

M/s Shri Kamadgiri Construction Through Its Partner Gajendra Singh Parihar Vs The State Of Madhya Pradesh And Others

Court: Madhya Pradesh High Court (Jabalpur Bench)

Date of Decision: Jan. 30, 2025

Acts Referred: The Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 &mdash Section 7, 7B, 7B(I)

Hon'ble Judges: Sanjeev Sachdeva, J, Vinay Saraf, J

Bench: Division Bench

Advocate: Amit Kumar Singh, Piyush Jain

Final Decision: Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Sanjeev Sachdeva, J

Since the controversy involved in these petitions are identical, they are being heard and decided by this common order. For the sake of convenience,

the facts and grounds stated in Misc. Petition No.7073 of 2024 are taken into consideration.

2. Petitioner impugns order dated 12.08.2024, whereby the Reference Petition filed by the petitioner under Section 7 of Madhya Pradesh

Madhyastham Adhikaran Adhiniyam, 1983, has been dismissed solely on the ground of limitation.

3. Petitioner was awarded a works contract on 04.09.2012. Certain disputes arose in reference to the works contract and the contract was terminated

on 27.11.2014. The contract contains a clause for dispute redressal in clause 24, which reads as under:

24. Dispute Redressal System : If any dispute or| difference of any kind whatsoever shall arises in connection with or arising out of this

Contract or the execution of Works or maintenance of the Works thereunder, whether before its commencement or during the progress of

Works or after the termination, abandonment or breach of the Contract, it shall, in the first instance, be referred for settlement to the

competent authority described along with their powers in the Contract Data, above the rank of the Engineer. The competent authority shall,

within a period of forty five days after being requested in writing by the Contractor to do so, convey his decision to the Contractor. Such

decision in respect of every matter so referred shall, subject to review as hereinafter provided. be final and binding upon the Contractor. In

case the Works is already in progress, the Contractor shall proceed with the execution of the Works, including maintenance thereof,

pending receipt of the decision of the competent authority as aforesaid, with all due diligence.

4. In terms of clause 24, in cases any dispute a difference of any kind whatsoever arises in connection with or out of the contract or execution of

work or maintenance of work, whether before its commencement, during the progress or after termination. In the first instance, it is to be referred for

settlement to the competent authority and the competent authority was obliged to with, within a period of 45 days, after being requested in writing to

convey decision to the contractor and such decision shall be final and binding.

5. A protest petition was filed by the petitioner against the termination of contract, which was rejected by the competent authority on 23.02.2015. The

Tribunal has noticed that petitioner had filed an undated copy of the quantified claim addressed to the final authority under Clause 24 of the contract,

though there is no date of the receipt of quantified claim, a letter dated 23.07.2017 sent by the final authority mentions the date of submission of the

quantified claim as 20.12.2015 under Clause 24 of the contract and the same was pending on that date.

6. Reference may be had to Section 7-B of the Adhiniyam, 1983.

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 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.

7. Section 7-B(1) stipulates that the Tribunal shall not admit a reference petition unless the dispute is first referred for the decision of the final authority

under the terms of works contract; and the petition is filed within one year from the date of communication of the decision of the final authority.

8. Proviso to Section 7-B (1) (b) stipulates 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 a period of one year of expiry of the said period of six months. The limitation as prescribed under

Section 7-B (1) mandates that the petition has to be filed within one year from the date of communication of decision of the final authority. The final

authority has been given a period of six months to decide the dispute and in case the final authority fails to decide the dispute within a period of six

months, the reference has to be filed within a period of one year from the expiry of period of six months i.e. 18 months in total.

9. In the instant case, the quantified claim was submitted by the petitioner on 20.12.2015. The final authority had a period of six months to decide the

quantified claim i.e. up to 20.06.2016 and thereafter as the final authority failed to decide the dispute within a period of six months, petitioner had a

period of 12 months to file a reference petition i.e. on or before 20.06.2017. Admittedly, in the instant case, reference has been filed on 06.09.2017.

Consequently, the reference was not filed within a period of 18 months of the date of filing of quantified claim by the petitioner.

10. Reliance is placed by learned counsel for petitioner on clause 2-A of Section 7-B to contained that a reference petition can be filed within period

of three years from the date of which the works contract is terminated.

11. We are unable to accept the contention of learned counsel for the petitioner for the reason that Section 7-B(1) comes into play in case there are

specific terms and conditions providing Dispute Redressal Mechanism.

12. In the instant case, Clause 24 extracted hereinabove contains Dispute Redressal Mechanism i.e. need to approach the competent authority. In

case there is a stipulation in the contract then stipulation will come into play and accordingly Section 7-B(1) would be applicable. This is the stipulation

as laid down by a Special Bench of this Court in Sanjay Dubey Vs State of M.P (2012) 4 MPLJ 212, wherein the Special Bench has held as

under:

6.In view of aforesaid enunciation of law, it is apparent that in case where an agreement provides for clause like Clause 29, the

jurisdiction of the Tribunal can be invoked only after approaching the authority as provided under the terms of the work contract. Section

7-B(1) in express terms provides that the Tribunal shall not admit a reference petition unless the dispute is first referred for decision of the

final authority under the terms of the contract and that the petition to the Tribunal is made within one year from the date of communication

of the decision of the final authority. The proviso to sub-section (1) of Section 7-B provides that if the final authority fails to decide the

dispute within the 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 said period of six months. Thus, it is necessary for an person aggrieved to approach the authority under the terms of the work

contract before filing the reference petition. On fulfillment of the conditions mentioned in the terms of the works contract alone as provided

in section 7-B(1) of the Act, the jurisdiction of the Tribunal can be invoked by filing a reference petition.

13. In view of the preceding analysis, we proceed to state our conclusions as under:-

(i) Where the works contract contains a clause like Clause 29, the jurisdiction of the Tribunal can be invoked only after approaching the

Authority as provided under the terms of the works contract.

(ii) However, subject to final adjudication of the issue by the Supreme Court as to whether Tribunal under the Act is a Court or not, in case

where the dispute has arisen under an agreement prior to coming into force of Section 7-B(2- A) of the Act which does not contain a clause

like Clause 29, an aggrieved person has to approach the Tribunal within a period of three years from the date of accrual of cause of

action.

(iii) Where the works contract does not contain any provision like Clause 29 and the dispute has arisen after coming into force of Section 7-

B(2-A) of the Act, in such a case, sub-section (2-A) of Section 7-B of the Act will apply and an aggrieved person can approach the Tribunal

within a period of 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.

(iv) In a case where the agreement is rescinded, two questions may arise for consideration. Firstly, which party to the agreement is at fault

and consequently, claim for damages for breach of contract. Secondly, the claim with regard to payment of amount of the final bill before

recission of the contract in accordance with the rates prescribed in the agreement. In the first case, the limitation would commence from the

date when the agreement is rescinded whereas in the second case, the limitation would commence from the date when the final bill is

prepared.

(v) The dispute under Clause 29 has to be submitted within the time limit which has been prescribed in the clause. The dispute cannot be

submitted to the Authorities mentioned in Clause 29 of the Agreement within a period of three years as the provisions of Limitation Act do

not apply to the Authorities under the Agreement as they are not the Courts.

(vi) Clause 29 of the Agreement is not violative of Section 28(b) of the Indian Contract Act, 1872.

13. The Special Bench of this Court has held that in case there is clause like Clause 29 (in the case of S anjay Dubey akin to Clause 24, in the present

case), the jurisdiction of the Tribunal could be invoked only after approaching the authority provided under the terms of works contract. It is only in

case there is no clause akin to Clause 29 then the party would have a period of three years to approach the Tribunal by way of a Reference. In the

instant case, since there is a clause providing a Dispute Redressal Mechanism, the period of limitation would be six months + one year from the date

of making of the quantified claim.

14. In view of the matter, we are of the view that the Tribunal has correctly held that the subject Reference Petition having been filed beyond the

period of limitation on 06.09.2017 after the 18 months period got over on 20.06.2017.

15. We find no infirmity in the view taken by the Tribunal or any ground to interfere with the same.

16. In view of the above, we find no merit in the petition. The petition is consequently dismissed. No order as to costs.