

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No.	Civil Revision No.911 OF 2003
Parties Name	M/s. Rajpal Construction Co. Vs. The State of M.P. and Ors.
Date of order	11/01/2022
Bench Constituted	Division Bench: Justice Sheel Nagu & Justice Purushaindra Kumar Kaurav
Judgement Delivered by	Justice Purushaindra Kumar Kaurav
Whether approved for reporting	Yes
Name of counsel for parties	For Appellant: Shri S. Rao, Advocate For Respondent No.1: Shri A.P. Singh, Deputy Advocate General. For Respondent No.2 : Shri Anoop Nair , Advocate.
Law laid down	Held: 1. The jurisdiction of the High Court under section 19 of the Act of 1983 is limited to the grounds mentioned in Section 19(2) of the Act of 1983. 2. In absence of production of the works contract before the Tribunal, it cannot be decided whether, the parties had obligation to approach the final authority under the works contract.
Significant paragraph numbers	Para 9 to 12

ORDER

(Passed on 11 /01/2022)

This revision under Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as Act of 1983) takes exception to award dated 03.05.2002, passed by Madhya Pradesh Arbitration Tribunal, Bhopal, in reference Case No.48/1991, allowing the counter claim of the respondent.

2. Brief facts for adjudication of the present revision are that Item Rate Tender of the applicant for the work of providing Cement Concrete Lining in Bansagar, Common Water Carrier (CWC) from K. 16.00 to 16.50 Km. was accepted by the respondent vide letter dated 26.12.1983. The work-order was issued to the applicant on 30.01.1984. The cost of work was Rs.20.50 lacs.

3. According to the applicant, after the issuance of work-order, he mobilized the machinery and deployed local and outside labourers on the site. In spite of making all preliminary arrangements for starting the work, the department failed to perform its contractual obligations and commitments in time, resulting in avoidable delay which has caused immense loss to him in terms of escalation in prices and losing of opportunity to get some other work etc. The applicant stated that despite herculean efforts to complete the work, there was no proper redressal of his grievances under those circumstances, he had to withdraw from the site on 31.03.1990. He stated that on 7.8.1989, he submitted the quantified claims before the Superintendent Engineer. Since no response was received, the revised claims were submitted vide letter dated 04.02.1991 before the said authority. His total claims were for Rs.4,02,136/- under various heads. Since the same also did not evoke any response from the respondent, therefore, the applicant approached the Madhya Pradesh Tribunal under Section 7 of the Act, 1983.

4. The respondents in their reply to the petition have denied the claims of the applicant. According to respondents, the delay was due to failure and breaches on the part of the applicant, hence, the respondents could not be held responsible for any loss allegedly suffered by the contractor on that account. The applicant lacked sufficient resources to carry out the work. The applicant had five

contracts in hand in the relevant period and, therefore, it had become unmanageable for the applicant to carry out all the works as per the construction programme. The respondents submitted their counter claim of Rs.2,38,602/- under various heads.

5. The learned Arbitral Tribunal allowed both the parties to prove the claim and counter claim. On the basis of material available on record, all the claims raised by the applicant were rejected except the one of earnest money and security deposit which was of Rs.16,179/-. The learned Arbitral Tribunal, however, allowed the counter claim of Rs.2,69,908/- with certain adjustment. It is this part of the impugned award of allowing counter claim is under challenge at the instance of the applicant in the present proceedings.

6. We have heard learned counsel appearing for the parties and perused the record.

7. Learned counsel for the applicant has placed reliance on the decision of the Full Bench of this Court in the matter of *Ravikant Bansal, Engineers and Contractors Vs. Madhya Pradesh Audyogik Vikas Nigam Gwalior*¹ and the decision in the matter of *Dr. Surendranath Reddy Vs. State of Madhya Pradesh*². According to him the Arbitral Tribunal has erred in allowing the counter claim of the respondents. Unless the dispute is first referred to the final authority in terms of the works contract, the counter claim was not maintainable. He states that the Tribunal should only entertain a counter claim preferred by the opposite party, when the same is first referred to the final authority for final decision under the terms of the contract. No other point is argued/pressed by the learned counsel for the applicant.

1. 2006(2) MPLJ 299

2. Civil Revision No.1973/2000, order dated 21.09.2015

8. Learned counsel appearing for the respondent/State supported the impugned award, he states that the applicant is not entitled to challenge the impugned award only on the ground of technicality. He further submits that in the present case the work-order was issued on 30.01.1984 and the claim before the Arbitral Tribunal was filed on 22.03.1991. The agreement executed between the parties is not on record, neither the provisions of Section 7 B of the Act of 1983 were in existence when the dispute had arisen. He distinguishes the decision cited by the learned counsel appearing for the applicant on facts. He placed reliance on decisions in the matter of *P.K.Pande Vs. State of M.P.*³, *Narayan Prasad Lohia Vs. Nikunj Kumar Lohia and others*⁴, *Union of India Vs. Susaka Private Limited and others*⁵ and *ARCE Polymers Pvt. Ltd. Vs. M/s. Alphine Pharmaceuticals Pvt. Ltd. & ors*⁶.

9. It is true that a question of law can be raised at any stage of the proceedings, however, in the present case, the issue does not only relate to law but of facts also. It is to be determined whether there exists a clause in the agreement requiring the parties to first refer the dispute for the decision of the final authority under the terms of the works contract or not. If there is no such clause in the terms of the works contract, in that case, there does not arise any requirement of the decision of the final authority. In the instant case, the agreement in question is not on record. Hence, it is not possible for this court to determine whether the parties had any obligation to first approach the final authority under the works contract or not. Thus, in absence of any challenge by the applicant before the Arbitral Tribunal on this issue and non-availability of the works contract in question, the

3. 2000(1) MPLJ 367.

4. (2002) 3 SCC 572.

5. (2018) 2 SCC 182.

6. 2021 SCC Online 1169. Civil Appeal No.7372/21 dated 03.12.2021.

same cannot be allowed to be agitated in a revisional jurisdiction of this Court.

10. This Court is also conscious of the fact that the agreement in question was executed prior to coming into force of the provision of Section 7 B of the Act of 1983 and the dispute had also arisen before coming into force of this provision.

11. Besides the aforesaid discussion, it may also be noted that this court's jurisdiction under Section 19 of the Act of 1983 is limited to the grounds mentioned in Section 19(2) of the said Act. Having perused the award, we do not find that the award falls under any of the categories of Section 19(2) of the 1983 Act warranting our interference.

12. Taking into consideration overall facts and circumstances of the case and the material available on the record, we do not find any substance in the present revision and, therefore, the same is hereby dismissed. No order as to costs.

(SHEEL NAGU)
JUDGE

(PURUSHAINDR KUMAR KAURAV)
JUDGE

