



IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 5<sup>th</sup> OF FEBRUARY, 2026

CIVIL REVISION No. 175 of 2009

*MANAGING DIRECTOR*

*Versus*

*ANIL KUMAR SHIVHARE AND OTHERS*

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Appearance:

Shri Hare Krishna Upadhyaya - Advocate for petitioner.

Shri Navneesh Jauhari - Advocate for respondent (s).

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ORDER

*Per. Justice Pradeep Mittal*

1. This Civil Revision, filed under Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, is directed against the award dated 13.02.2009 passed by the Madhya Pradesh Arbitration Tribunal, Bhopal, in Reference Case No. 19/2005, whereby the appellant was directed to pay a sum of Rs.35,96,314/- to the petitioner along with interest @ 6.5% per annum from 15.11.2001.

2. The petitioner/Nigam floated a tender for construction of Dastkari Haat at Gwalior Trade Fair Complex, Gwalior, which was initially awarded to M/s Plant Builders, Gwalior. After execution of part of the work, the said contractor abandoned the project. Thereafter, respondent No.1 offered to complete the remaining work on the same tender rates and terms.



Accordingly, an agreement was executed between the petitioner and respondent No.1 on 23.10.1996 and a work order was issued on 24.10.1996, stipulating completion of the work, including handing over of at least 50 shops, by 15.12.1996.

3. The respondent No.1 commenced the work but failed to complete it within the stipulated time. Disputes arose about payment of the running account bills. The respondent No.1 submitted the 5th, 6th and 7th running account bills and claimed that an amount of Rs. 35,65,366/- remained outstanding after adjustment of payments made. Correspondence was exchanged between the parties, and the respondent No.1 treated the 7th running account bill as the final bill.

4. Earlier, the respondent No.1 had filed a civil suit, which came to be dismissed for want of prosecution on 15.03.1999. Subsequently, a notice under Section 80 of the CPC was issued on 26.12.2000. Thereafter, the respondent No.1 raised a dispute before the authority under Clause 29 of the agreement and ultimately filed a reference petition before the Madhya Pradesh Arbitration Tribunal, which was registered as Reference Case No.19/2005. The petitioner raised an objection regarding limitation under Section 7-B of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983.

5. After recording evidence and hearing the parties, the learned Arbitration Tribunal allowed the claim of respondent No.1 in its entirety and passed the impugned award dated 13.02.2009, directing payment of the claimed amount with interest.



6. Learned counsel for the petitioner submitted that the impugned award passed by the Arbitration Tribunal is *ex facie* illegal and unsustainable, as the reference petition filed by respondent No.1 was clearly barred by limitation. It was contended that the Tribunal committed a grave error of law in entertaining a time-barred reference petition and thereby exercised jurisdiction not vested in it under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983.

7. It was argued that the cause of action, if any, arose on 22.02.1998 when the pre-final measurements were recorded and accepted by respondent No.1. However, the respondent approached the Final Authority only on 08.08.2001 and thereafter filed the reference petition after an inordinate delay of nearly nine years, which was patently beyond the permissible period of limitation. Even the claim before the Final Authority was barred by several months. Despite specific objection raised under Section 7-B of the Adhiniyam of 1983, the Tribunal failed to consider the issue of limitation in its proper perspective.

8. Learned counsel further submitted that the Tribunal erred in treating the alleged completion certificate dated 22.12.1999 as the starting point of limitation. Reliance was placed upon the judgment of this Court in M/s Serman India Road Makers Private Limited, wherein it has been categorically held that the date of completion of work cannot be treated as the date of cause of action for the purpose of arbitration. Since Clause 29 of the agreement does not prescribe any time limit for approaching departmental authorities, the limitation of three years would apply, which



stood clearly exhausted in the present case.

9. It was also submitted that the contract stipulated completion of the work within six months from the date of issuance of work order and no sanctioned extension of time was ever granted. The measurements recorded on 22.02.1998 and the disputes relating to wrongful claims, including transportation of soil, clearly demonstrated that the claim itself was disputed and could not have been entertained after such prolonged delay.

10. On these grounds, learned counsel for the petitioner prayed that the impugned award dated 13.02.2009 be set aside as being barred by limitation and contrary to settled principles of law.

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

Following issue is raised for the consideration in this revision.

(a) *Whether the tribunal wrongly considered the issue of the limitation of filing reference as the reference was within limitation ?*

12. Learned Tribunal has considered the date of completion of work, i.e., 20/12/1999, as the date of cause of action and observed that there is no limitation in the contract for filing the claim under Clause 29 of the agreement. Hence, in the light of the case of M/s Serman India Road Makers Private Limited (2005 Arb. WLJ 583), the limitation would be three years from the date 20/12/1999, and therefore, the claim under Clause 29 is within limitation.

13. The third member of the Tribunal has opined a conflicting view that the claim is time barred. He opined that the final bill was prepared on



22/2/1998 and continuity of work, as admitted by the petitioner, was till 20/3/1998, the cause of arbitration had arisen after one month, on 20/4/1998. Thus, in view of the decision in M/s Serman India Road Makers Private Limited, the limitation for the quantified claim would have been preferred within three years, up to 21/2/2001 or 19/4/2001.

14. The petitioner and the respondent have heavily relied upon the judgment in M/s Serman India Road Makers Private Limited (2005 Arb. WLJ 583) and have claimed that the limitation for filing a quantified claim before the finalizing authority under Clause 29 of the agreement is three years. The aforesaid case has been considered by a Larger Bench of this Court, which opined that the limitation for filing a quantified claim is governed by the conditions of the agreement and not by the period of three years. For reference, the relevant paragraph of the judgment of the Full Court is reproduced hereunder

“It is profitable to reproduce the provision of Section 7 of the Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990.”

*7-A. Reference Petition.—(1) Every reference petition shall include whole of the claim which the party is entitled to make in respect of the works contract till the filing of the reference petition but no claims arising out of any other works contract shall be joined in such a reference petition.*

*(2) Where a party omits to refer or intentionally relinquishes any claim or any portion of his claim, he shall not afterwards be entitled to refer in respect of such claim or portion of claim so omitted or relinquished.*

*(3) Notwithstanding anything contained in sub-section (1) or subsection (2)*



*disputes relating to works contract which may arise after filing of the reference petition may be entertained as and when they arise, subject to such conditions as may be prescribed.*

**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.*

15. In the case of Sanjay Dubey v. State of M.P. and another, reported in 2012 (4) M.P.L.J. 212 while dealing with the interplay between contractual dispute resolution clauses and statutory limitation periods, particularly concerning the jurisdiction of the Madhya Pradesh Arbitration Tribunal, the key principle established is that if a contract includes a dispute resolution clause, the parties must adhere to the stipulated procedures and timeframes, such as approaching an authority within a specified time, before they can approach the Tribunal. 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.

16. In Sanjay Dubey (supra) and Telecommunications Consultants India Ltd Versus Madhya Pradesh Rural Road Development Authority And another 2019 1 MPLJ 99, full court of this high court has given an answer regarding the limitation of the reference as under:-

*Having opined thus, the conclusions can be summarised as under:-*

- (i) The proceedings before the Arbitral Tribunal are the proceedings before the Court in terms of Judgment of the Supreme Court in Anshuman Shukla-I (supra);*
- (ii) Once time has begun nothing stops it. The said principle is not only a principle in terms of Section 9 of the Limitation Act, 1963 but is also a*



*principle in Common Law and is applicable to proceedings under the Act as it is just and equitable;*

*(iii) If an aggrieved person has not availed the remedy within the period of limitation, his right to sue stands extinguished. Such right does not get revived on account of the decision of the final authority after six months;*

*(iv) The reference can be sought within one year of the decision of the final Authority but if final Authority fails to decide the reference within six months, then such reference is deemed to be rejected and confers cause of action to an aggrieved person to seek reference from the statutory Arbitral Tribunal. The findings in Rajawat's case (supra) are not contrary to the Judgment in Sanjay Dubey's case (supra) and therefore, continue to be good law whereas Ram Niwas Shukla's case (supra) is not a good law and is overruled.”*

17. It is well settled that 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. Clause 29 of the Agreement is not violative of Section 28(b) of the Indian Contract Act, 1872. The Special Bench of this Court has held that in case there is clause like Clause 29 (in the case of Sanjay 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 years from the date of making of the quantified claim.

18. In present case it is not disputed that the reference is within jurisdiction from the filing of the claim before the finalizing authority under clause 29 of the agreement. It is also not disputed that no limitation has been provided in clause 29 of the agreement to filing the quantified claim. There is only a dispute that the claim was within three year had been filed or not before the finalizing authority ?

19. It is evident from the record the 7th pre final bill was prepared on 22/02/1998. The claim was submitted before the competent authority on 08/08/2001, which was not decided, and the reference was filed on 05/02/2003. From the date of filing of the claim, the limitation for filing the reference expired on 07/02/2003. The 7th bill was not paid for a long time; therefore, the respondent submitted a letter Ex-P/35 stating that the 7th bill would be treated as the final bill and requesting payment of the bill amount to the respondent. The completion certificate Ex-P/32 stated that the work was completed on 20/12/1999, and the cause of action arose on 20/12/1999. On the date of 20/12/1999 the limitation for filing claim under clause 29 is three year which would be expired on 20/12/2003 and claim was filed on 8/8/2003 which is under limitation.

20. The petitioner raised an objection that from the date 22/02/1998 was the date for filing claim under Clause 29 and claim should have been submitted before 22/02/2001, but it was filed on 08/08/2001, which is time-



barred, hence, the entire claim was time-barred.

21. The respondent objected that the cause of action arose by letter dated 13/07/2001, Ex-P/35, hence, his claim under Clause 29 was within limitation, and the reference was filed within 18 months on 05/02/2003, therefore, the objection does not sustain.

22. The Executive Engineer made a request on 16/03/1998, Ex-P/12, for payment of work done by the contractor. Thereafter, the contractor made requests for payment by letter dated 20/03/1998, Ex-P/13, letters dated 04/05/1998, Ex-P/14 and Ex-P/15, letter dated 31/05/2001, Ex-P/16, and letter dated 31/07/2001, Ex-P/35. However, the petitioner never denied his claim.

23. It was settled in Sanjay Dubey case that, 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 rescission 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.

24. Therefore we hold that if dispute arises regarding the payment of amount of the final bill before rescission of the contract in accordance with the rates prescribed in the agreement then limitation for filing claim before the finalizing authority will start from the date of preparing final bill. In this case no final bill was prepared, on the date 13/07/2001 the



respondent submitted a letter Ex-P/35 stating that the 7th bill would be treated as the final bill and requesting payment of the bill amount to the respondent. Hence the date of final bill was 13/7/2001 and after that cause of action was accrued for filing the claim. Therefore, the claim of respondent was within time and no illegality found to hold that the claim is within limitation.

25. Having examined the matter in detail, we are of the opinion that there are jurisdictional errors, acts of misconduct or events of invalidity or impropriety in the conduct of proceedings by the Arbitrator in passing the award, For this reason, this court not inclined to exercising its revisional jurisdiction under Section 19(2) by interfering with the award passed by the Arbitral Tribunal.

26. For the reasons stated above, the Civil revision arising out in 19/2005 of award dated 13/02/2009 passed by Madhya Pradesh Arbitration Tribunal Bhopal, is accordingly Civil Revision disallowed and confirmed the award passed by the tribunal. Parties shall bear their own costs. The Record of tribunal be sent back with the copy of order with in two week. If any Interim stay order passed, is hereby vacated.

27. It is made clear that on 30/7/09, a direction was given to the petitioner to deposit the entire amount before the Tribunal within a period of 30 days. Upon deposit of the aforesaid amount, the Tribunal was to invest the said amount in a beneficial interest-bearing deposit scheme of a nationalized bank, initially for a period of six months, extendable in case no directions were issued by this Court. On 10/3/14, it was directed that the amount be



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deposited before the Registrar General of the High Court in place of the Tribunal. On 11/4/14, the petitioner deposited Rs. 35,96,314 in CCD No. R.No.40/651. The petitioner neither informed the Court nor the respondent, and it was also not brought to the knowledge of the office of the High Court, that the said amount was to be invested in a beneficial interest-bearing deposit scheme of a nationalized bank. Therefore, the respondent unnecessarily borne the loss of interest. Hence, it amounts to non-payment of the decratal amount to the respondent, and therefore, the petitioner is liable to pay decratal amount with interest as per the award within 30 days from the date of this order. The petitioner is at liberty to withdraw the amount deposited by him in CCD.

(VIVEK RUSIA)  
JUDGE

(PRADEEP MITTAL)  
JUDGE

Praveen