate.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**  
**CAV Order**

**14-07-2021**

1. This petition has been brought being aggrieved by the award dated 29-03-2016 passed by the Chhattisgarh Madhyastham Adhikaran, Raipur (C.G.) seeking quashment of this award and direction to remand the case to the Adhikaran Raipur for the purpose of deciding the matter afresh.
2. The petitioner/applicant had made a reference Petition No.2/2007 under Section 7(B) of the Chhattisgarh Madhyastham Adhikaran Adhiniyam 1983 (in short 'the Act, 1983) praying for award Rs.13,68,127/- from the non-applicants/respondents. This reference case has been disposed off by the impugned order dismissing the reference petition of the applicant/petitioner. It is submitted by learned counsel for the petitioner that the award is totally erroneous and against the provisions of law. The learned Tribunal posed two questions, firstly that whether the reference petition is barred by limitation and secondly whether the applicant/petitioner is entitled for the award as prayed.

Learned Tribunal held that the reference petition is barred by the limitation. Subsequent to that, the reference has been decided and dismissed on merits also.

3. It is submitted by the counsel for the applicant/petitioner that there had been no delay in filing the reference. The Tribunal has taken into consideration the date 04-08-2004, on which date the contract between the parties had not terminated and thus the contract was continuing, therefore, the cause of action had arose on 01-10-2004. It is also submitted that the respondents never raised any objection on the point of limitation. Therefore, consideration on the question of limitation by learned Tribunal is also arbitrary. Hence, the petition may be allowed and the impugned order may be set aside and relief be granted to the petitioner.

4. Learned State counsel appearing for the respondents opposes the petition and the arguments. It is submitted that the reference of the petitioner was very clearly time barred. The petitioner has made clear admission that the contract was terminated on 04-08-2004, therefore, the cause of action has arisen from that date. Hence, no error has been committed by the learned Tribunal in dismissing the reference on the ground of limitation and also on merits. Therefore, this civil revision may be dismissed.

5. Section 7(B) of the Chhattisgarh/Madhya Pradesh Madhyastham Adhikaran Adhiniyam 1983 provides as follows:-

**“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 proceeding the date of commencement of this Act or after such commencement but before the commencement of Madhya Pradesh Madhyastham Adhikarn (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.”

6. The facts of the case shows, that the petitioner/applicant made a reference of dispute on 14-10-2004 to the Superintending Engineer by invoking clause 29 of the agreement. It is mentioned in the impugned order, that by invoking clause 29 of the agreement the applicant/petitioner had to make a reference within 30 days from 04-08-2004, but that reference itself was delayed. Sub-section 1(b) of Section 7-B of the Act, 1983 very clearly provides that the petition to the Tribunal can be made within one year from the date of the communication of decision of final authority, who in this case, is Superintending Engineer. There is proviso, that if the final authority fails to decide the dispute within six months from the date of reference to it, then the petition to the Tribunal can be made within one year after expiry of that six months. The date of reference to final authority is 14-10-2004, therefore, the

failure of final authority which has to be reckoned on completion of six months from this date, that will be on or about 13<sup>th</sup> of April, 2005. According to this provision under Section 7-B of the Act, 1983 the petitioner/applicant had limitation to file petition before the Tribunal within one year from the date the failure of the Superintending Engineer was to be reckoned and that one year would be complete in the month of April, 2006. The present reference has been clearly filed on 31-01-2007 which is hopelessly barred by limitation.

7. After considering on the submissions, the facts present and the law, I am of this view that the learned Tribunal has not committed any error in holding that the reference petition is barred by limitation. However, the Tribunal proceeded to decide the case on merits which was not a necessity after the finding that the reference petition was barred by limitation. In the light of these things, it is held that this revision petition is totally without any substance. Learned Tribunal has exercised the jurisdiction properly in accordance with law by dismissing the reference petition of the applicant/petitioner. Hence, this civil revision is hereby dismissed.

Sd/-

**(Rajendra Chandra Singh Samant)**  
**Judge**