



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**&**

**HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI**

**ON THE 25<sup>th</sup> OF NOVEMBER 2024**

**ARBITRATION REVISION No. 4 of 2017**

***M/S JMC TAHER ALI JOINT VENTURE THROUGH KANHIYA LAL  
SUTHAR***

*Versus*

***INDORE MUNICIPAL CORPORATION***

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**Appearance:**

*Shri S.C.Bagadiya learned Senior Advocate with Shri Rohit  
Saboo, counsel for the petitioner.*

*Shri Amol Shrivastava, learned counsel for the respondent.*

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***Reserved on* : *06.11.2024***

***Pronounced on* : *25.11.2024***

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**ORDER**

***Per: Justice Vivek Rusia***

This Arbitration Revision is filed under Section 19 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 by the petitioner being aggrieved by the final order dated 31.01.2017 whereby the Reference



Case No. 35/2014 has been dismissed by the M.P. Arbitration Tribunal, Bhopal on the ground of limitation.

**Facts of the case in brief:**

**02.** The respondent-Indore Municipal Corporation issued a Notice Inviting Tender (NIT) for the work of “Supplying, Laying, Jointing, Testing and Commissioning of Raw Water Pumping Main and all allied work, Lot No. 2 – Raw Water Pumping Main from Intake Well to DWTP (Contract Package – IMC1 1Lot 2) {hereinafter referred to as the 'works contract'}. The petitioner participated in the tender process and on 26.06.2007, the petitioner's bid was accepted being the lowest bidder. On 31.07.2007, an agreement was executed between the petitioner and respondent. Petitioner was given 18 months to complete the work starting from 31.07.2007 with the total cost of work Rs. 48,09,00,981.90/-. According to the petitioner, the work was completed on 25.05.2010 beyond the stipulated completion period of 18 months. Thereafter, a dispute arose between the parties in respect of the deduction of price escalation from running bills. Vide letter dated 18.10.2010, the petitioner protested the method of computation and deduction made from the running bills. Petitioner made a request for release of Rs. 64,86,000/- deducted by the respondent. On 03.03.2011, the dispute was referred to the Dispute Board constituted under Clause 20.2 of the General Conditions of Contract. Initially, on 07.04.2010, the dispute was limited to the extension of time but later on, all other disputes were included for adjudication before the Dispute Board. As per the terms and conditions of the contract, the Dispute Board ought to have decided the dispute



within 84 days i.e. on or before 25.05.2011, but the disputes were decided on 12.09.2012 except the dispute referred on 03.03.2011 regarding price escalation from the value of work done to the extent of mobilization advance. According to the petitioner, the said dispute remained unadjudicated and inconclusive. On 26.03.2013, final bill of the petitioner was paid by the respondent withholding the amount of price escalation claimed by the petitioner. Petitioner contended that no intimation was made regarding final decision given by the Dispute Board. Petitioner sent a request dated 27.05.2013 to the Commissioner, Indore Municipal Corporation for amicable settlement to resolve the only pending issue in respect of the amount of price escalation accrued on the gross value of work done amounting to Rs. 64,86,000/-. As per the petitioner, intimation in respect of the final adjudication by the Dispute Board dated 08.10.2012 was communicated by the respondent through a letter dated 07.06.2013.

**03.** Thereafter, petitioner approached the M.P.Arbitration Tribunal on 10.01.2014 by way of a reference petition registered as Reference Case No. 35/2014 under Section 7-A and 17 of the M.P.Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as 'the Adhiniyam'). After issuance of notice, the respondent appeared and filed preliminary objections under Sections 7-A and 7-B of the Adhiniyam seeking dismissal of the reference as time-barred. Thereafter written statement was filed by the respondent and affidavit in lieu of examination-in-chief. As per the petitioner, at the time of final hearing, the learned Arbitration Tribunal decided the issue of preliminary objection and dismissed the



reference as time-barred by relying on the judgment passed by the Coordinate Bench of this Court in the case of *Rajawat & Co. vs. State of Madhya Pradesh* reported in *2005 (4) MPLJ 16* and *Manoharlal Arora vs. State of Madhya Pradesh* reported in *2006 (1) MPJR 304*. Hence, this revision against impugned order dated 31.01.2017.

**04.** Shri S.C.Bagadiya, learned Senior Counsel for the petitioner submitted that the decision given by the Dispute Board under Clause 20.4 of the General Conditions of Contract cannot be said to be a final decision as there is further remedy of amicable settlement available under sub-Clause 20.5. The learned Tribunal has also failed to consider the sub-Clause 20.7 which provides that in the event of failure of a party to comply with the decision of the Dispute Board, the other party may, without prejudice to other rights, refer the failure to arbitration under sub-Clause 20.6 and in such case the sub-Clauses 20.4 and 20.5 shall not apply to this reference. It is further submitted that the learned Tribunal has not considered the judgment passed by the five Judges Bench (Special Bench) of this Court in the case of *Sanjay Dubey vs. State of M.P. & Anr. reported in 2012 (4) MPLJ 212*. Shri Bagadiya learned Senior Counsel further submitted that the issue of limitation is a mixed question of facts and law and the same is liable to be decided along with other issues after recording the evidence. Once the Tribunal has registered the reference, it cannot be dismissed under Section 7-B of the Adhinyam as a preliminary issue especially when the written statement had been filed and evidence has been brought on record by both the parties.



**05.** Shri Bagadiya, learned Senior Counsel further submitted that the learned Tribunal has wrongly placed reliance on the judgment passed in the case of *Rajawat (supra)* and *Manoharlal (supra)* as the same do not apply to the facts of the present case in which the Dispute Board cannot be said to be the final authority, whereas in the aforesaid cases pertaining to PWD contract in which the 'final authority' is clearly defined in PWD manual. As per the law laid down by this Court in the case of *Sanjay Dubey (supra)*, the period of limitation is three years as per sub-section (2-A) of Section 7-B of the Adhinyam. Therefore, the impugned order is liable to be set aside and the matter be remanded back to the Tribunal to be decided afresh.

**06.** Per contra, Shri Amol Shrivastav, learned counsel for the respondent contended that as per Clause 20 of the General Conditions of Contract, if the contractor considers himself to be entitled to an extension of time for completion and/or any additional payment under any Clause, he shall give notice to the Engineer within 28 days. Thereafter, the dispute(s) shall be referred to the Dispute Board for decision in accordance with sub-Clause 20.4. Under sub-Clause 20.4, it is mandatory for the Dispute Board to give its decision within a period of 84 days and such decision shall be binding on both the parties.

**07.** Learned counsel for the respondent further contended that as per Section 7-B of the Adhinyam, the Tribunal shall not admit a reference petition unless the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority. However, as per the proviso, 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. In the present case, the dispute was referred to the Dispute Board on 03.03.2011 and the period of 84 days expired on 25.05.2011. No decision was given by the Dispute Board within six months which expired on 04.09.2011. In such circumstances, the period of limitation for the petitioner to approach the Tribunal was within one year i.e. up to 05.09.2012. Therefore, the Tribunal has rightly dismissed the reference which was filed on 10.01.2014. In the case of *Rajawat (supra)* and *Manoharlal (supra)*, this Court took a view that in case of failure to give a decision within six months from the date of reference by the final authority, the limitation of one year shall commence from the date of expiry of said period of six months as per the proviso to sub-section (1) of Section 7-B of the Adhinyam and if reference is not filed within one year, then the same shall be treated as time-barred. The aforesaid view has been upheld by the Full Bench of this Court in the case of *Telecommunication Consultants India Ltd. vs, M.P.Rural Road Development Authority and Anr.* reported in *2019 (1) MPLJ 99*. Hence, no interference in the impugned order is called for and the petition is liable to be dismissed as finally contended by Shri Amol Shrivasta, counsel for the respondent.

**08.** We have heard the learned counsel for the parties and perused the record.

**09.** The work order was issued to the petitioner on 31.07.2007 with an 18-month stipulated period of completion. Petitioner commenced the



work on 31.01.2009 and the substantial work was completed on 25.05.2010. Thereafter, a representation was submitted for extension of time. After release of Running Bill No. 31, petitioner wrote a letter dated 18.10.2010 requesting Indore Municipal Corporation to release Rs. 64,86,000/- deducted on account of the repayment amount of mobilization amount from the gross amount of work done while calculating the price adjustment amount. The petitioner raised a dispute on 03.03.2012 which has been taken into consideration as the date of commencement of the proceeding by the one-member Dispute Board. But as per the contents of decision of the Dispute Board, the dispute between petitioner and respondent according to the agreement in question was received by the Dispute Board from the Project Manager vide letter dated 04.06.2012. Therefore, after receipt of such request, the Dispute Board commenced proceeding for adjudication of the dispute. The one-Member Dispute Board called upon the Project Manager to submit the desired information pertaining to the work along with documents. The information was submitted by the Project Manager on 02.07.2012. But the validity period of Dispute Board expired on 30.06.2012 which was extended from 20.07.2012 for a period of three months vide letter dated 13.07.2012 by the Project Manager. Thereafter, the Project Manager constituted a committee for the finalisation of the issue of time extension in various work packages. The decision of such committee was brought to the knowledge of the Dispute Board vide letter dated 16.08.2012. Thereafter, the Dispute Board passed final decision on 12.09.2012 without touching the issue with respect to the payment of price escalation of mobilization advance. After the aforesaid order, the respondent passed



final bill on 12.10.2022 which was paid to the petitioner on 26.03.2013. Petitioner sent a letter requesting for the final decision by way of an amicable settlement as per the terms of the agreement. Vide letter dated 07.06.2013, the Project Manager rejected the request and communicated the decision taken by the Dispute Board in respect of claim no. 5 dated 08.10.2012. Shri S.K.Shrivastav, Member, Dispute Board vide letter dated 08.10.2012 informed the Project Manager about the decision taken in respect of payment of escalation of mobilization advance. Therefore, after receipt of the letter dated 07.06.2013, the petitioner filed a reference petition before the M.P. Arbitration Tribunal, Bhopal on 10.01.2014.

**10.** Shri Amol Shrivastav, learned counsel for the respondent has argued that as per proviso to Section 7-B(1) of the Adhinyam, if the final authority fails to decide the dispute within a period of six months from the date of reference to it, petition to the tribunal shall be made within one year of the expiry of the said period of six months.

**11.** As per clause 20.4 of the General Conditions of the Contract, 84 days is given to the Dispute Board to take a decision but the same is extendable by the DB with the consent of the parties. The period of 84 days expired on 25.05.2011. Thereafter, 28 days expired for sending dissatisfaction. The six-month period as contemplated under the proviso to Section 7-B(1) of the Adhinyam expired on 04.09.2011 and finally thereafter the limitation of one expired on 05.09.2012. Therefore, in view of the law laid down in the case of *Rajawat (supra)* and *Manoharlal (supra)*, the Tribunal has dismissed the case being beyond limitation.





12. Clause 20.4 of the General Conditions of Contract is reproduced hereunder :

**"20.4 Obtaining** If a dispute (of any kind whatsoever) arises  
**Dispute Board's** between the Parties in connection with, or arising  
**Decision** out of, the Contract of the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause. For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both the Parties, the DB shall give its decision, which shall be reasoned and shall state that its given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or any arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to



commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both the Parties."

**13.** From perusal of the above, it is clear that Clause 20.4 provides 84 days to the DB to decide the dispute after receiving such reference, or within such other period as may be proposed by the DB and approved by both parties. In the present case, the dispute was referred to the Dispute Board on 04.06.2012 and the said period was extended by the Project Manager up to 13.07.2012. Thereafter, the Project Manager constituted a committee in respect of the extension of time which gave its decision on 16.08.2012 and thereafter, the Dispute Board passed a decision in respect of other claims on 12.09.2012 which is not subject matter of this revision.



After the so-called decision given on 08.10.2012, the final bill was paid to the petitioner on 26.06.2013 withholding the amount of Rs. 64,86,000/- which gave a cause of action for filing reference before the Tribunal.

**14.** The dispute was referred on 04.06.2012 and thereafter, the period was extended by the Project Manager after the period of 84 days up to 31.07.2012. The contract agreement provides for a period of 84 days for the Dispute Board to decide on a reference or within such other period as may be proposed by the Dispute Board and approved by both parties. The said decision shall be binding unless and until it shall be revised for an amicable settlement or arbitral award is passed. Clause 20.4 further provides a limitation period of 28 days for commencement of arbitration proceeding, if the decision is not given within 84 days. Section 7-B(1) of the Adhinyam prescribes another period of limitation to approach the Tribunal after exhausting the departmental remedy provided in the contract agreement. The Dispute Board gave its decision on 08.10.2012 during the extended period which was extended with the consent of the parties. The Tribunal did not consider the fact that the time to give a decision was extended by the Project Manager. Before the Dispute Board neither of the parties objected in respect of the expiry of limitation, therefore, there was deemed extension with the consent of the parties. The decision of the Dispute Board was communicated to the petitioner on 07.06.2013. The limitation period of one year shall commence either from 07.06.2013 as per Section 7-B(1)(a) or from the date of payment of the final bill to the petitioner on 26.03.2013 i.e. after



the rejection of the request for amicable settlement. In either situation, the petitioner approached the M.P. Arbitration Tribunal within limitation.

**15.** Even other wise the Project Manager extended the period up to 13.07.2012 which was accepted by the Dispute Board and if the dispute not was decided within six months by the Dispute Board then petitioner could approach the Tribunal within one year i.e. within one year and six month from 13.07.2012 and the petitioner filed the reference on 10.01.2014 within one year five months, hence within limitation.

**16.** In view of the foregoing discussion, the impugned order is liable to be and is hereby set aside. Matter is remanded back to the Tribunal for adjudication on merits.

**17.** With the aforesaid, the revision stands allowed and disposed of. Let the original record be sent back to the Tribunal.

**(VIVEK RUSIA)  
JUDGE**

**(BINOD KUMAR DWIVEDI)  
JUDGE**