HIGH COURT OF MADHYA PRADESH: JABALPUR

(Full Bench)

AR No. 02/2016

Telecommunications Consultants India Ltd. ..….....PETITIONER

Versus

Madhya Pradesh Rural Road Development Authority
And another …….RESPONDENTS

CORAM:

Hon'ble Mr. Justice Hemant Gupta, Chief Justice
Hon'ble Mr. Justice Vijay Kumar Shukla, Judge
Hon'ble Mr. Justice Sanjay Dwivedi, Judge

Appearance:

Mr. Siddharth Gulatee and Mr. Shekhar Sharma, Advocates for the petitioner.

Mr. Shashank Shekhar Dugwekar and Mr. Amit Kumar Singh, Advocate for the respondents.

Mr Amit Seth, Government Advocate for the State.

Whether Approved for Reporting: Yes

Law Laid Down:

- Any dispute relating to works-contract as defined under Section 2(d) of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (for short "the Act") is required to be referred for the decision of the final Authority in terms of clause 29 of the agreement in question. In terms of clause (b) of Sub-section (1) of Section 7-B of the Act, the reference is required to be made within one year from the date of communication of the decision of the final Authority whereas, in terms of the proviso to Sub-section (1) of Section 7-B of the Act, the final Authority has six months' time to take a decision.

- The law of limitation is a statutory right and therefore, each word of the statute has to be given its natural meaning. Therefore, the proviso to Sub-section (1) of

Section 7-B of the Act would be applicable in a situation where final Authority has not given any decision within six months from the date of reference to it.

- The proviso to Sub-section (1) of Section 7-B of the Act is explicit granting six months' time to the final Authority to decide the matter and thereafter right has been conferred on the aggrieved person to seek reference. If the decision is not taken within six months, it amounts to deemed rejection of the claim and thus, cause of action to an aggrieved person is complete if the final Authority fails to decide the dispute within six months. The period of limitation in terms of Sub-section (1)(b) of Section 7-B of the Act is one year from the date of decision of the final Authority but in case the final Authority is unable to decide within six months, the cause of action will be complete to an aggrieved person to invoke the jurisdiction of the Tribunal within one year after the expiry of six months.

- Once the period of limitation under the Act starts, it would not stand revived by subsequent decision of the final Authority after the expiry of limitation in terms of Sub-section (1)(b) of Section 7-B of the Act even if the Arbitral Tribunal is not a court to which Section 9 of the Limitation Act would be applicable but because, the principle is based upon common law and is just and equitable as well. - *(2006) 12 SCC 709 (State of Punjab v. Balkaran Singh), 1970 Lab IC 701 (Jaswant Sugar Mills Ltd. v. Naubat)* and *AIR 1968 Mad. 161 (Joseph Carlos v. Stanislaus Costa)* - ***Relied.***

- A reference which has become barred by limitation in view of the statutory provision, cannot be revived. In other words, if an aggrieved person has failed to seek reference within one year of the final decision of the Authority or after deemed decision of the final Authority within six months of making a reference, the remedy to seek resolution of dispute stands exhausted.

- Conferring cause of action on an aggrieved person to invoke the jurisdiction of the Tribunal as and when the final Authority decides the matter is doing violence to the provision of Sub-section (1)(b) of Section 7-B of the Act. The Legislative provision cannot be set at naught by such a queer reasoning. The Division Bench Judgment in **Ram Niwas Shukla v. State of M.P., 2006 (4) M.P.L.J. 34** does not lay down good law and is thus, ***overruled***.

Significant Paragraph Nos.: 2 to 5, 12 to 15, 19, 21, 22, 26, 31 to 39

Reserved on: 20.09.2018

O R D E R

(**Pronounced on this 3rd day of October, 2018**)

Per : Hemant Gupta, Chief Justice:

The present revision is placed before us in pursuance to an order passed by a Division Bench of this Court on 10.08.2018 finding divergent views of the two Division Bench Judgments of this Court rendered in **Ram Niwas Shukla v. State of M.P., 2006 (4) M.P.L.J. 34** and **Rajawat and Company. v. State of M.P., 2005 (4) M.P.L.J. 16**. The Bench has framed the following question for the opinion of the Larger Bench:-

> "Whether the proviso to Sub-section (1) of Section 7-B of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 would be applicable in a situation where the Final Authority has not given any decision within six months?"

2. The issue is purely legal and depends upon the statutory provisions. The Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (for short "the Act") was published in the M.P. Gazette (Extraordinary) dated 12.10.1983 for providing alternative mode of dispute resolution in respect of works-contract granted by State or Public Undertakings. The Act has undergone major changes when M.P. Madhyastham Adhikaran (Amendment) Act No.9 of 1990 was published in State Gazette on 24.04.1990. By virtue of the Amendment, the limitation for raising reference was prescribed, which was not in the original Act as also Sub-section (4) and (5) were added in Section 7 of the Act, Section 7-A and Section 7-B were also added apart from substituting Section 2(d) defining "dispute" and 2(i) defining "works-contract".

3. Subsequently, there was another amendment in the Act. Sub-section (1) of Section 7-B has been substituted by M.P. Act No.36 of 1995 whereas Sub-section (2-A) was initially inserted by M.P. Act No.19 of 2003 and then substituted by M.P. Act No.1 of 2004 and then again substituted by M.P. Act No.19 of 2005. The relevant provisions of the Act, after the amendment in 1990 and the provisions as up-to-date, are given in juxtaposition, as under:-

Relevant Provisions of the Act after amendment in 1990	**Relevant Provisions of the Act Up-to-date**
7. Reference to Tribunal. - (1) Either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal. *** *** (4) Every reference shall be accompanied by such documents or other evidence and by such other fees for service or execution of processes as may be prescribed. (5) On receipt of the reference under sub-section (1), if the Tribunal is satisfied that the reference is a fit case for adjudication, it may admit the reference but where the Tribunal is not so satisfied it may summarily reject the reference after recording reasons therefor. *** *** **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 sub-section (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,-	**7-B. Limitation.-*** [(1) The Tribunal shall not admit a reference petition unless-
(a) in a case where a decision has been made in connection with a dispute under the terms of the agreement for a works-contract by the final authority under the agreement unless the reference petition is made within one year from the date of communication of such decision, if any;	(a) the dispute is first referred for the decision of the final authority under the terms of the works contract; and
(b) in a case where a dispute has been referred to the final authority under the agreement and such authority fails to decide it within a period of six months from the date of reference to it unless the reference petition is made within one year from the date of expiry of the said period of six months.	(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 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 the 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) 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. *Sub-Section 1 substituted *by Madhya Pradesh Act No.36 of 1995 w.e.f. 15.12.1995* **(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. ***Sub-section (2-A) as substituted by M.P. Act No.19 of 2005 (29.8.2005).*

4. The provisions of Section 7-B of the Act, as amended in the year 1995 came up for consideration before a Division Bench of Gwalior Bench of this Court in **Rajawat and Company**'s case (supra). The Court held that in terms of Sub-section (1)(b) of Section 7-B of the Act, where the final Authority in terms of an agreement fails to decide a dispute raised within a period of six months from the date of reference to it, the reference petition is to be made within one year of the expiry of the said period of six months. The Division Bench of this Court relied upon an earlier Division Bench Judgment rendered in **M/s Virendra Construction & Engineering Com., Mungaoli, Distt. Guna v. State of M.P. and others** (Civil Revision No.136/1996 decided on 27.02.2004). The Court in **Rajawat and Company**'s case (supra), held as under:-

> "**6**. …Language of section 7-B of the Adhiniyam is clear and specific. It provides that no reference shall be admitted by the Tribunal where a decision has been made in connection with a dispute under the terms of agreement for a works contract by the final authority under the agreement unless the reference petition is made within one year from the date of communication of such decision, if any. This section further provides that where a dispute has been referred to the final authority under the agreement and such authority fails to decide it within a period of six months from the date of dispute unless the reference petition is made within one year from the date of expiry of said period of six months. Thus, reference petition can be filed after the dispute is referred to final authority and, if the final authority fails to decide the dispute with a period of six months then the period of limitation shall start running on expiry of six months from the date of dispute and period of limitation is one year.

7. In the present case, dispute was submitted to the Superintending Engineer on 18-5-1991. It was not adjudicated within a period of six months. Therefore, cause of action started running with effect from 18-11-1991 and the dispute ought to have been filed on or before 18-11-1991. Claimant continued to wait for the decision and is claiming benefit of final orders passed by the Superintending Engineer dated 22-7-1994.

Question is whether the contractor will be entitled for fresh period of limitation with effect from 22-7-1994. This question came up for consideration before this Court in the case of *M/s Virendra Construction & Engineering Com., Mungaoli, Distt. Guna vs. State of M. P. and others* (*Civil Revision No. 136/1996* decided by Division Bench of this Court on 27-2-2004) and after interpreting section 7-B of the *Adhiniyam* that the period of limitation shall commence on the expiry of six months from the date of reference of dispute to the final authority. The language of the section is plain and simple. From bare reading of section 7-B it is clear that section 7-B(1)(a) and 7-B(1)(b) are not independent of each other. Petitioner cannot claim benefit of limitation from the date of final order which is not passed within stipulated period of six months. Period of limitation is covered by section 7-B(1)(b) of the Adhiniyam and if the reference petition is barred by limitation, then said dispute is not maintainable. Though clause 29 of the agreement provides that the dispute should be preferred within thirty days, but since the dispute has been entertained and not decided within six months, the contractor could not claim benefit of limitation after some final orders are passed on 22-7-1994. Claim should have been filed on expiry of period of limitation within eighteen months from 18-5-1991. In the circumstances, petition for reference filed before the Arbitration Tribunal was clearly barred by limitation and the Tribunal committed an error in adjudicating the dispute."

5. The Judgments of Division Bench of this Court in **Rajawat and Company**'s case (supra) and **M/s Virendra Construction** (supra) were not brought to the notice of the Court in **Ram Niwas Shukla**'s case (supra). The Court held that if the petitioner finds that the final Authority is in the process of deciding the matter even after a period of six months or takes a risk even

after a period of six months and awaits for the decision of the final Authority, he shall be entitled to file reference petition under Clause (b), but in case the final Authority does not take any decision even thereafter, the petitioner shall not be entitled to file petition after expiry of one year from the said period of six months. The Court in **Ram Niwas Shukla**'s case (supra) held as under:-

> "**9**. Section 7-B(1) of the Act firstly provides 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 the works contract. This makes a mandatory obligations on the part of a person who is willing to file a reference application to the Tribunal to firstly refer the dispute to the final authority. After enactment of section 7-B(1)(a) of the Act, 1983, it is now the requirement of the law to the applicant to firstly refer the matter as required under Clause (a) of sub-section (1). Thereafter Clause (b) of sub-section (1) provides that the petition to the Tribunal shall be made within one year from the date of communication of the decision of the final authority, meaning thereby the petitioner is entitled to file a reference petition within one year from the date of communication of the decision of the final authority. The provision further provide that if the final authority fails to decide the dispute within a period of 6 months from the date of reference to it, the petition to the Tribunal shall be made within a year of the expiry of the period of 6 months, but it does not provide that in case the final authority decides the matter after a period of 6 months, there shall be a bar to file reference application thereafter. If the petitioner takes a risk and awaits the decision of the final authority and final authority after a period of 6 months decides the matter, the petitioner if dissatisfied with the final decision is entitled to file a petition to the Tribunal within a year from the date of communication of the decision under Clause (b) of Sub-section (1). Section 7-B also does not provide that the final authority shall decide the matter within a period of 6 months and not thereafter. The final authority has not been restricted to take final decision within a period of 6 months, then how the petitioner can be restricted to file a petition after the decision of the final authority even if it is after six months from the date of reference to it. The legislation in its wisdom has not provided any limitation to the final authority to decide the mater or

> final authority has not been debarred from making a final decision after a period of 6 months then the petitioner can not be put to any restriction and is entitled to file the reference application within one year from the date of the decision of the final authority. A harmonious construction of the aforesaid provision is that the petitioner after awaiting 6 months from the date of a reference to the final authority shall be entitled to file reference petition to the Tribunal within one year of the expiry of the said period of 6 months. If the petitioner finds that the final authority is in the process of deciding the matter even after a period of 6 months or takes a risk even after a period of six months and awaits for the decision of the final authority, he shall be entitled to file reference petition under Clause (b), but in case the final authority does not take any decision even thereafter, the petitioner shall not be entitled to file petition after expiry of one year from the said period of six months.
>
> **10**. The applicant who approached to the final authority by filing dispute and awaited decision of the final authority, though he may lost limitation after expiry of one year of the said period of six months but in case, when the dispute is decided by the aforesaid authority after the aforesaid period of six months a fresh cause of action arises in favour of the petitioner, and he can file reference petition before the Tribunal as per the limitation provided in Section 7-B(1)(b). Considering aforesaid, the Tribunal committed an error in dismissing the reference application as barred by time."

6. Thus, it was held that an aggrieved person can seek reference within one year of the decision of the final Authority irrespective of the fact that no decision has been given by the Authority within six months. Therefore, in view of the conflict between the two Benches of this Court, the matter has been placed before us to examine the question raised.

7. Learned counsel for the petitioner contends that the proviso can be treated to be an exception to the substantive provision of Sub-section (1)(b) of Section 7-B of the Act. It is argued that the "dispute" as defined under Section 2(d) of the Act, is required to be referred to the final Authority. Since there is no provision mandating the final Authority to take a decision, the

failure of the final Authority to decide the dispute within six months will not non-suit an aggrieved person. It is submitted that for a valid reference under Section 7-A of the Act, the dispute has to be finally decided by an Authority in terms of an agreement. Therefore, if the dispute is not decided, the petitioner cannot be barred from raising reference after the decision of the final Authority. It is also argued that Sub-section (2-A) of Section 7-B of the Act starts with a *non obstante* clause, which gives outer period of three years for raising dispute before a statutory Arbitral Tribunal, therefore, the provisions of Section (2-A) will be preferred as against the provisions of Sub-section (1) of Section 7-B of the Act.

8. Learned counsel for the petitioner pointed out that a five Judge Bench Judgment of this Court rendered in **Sanjay Dubey v. State of M.P. and another, 2012 (4) M.P.L.J. 212** deals with the period of limitation for reference but the question raised in the present petition that as to whether a petitioner would have a cause of action to seek reference after the decision of final Authority beyond expiry of six months, was not raised or decided.

9. Learned counsel for the petitioner relies upon Judgments of the Supreme Court rendered in the cases of **Commissioner of Income Tax, Mysore, Travancore, Cochin and Coorg, Bangalore etc. v. The Indo Mercantile Bank Ltd. Etc., AIR 1959 SC 713**; **Dwarka Prasad v. Dwarka Das Saraf, (1976) 1 SCC 128**; **Madhu Gopal v. VI Additional District Judge and others, (1988) 4 SCC 644; Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and others, (1991) 3 SCC 442**; **A.N. Sehgal and others v. Raje Ram Sheoran and others, 1992 Supp (1) SCC 304**; and **Kerala State Housing Board and others v. Ramapriya**

Hotels (P) Ltd. and others (1994) 5 SCC 672 to contend that all the provisions of the statute are to be harmoniously read and the proviso, sometimes, is an exception to the substantive provision.

10. On the other hand, learned counsel for the State relies upon a Larger Bench Judgment of this Court in **Sanjay Dubey**'s case (supra) to contend that it has been held that Sub-section (1) would be applicable if the agreement has a clause similar to clause 29, which was subject matter of consideration whereas Sub-section (2-A) would be applicable where there is no same or similar clause as Clause 29 in the agreement in question. Therefore, both the provisions i.e. Sub-section (1) and Section (2-A) operate in different fields. It has been further held that if the final Authority fails to decide within six months, an aggrieved person has to seek a reference within one year of the expiry of six months. The reliance is placed upon a Division Bench Judgment of this Court rendered in **Aggyaram and Co. v. M.P. Public Works Department and others**, **2008 (2) M.P.L.J. 390** wherein **Ram Niwas Shukla**'s case (supra) was distinguished. It was held that the Authority was not approached within time prescribed in the agreement; therefore, any decision rendered would not give fresh cause of action. It was also held that once limitation has commenced and comes to end, it would not revive by rendering a decision on an incompetent reference. A relevant excerpt from the decision in **Aggyaram**'s case (supra) is reproduced as under:-

> "**8**……...After the amendment made by the Act No.1 of 2004, position has been made clear, However, in the instant case, authority as per agreement were not approached within time the limitation had come to an end as provided under section 7B(1)(a) and section 7B(1)(b) much

> before the decision was rendered by the Superintending Engineer. As the Superintending Engineer was not approached within the time stipulated under Clause 29 of the agreement, any decision rendered by him on an invalid reference was not to give rise to fresh cause of action. It is also settled proposition of law that once limitation has commenced and comes to an end, it would not be revived by rendering a decision on an incompetent reference. In *Ram Niwas Shukla* (supra), the relevant clause of the agreement providing for raising of dispute was not the question agitated and limitation under section 7-B of Adhiniyam depends upon approaching the final authority as per the agreement. Thus, no assistance can be drawn by the decision of this court in *Ram Niwas Shukla* (supra)."

11. Learned counsel for the State also refers to an order passed by a Division Bench of this Court in **Civil Revision No.2148/1999** (**M/s A.M.S.K. Group v. State of M.P. and another**) on 09.02.2017 wherein an order passed by the five members of the Arbitral Tribunal under the Act on 21.07.1999 in Reference Case No.17/1998 (M/s A.M.S.K. Group v. State of M.P. and another) was upheld. The order passed by this Court in **Civil Revision No.2148/1999** (supra) reads as under:-

> "……...As far as the present case is concerned, the facts go to show that petitioner submitted a quantified claim to the tune of Rs.17,85,397/- to the Executive Engineer on 12.07.1995, a copy of this was also given to the Superintendent Engineer, the Final Authority under the Agreement. The Executive Engineer failed to decide the claim, but the final authority, namely the Superintendent Engineer after issuing notice and fixing a date on 16.07.1996 rejected the claim on 26.02.1997 and claiming this to be a cut-off date from which period of limitation as contemplated under Section 7-B(1)(b) of the M.P. Madhyastham Adhikaran Adhiniyam, 1983, the claim was filed, which has been rejected. The Tribunal in para 27 dealt with the matter on following manner, which reads as under:
>
> > *"27. In Ref. Case No.17/98, the admitted facts are that the petitioner submitted his quantified claims to Executive Engineer on 12.7.95 (Annexure 38), its copy was given to Superintendent*

Engineer, the final authority. Executive Engineer failed to decide petitioner's claims. Petitioner filed appeal before the final authority (Superintendent Engineer) on 16.7.96 (Annexure -44). No doubt, Superintendent Engineer fixed 26.2.97 as the date of hearing after a lapse of six months from 16.7.96, nevertheless in view of our above findings this date has no relevance, thereafter Superintendent Engineer decided petitioner's appeal on 20.3.97. In our considered view, the petitioner does not got a fresh period of limitation of one year from 20.3.97 under clause (b) of sub-sec (1) of Sec. 7-B. The period of limitation for presentation of such a referent petition started from 16.1.97 and expired on 16.1.98, while this reference petition is filed on 6.3.98, Thus, we hold that this reference petition is time barred."

The tribunal is right in holding that the period prescribed for presentation of reference petition started on 16.01.1997 i.e. six months after claim was raised before the Superintendent Engineer on 16.07.1996, when the six months period after presentation of claim before the Final Authority, namely the Superintendent Engineer was made on 16.7.1996 and the one year period available would lapse on 16.1.98 and, therefore, the revision petition filed on 6.3.1998 was beyond limitation. The contention of the petitioner that the period should commence from the date of rejection of the claim by the Superintendent Engineer on 26.2.1997 cannot be accepted, as the Division Bench of this Court has interpreted the provisions of Section 7-B of the Adhiniyam in the case of Rajawat and Company Vs. State of M.P. and Others, 2005(4) MPLJ 16 and it has been held in para 7 of the aforesaid judgment that the benefit of limitation from the final order cannot be claimed, if final order is not passed within six months, as stipulated in Clause 7-B proviso thereto. Admittedly the claim in question was filed beyond the prescribed period of limitation and in the light of law laid down in the case of Rajawat (supra) we see no error in the order passed by the learned tribunal warranting reconsideration the appeal is, therefore, dismissed."

12. The question: as to whether, the "Tribunal" under the Act is a "Court" or not, came for consideration before the Supreme Court in **State of Madhya Pradesh and another v. Anshuman Shukla, (2008) 7 SCC 487**

(for short "**Anshuman Shukla-I**"). It was held that the fact that the Authorities under the Act are empowered to examine witnesses after administering oath to them, clearly shows that they are "Court" within the meaning of the Evidence Act, 1872. The Court held as under:-

> **"14.** The Act is a special Act. It provided for compulsory arbitration. It provides for a reference. The Tribunal has the power of rejecting the reference at the threshold. It provides for a special limitation. It fixes a time-limit for passing an award. Section 14 of the Act provides that proceeding and the award can be challenged under special circumstances. Section 17, as noticed hereinbefore, provides for finality of the award, notwithstanding anything to the contrary contained in any other law relating to arbitration.
>
> **15.** The High Court exercises a limited power. The revisional power conferred upon the High Court is akin to Section 115 of the Code of Civil Procedure. It has the power to decide as to whether the Tribunal has misconducted itself or the proceedings or has made an award which is invalid in law or has been improperly procured by any party to the proceedings.
>
> **16.** As noticed heretobefore the proviso appended to Section 19 was added by M.P. Act 19 of 2005. Prior thereto the High Court, even at the instance of a party, despite expiry of the period of limitation could have exercised its suo motu jurisdiction.
>
> **17.** It is trite law that provisions of the Limitation Act, 1963 shall apply to a court. It has no application in regard to a tribunal or persona designata. There exists a distinction between a court and the Tribunal. The very fact that the authorities under the Act are empowered to examine witnesses after administering oath to them clearly shows that they are "court" within the meaning of the Evidence Act. It is relevant to refer to the definition of "court" as contained in Section 3 of the Evidence Act which reads as follows:
>
> > "3. *Interpretation clause*.— * * *
> >
> > '*Court*'.—'Court' includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence."

18. The Tribunal has been confirmed (*sic* conferred with) various powers. There, therefore, in our opinion, cannot be any doubt whatsoever that the authorities under the Act are also "courts" within the meaning of the provisions of the Evidence Act.

19. The definition of "courts" under the Evidence Act is not exhaustive (see *Empress* v. *Ashootosh Chuckerbutty, ILR (1879-80) 4 Cal 483)*. Although the said definition is for the purpose of the said Act alone, all authorities must be held to be courts within the meaning of the said provision who are legally authorised to take evidence. The word "court" under the said Act has come up for consideration at different times under the different statutes.

*** *** ***

27. A court for the purpose of application of the Limitation Act should ordinarily be subordinate to the High Court. The High Court exercises its jurisdiction over the subordinate courts inter alia in terms of Section 115 of the Code of Civil Procedure. While the High Court exercises its revisional jurisdiction, it for all intent and purport exercises an appellate jurisdiction. (See *Shankar Ramchandra Abhyankar* v. *Krishnaji Dattatreya Bapat, (1969) 2 SCC 74*).

28. The provisions of the Act referred to hereinbefore clearly postulate that the State of Madhya Pradesh has created a separate forum for the purpose of determination of disputes arising inter alia out of the works contract. The Tribunal is not one which can be said to be a domestic tribunal. The Members of the Tribunal are not nominated by the parties. The disputants do not have any control over their appointment. The Tribunal may reject a reference at the threshold. It has the power to summon records. It has the power to record evidence. Its functions are not limited to one Bench. The Chairman of the Tribunal can refer the disputes to another Bench. Its decision is final. It can award costs. It can award interests. The finality of the decision is fortified by a legal fiction created by making an award a decree of a civil court. It is executable as a decree of a civil court. The award of the Arbitral Tribunal is not subject to the provisions of the Arbitration Act, 1940 and the Arbitration and Conciliation Act, 1996. The provisions of the said Acts have no application.

29. We are, therefore, of the opinion that the Tribunal for all intent and purport is a court. The Tribunal has to determine a lis. There are two

> parties before it. Its proceedings are judicial proceedings subject to the revisional order which may be passed by the High Court."

13. The Supreme Court held that the "Tribunal" is a "Court", but, referred the matter to Larger Bench to decide the question: as to whether, the case of **Nagarpalika Parishad, Morena v. Agrawal Construction Co.** [SLP (C) No.21349 of 2003 decided on 27.08.2004), was correctly decided. The Larger Bench considered the question raised in a Judgment rendered in **State of Madhya Pradesh and another v. Anshuman Shukla, (2014) 10 SCC 814** (for short "**Anshuman Shukla-II**"). The Court examined the question: whether the provisions of the Limitation Act are applicable to the provisions of the Act. The Court held as under:-

> **"32.** Section 19 of the 1983 Act does not contain any express rider on the power of the High Court to entertain an application for revision after the expiry of the prescribed period of three months. On the contrary, the High Court is conferred with suo motu power, to call for the record of an award at any time. It cannot, therefore, be said that the legislative intent was to exclude the applicability of Section 5 of the Limitation Act to Section 19 of the 1983 Act.
>
> **33.** In our opinion, it is unnecessary to delve into the question whether the Arbitral Tribunal constituted under the Act is a court or not for answering the issue in the present case as the delay in filing the revision has occurred before the High Court, and not the Arbitral Tribunal.
>
> **34.** In light of the reasons recorded above, we are of the opinion that the case of *Nagar Palika Parishad, Morena (supra)* was decided erroneously. Section 5 of the Limitation Act is applicable to Section 19 of the 1983 Act. No express exclusion has been incorporated therein, and there is neither any evidence to suggest that the legislative intent was to bar the application of Section 5 of the Limitation Act on Section 19 of the 1983 Act. The cases which were relied upon to dismiss the special leave petition, namely, *Nasiruddin and others v. Sita Ram Agarwal (2003) 2 SCC 577* and *Union of India v. Popular Construction Co. (2001) 8 SCC 470* can be distinguished both in terms of the facts as

> well as the law applicable, and thus, have no bearing on the facts of the present case".

14. Thus, it is beyond doubt that the "Tribunal" is a "Court" as it has been held that Section 19 of the Act does not contain any express rider on the power of the High Court to entertain an application for revision after expiry of the prescribed period of three months. It cannot, therefore, be said that the legislative intent was to exclude the applicability of Section 5 of the Limitation Act to Section 19 of the Act.

15. The two principles in respect of applicability of law of limitation need to be stated first. It is well settled that the time does not stop to run once it has started to run. Reference may be made to a Judgment of the Supreme Court rendered in the case of **State of Punjab and Another v. Balkaran Singh, (2006) 12 SCC 709**.

16. A Division Bench of Madras High Court in a Judgment reported as **Joseph Carlos v. Stanislaus Costa and others**, **AIR 1968 Mad. 161** held that once time has begun to run, nothing stops it. The Court held as under:-

> **"20.** Therefore, when the cause of action of the suit arose, viz., when the trust properties were alienated by the first defendant to the tenth defendant, plaintiff's father was in existence and he was a proper person capable of suing to set aside the sale, and limitation did begin to run from the date of sale. When once time has begun to run owing to the right to sue having accrued to the person who was not labouring under any legal disability, the subsequent disability of himself or of his son or other representative is not a ground of exemption from the operation of the ordinary rule. To quote the maxim of Banning; it is almost universal rule in the law of limitation that when once time has begun to run, nothing stops it....."

17. A Division Bench of Allahabad High Court in a Judgment reported as **Jaswant Sugar Mills Ltd., Meerut v. Naubat, 1970 Lab IC**

701 examined the argument that Section 9 of the Limitation Act is applicable only to court and not to the proceedings under the Payment of Wages Act. It was held that the principle that "once limitation starts running, it cannot be stopped on account of the disability or inability of the parties" is not only principle contained in Section 9 of the Limitation Act, but, is also a common law principle. The Court held as under:-

> **"9.** The applicant's contention that once time starts to run, it cannot be stopped is based on the provisions of Section 9 of the Indian Limitation Act, 1908, which provides:
>
> > "9. Where once time has begun to run, no subsequent disability or inability to sue stops it:
> >
> > Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues."
>
> It has been urged on behalf of the employees that Section 9 is applicable only to Courts and the authority under the Payment of Wages Act is not a Court. It is unnecessary to go into this controversy, as apart from Section 9, the Common law also recognises the principle that once limitation starts running, it cannot be stopped on account of the disability or inability of the parties. Disability or inability is something personal to the plaintiff or the applicant. Disability has been defined as want of qualification to act and inability as want of physical power to act; but lack or absence of the cause of action is neither disability nor, inability. Section 9 as well as the principle of continuous running of time contemplate cases where the cause of action continues to exist. They cannot apply to cases where the cause of action is cancelled by subsequent events....."

18. Thus, once the period of limitation under the Act has started, it would not stand revived by subsequent decision of the final Authority after the expiry of limitation in terms of Sub-section (1)(b) of Section 7-B of the Act. Even if the Arbitral Tribunal is not a Court to which Section 9 of the

Limitation Act would be applicable but such principle based upon common law and is just and equitable as well, would be applicable to the proceedings under the Act.

19. The second principle of law of limitation is that it is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. One aspect relates to the extinguishment of the right if a claim or action is not commenced with a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. The Supreme Court in **Bharat Barrel and Drum Mfg. Co. Ltd. and another v. The Employees State Insurance Corporation, (1971) 2 SCC 860,** held as under:-

> **"7.** The manner of this approach may be open to the criticism of having over-simplified the distinction, but nonetheless this will enable us to grasp the essential requisites of each of the concepts which at any rate "has been found to be a workable concept to point out the real and valid difference between the rules in which stability is of prime importance and those in which flexibility is a more important value. *American Jurisprudence,* Vol. 51 (Second Edn.), 605. Keeping these basic assumptions in view it will be appropriate to examine whether the topic of limitation belongs to the Branch of procedural law or is outside it. If it is a part of the procedure whether the entire topic is covered by it or only a part of it and if so what part of it and the tests for ascertaining them. The law of limitation appertains to remedies because the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of that right. Apart from Legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore any time fixed by the statute is necessarily to be arbitrary. A statute prescribing limitation however does not confer a right of action nor speaking

generally does not confer on a person a right to relief which has been barred by efflux of time prescribed by the law. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asseting them in a court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dermientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. While this is so there are two aspects of the statutes of limitation the one concerns the extinguishment of the right if a claim or action is not commenced with a particular time and the other merely bare the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute, prescribing the limitation extinguishes the right, it affects substantive rights while that which purely pertains to the commencement of action without touching the right is said to be procedural. According to Salmond the law of procedure is that branch of the law of actions which governs the process of litigation, both civil and criminal. “All the residue” he says “is substantive law, and relation not to the process of litigation but to its purposes and subject-matter”. It may be stated that much water has flown under the bridges since the original English theory justifying a statute of limitation on the ground that a debt long overdue was presumed to have been paid and discharged or that such statutes are merely procedural. Historically there was a period when substantive law was inextricably intermixed with procedure; at a later period procedural law seems to have reigned supreme when forms of action ruled. In the words of Maine “so great is the ascendancy of the Law of Actions in the infancy of Courts of Justice, that substantive law has at first the look of being gradually secreted in the interstices of procedure” *Maine, Early Law and Custom, 389*. Even after the forms of action were abolished Maitland in his Equity was still able to say “The forms of action we have buried but they still rule us from their graves”, to which Salmond

> added "In their life they were powers of evil and even in death they have not wholly ceased from troubling" 21 LQR 43. Oliver Wendal Holmes had however observed in "The Common Law" "wherever we trace a leading doctrine of substantive law far enough back, we are likely to find some forgotten circumstance of procedure at its source". It does not therefore appear that the statement that substantive law determines rights and procedural law deals with remedies is wholly valid, for neither the entire law of remedies belongs to procedure nor are rights merely confined to substantive law, because as already noticed rights are hidden even "in the interstices of procedure". There is therefore no clear cut division between the two."
>
> (Emphasis supplied)

20. The Supreme Court in the Judgment reported as **T. Kaliamurthi and another v. Five Gori Thaikkal Wakf and others, (2008) 9 SCC 306** was considering the limitation of filing a suit under the Wakf Act, after the expiry of limitation under the Limitation Act. The Court held that once it is held that the suit for possession of the suit properties filed at the instance of the Wakf were barred under the Limitation Act, 1908, the necessary corollary would be to hold that the right of the Wakf to the suit properties stood extinguished in view of Section 27 of the Limitation Act, 1963 and, therefore, when Section 107 of the Wakf Act came into force, it could not revive the extinguished rights. The Court held as under:-

> **"42.** From the above, it is clear that the right of action, which is barred by limitation at the time when the new Act comes into force, cannot be revived by the change in the law subsequently. In *Ram Murti* v. *Puran Singh,* AIR 1963 Pun 393, it has been held that Section 107 renders the Limitation Act, 1963 inapplicable to suits for possession of immovable properties comprised in any wakf or any interest therein but the right of a person to institute such a suit which is already barred at the commencement of this Act cannot revive. It was further held that his title is extinguished and a good title is acquired by the person in possession and that where the title of the true owner is extinguished in

favour of the wrongdoer, it is not revived by that person again getting into possession. There is no remitter to the old title.

**** ****

50. In the present case, as noted hereinearlier, the trial court had held that the suits were barred under Article 134-B of the Limitation Act, 1908 and, therefore, since the suits were barred under the 1908 Act, in view of Section 31 of the Limitation Act, 1963, Article 96 of the 1963 Act could not be applied. Section 31 was overlooked by the first appellate court. Therefore, in our view, when the right stood extinguished, Section 107 cannot have the effect of reviving the extinguished right/claim. This principle has also been followed in *Karnataka Steel & Wire Products* v. *Kohinoor Rolling Shutters & Engg. Works (2003) 1 SCC 76*.

51. The learned counsel for the respondents argued before us that in the present case, only the remedy was barred but the right was not extinguished and, therefore, no reliance can be placed on the authorities cited above. We are not inclined to accept this submission of the learned counsel for the respondents. It is true that there is a difference between extinguishing a right and barring a remedy. The difference has been explained by this Court in *Prem Singh* v. *Birbal (2006) 5 SCC 353*, wherein this Court at paras 11 and 12 observed as under: (SCC pp. 357-58)

> "*11*. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.
>
> *12*. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out or is raised by the defendant or not, in the event a suit is found to be barred by limitation, every

> suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed."
>
> **52.** The difference between the two aspects viz. barring of remedy and extinguishment of right can also be seen in the decision of this Court in *Bharat Barrel & Drum Mfg. Co. Ltd.* v. *ESI Corpn (1971) 2 SCC 860.*
>
> **53.** In view of the above authorities, we are of the view that in the present case, once it is held that the suit for possession of the suit properties filed at the instance of the Wakf were barred under the Limitation Act, 1908, the necessary corollary would be to hold that the right of the Wakf to the suit properties stood extinguished in view of Section 27 of the Limitation Act, 1963 and, therefore, when Section 107 came into force, it could not revive the extinguished rights. The authorities relied upon by the learned counsel for the respondents in this regard in *Sree Bank Ltd.* v. *Sarkar Dutt Roy & Co.* AIR 1966 SC 1953, *Dhannalal* v. *D.P. Vijayvargiya* (1996) 4 SCC 652, *New India Assurance Co. Ltd.* v. *C. Padma* (2003) 7 SCC 713 and *S. Gopal Reddy* v. *State of A.P.* (1996) 4 SCC 596 have no application to the facts of the case because in these cases, unlike the present case, there was no extinguishment of the rights."

21. As per the said judgements, if an aggrieved person has not availed the remedy within the period of limitation, the right to sue stands extinguished. Such right is not revived even if there is an enactment like the Wakf Act providing different period of limitation. Thus, an extinguished right to sue cannot be revived.

22. In the light of the aforesaid two well established principles of law of limitation, the question that needs to be examined is: whether an aggrieved person can seek reference after expiry of one year after giving six months to decide the reference raised before it.

23. The celebrated Author - Justice G.P. Singh in his book, Principles of Statutory Interpretation, 13th Edition, 2012 has explained that the normal function of a proviso is to except something out of the enactment or to

qualify something enacted therein which but for the proviso would be within the purview of the enactment.

24. The Constitution Bench in **Dwarka Prasad**'s case (supra) held that the rulings and text books bearing on statutory construction have assigned many functions for provisos but the proviso is to be interpreted having regard to the text and context of a statute. The Court held as under:-

> "**16**. There is some validity in this submission but if, on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case. In a country where factories and industries may still be in the developmental stage, it is not unusual to come across several such units which may not have costly machinery or plant or fittings and superficially consist of bare buildings plus minor fixtures. For example, a beedi factory or handicraft or carpentry unit — a few tools, some small contrivances or collection of materials housed in a building, will superficially look like a mere "accommodation" but actually be a humming factory or business with a goodwill as business, with a prosperous reputation and a name among the business community and customers. Its value is qua business, although it has a habitation or building to accommodate it. The personality of the thing let out is a going concern or enterprise, not a lifeless edifice. The Legislature, quite conceivably, thought that a marginal, yet substantial, class of buildings, with minimal equipments may still be good businesses and did not require protection as in the case of ordinary building tenancies. So, to dispel confusion from this region and to exclude what seemingly might be leases only of buildings but in truth might be leases of businesses, the Legislature introduced the exclusionary proviso.
>
> **17**. While rulings and text books bearing on statutory construction have assigned many functions for provisos, we have to be selective, having regard to the text and context of a statute. Nothing is gained by extensive references to luminous classics or supportive case-law. Having explained the approach we make to the specific "proviso" situation in Section 2(*a*) of the Act, what strikes us as meaningful here is that the Legislature by the amending Act clarified what was implicit earlier and

> expressly carved out what otherwise might be mistakenly covered by the main definition. The proviso does not, in this case, expand, by implication, the protected area of building tenancies to embrace "business" leases."

25. In **Tribhovandas Haribhai Tamboli**'s case (supra), the Supreme Court held that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. The relevant paragraph from the said decision reads as under:-

> **"6**. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect."

26. The reading of the Judgments referred to by the learned counsel for the petitioner is that text and context of a statute will be determinative of

scope of proviso. The scope of the proviso is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.

27. The Division Bench of this Court in the case of **M/s Sermen (India) Road Makers Pvt. Ltd. v. State of M.P. and others, 2005 (3) M.P.H.T. 292** held that the limitation period is three years from the date on which the works-contract is terminated, foreclosed, abandoned, comes to an end or when a dispute arises during the pendency of the works-contract. The Court held as under:-

> "**17**. We have referred to the same as Mr. Rao and Mr. N. Johri have submitted that sometimes the final bill is settled after five years and, therefore, it should be the date of settlement of the final bill otherwise there would be chaos and that would give rise to injustice. In this submission, we really do not perceive any merit. By way of limitation, period provided is three years from the date on which the work contract is terminated, foreclosed, abandoned comes to an end or when a dispute arises during the pendency of the works contract. We do not intend to dilate on the aforesaid provision as it is not necessary in the case at hand. We have noted it. We have fixed the period of three years for approaching the Final Authority from the date of accrual of cause of arbitration and when a cause of arbitration would arise would be dependent upon various factors in a given case. We hasten to clarify that we have dealt with the unamended provision and only referred to the amended provision as it was brought to our notice."

28. The five Judge Bench in **Sanjay Dubey**'s case (supra) was examining the orders of the statutory Arbitral Tribunal which has dismissed

the reference petitions on the ground that petitions have been presented beyond the period of three years from the date of accrual of cause of action. The matter was placed before the Larger Bench in view of the reservation of the Full Bench on 27.10.2009 in **Civil Revision No.1343/2003** (**Sanjay Dubey v. State of M.P. and others) (**for short **"Sanjay Dubey-I")** with the earlier Full Bench Judgment of this Court in **State of M.P. and another v. Kamal Kishore Sharma, 2006 (2) M.P.L.J. (FB) 113**. In **Sanjay Dubey**'s case the Court *inter alia* held as under:-

> "**6**. The Tribunal gets the jurisdiction to adjudicate the dispute under the Act, but for the Act, it would have no jurisdiction to adjudicate the dispute in relation to works contract. It is well settled in law that where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. Wherever jurisdiction is given to a Court by an Act of Legislature and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with, the jurisdiction does not arise. [See: *Mohammed Hasnuddin* v. *State of Maharashtra*, (1979) 2 SCC 572]. 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 fulfilment 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.

7. There may be cases where the works contract may not contain any provision for dispute redressal like the one provided in Clause 29 of the Agreement. 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 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. It is pertinent to note that section 7-B(2-A) as it exists today has come into force w.e.f. 29-8-2005. The aforesaid provisions does not have retrospective operation as the language employed therein does not even remotely suggest so, as has been held by the Full Bench in its order dated 27-10-2009.

*** *** ***

9. The first part of Clause 29 of the agreement provides for a dispute resolution mechanism. It provides that the dispute has to be referred to the Superintending Engineer in writing for decision within a period of 30 days from such occurrence. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of 60 days of such request. If the Superintending Engineer fails to give his instructions in writing within a period of 60 days or mutually agreed time after being requested of, an aggrieved party may file an appeal to the Chief Engineer within 30 days and shall give his decision within a period of 90 days. Thereafter, an aggrieved person can approach the Tribunal within one year from the date of communication of decision of the final authority. 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 period of six months. The contention made on behalf of the applicants that in view of sub-section (2-A) of section 7-B, an aggrieved person can approach the Tribunal directly without approaching the authorities mentioned in Clause 29 of the agreement, cannot be accepted as the same would obliterate the provisions of sub-section (1) of section 7- B and would render the same otiose as it is well settled legal proposition that it is

incumbent on the Court to avoid a construction if reasonably permissible on the language which would render part of the statute devoid of any meaning or application. [See: *Rao Shiv Bahadur Singh* v. *State of U.P.*, AIR 1953 SC 394]

*** *** ***

11. It was also submitted on behalf of the petitioners that the time limit prescribed in Clause 29 is not mandatory and therefore, the same need not be adhered to strictly. We are not inclined to accept the aforesaid submission as non-submission of timely claims is likely to result in disappearance or destruction of the evidence. A person cannot be permitted to approach the authority at any time which he chooses. It is also relevant to mention here that the applicants have entered into an agreement with the State Government with open eyes and they cannot be permitted now to contend that it is not necessary to adhere to the time schedule provided for redressal of their grievances under clause 29 of the agreement. Similarly, the contention that aggrieved person can approach the Superintending Engineer as well as the Chief Engineer within a period of three years as provided in Article 113 of the Limitation Act also cannot be accepted as it is well settled in law that provisions of Limitation Act apply to Courts only and the authorities under the agreement are admittedly not the Courts. [See: *State of Jharkhand* v. *Shivam Coke Industries, Dhanbad and others*, (2011) 8 SCC 656). For yet another reason, this submission cannot be accepted, as the Division Bench decision in *Sermen India Road Makers Pvt. Ltd.* v. *State of M.P.*, 2005 (3) MPHT 292 has been overruled by the Full Bench vide order dated 27-10-2009 and it has been held that it would not be correct to say that the claimant can raise the dispute within three years before the final authority from the date of accrual of cause of action.

*** *** ***

29. The conclusions of the Larger Bench in **Sanjay Dubey**'s case (supra) read as under:-

"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.

*** *** ***

(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."

30. The case of **Sanjay Dubey** (supra) was decided on 27.10.2009. At that time, the matter was pending decision of the Larger Bench in view of the orders passed by the Supreme Court in **Anshuman Shukla-I** (supra). In **Anshuman Shuka-I** (supra) the finding recorded is that the Arbitral Tribunal is a Court and therefore, the Limitation Act would be applicable. In **Anshuman Shukla-II** (supra), three Judge Bench has not reversed such finding but overruled the Judgment in **Nagarpalika Parishad, Morena**'s case (**supra**) and also held that the Limitation Act would be applicable to a revision under Section 19 of the Act before this Court. Thus, the finding of

the Larger Bench that Limitation Act does not apply to Authorities under the agreement no longer holds good in view of the Judgment of the Supreme Court in **Anshuman Shukla-I** (supra).

31. The Larger Bench in **Sanjay Dubey's** case (supra) held that the Judgment including in the cases of **M/s Sermen (India) Road Makers** (supra) and **Rajawat and Company** (supra) stand overruled insofar as they contain any observation or findings which are inconsistent with the conclusions referred to above. But, the attention of the Court was not drawn to the Judgment in **Ram Niwas Shukla**'s case (supra). We find that the conclusions drawn by the Larger Bench are not inconsistent with the Judgment of the Division Bench of this Court in **M/s Sermen (India) Road Makers**'s case (**supra**) and **Rajawat and Company**'s case (supra). We may state that the only difference in **Rajwant and Company'**s case and **Ram Niwas Shukla**'s case is that in the earlier case, the period to decide reference by the Final Authority was part of Section 7B(1)(b) of the Act, whereas, such provision has been made in two parts, one relating to period of limitation to seek reference after the decision of the Final Authority and the proviso giving six months' time to the Final Authority to decide the claim of an aggrieved person.

32. The Sub-section (1)(b) of Section 7-B of the Act is to the effect that the reference to the Tribunal is to be made within one year from the date of communication of the decision to the final Authority. The proviso limits the time for the final Authority to decide the dispute within a period of six months. Therefore, if the final Authority does not decide the dispute within

six months, the cause of action is complete to an aggrieved person to approach the Tribunal, which he can do within one year. The proviso is, thus, an exception to sub-clause (b) limiting the time limit for the final Authority to decide the dispute.

33. The law of limitation cannot be left on uncertainties as to whenever the final Authority decides; the cause of action will arise to an aggrieved person to seek reference. The law of limitation is a statutory right and therefore, each word of the statute has to be given its natural meaning. The proviso is explicit granting six months' time to the final Authority to decide the matter and thereafter right has been conferred on the aggrieved person to seek reference. If the decision is not taken within six months, it amounts to deemed rejection of the claim and thus, cause of action to an aggrieved person is complete if the final Authority fails to decide the dispute within six months. The Judgment of this Court in **Ram Niwas Shukla**'s case (supra) is based upon 'ifs' and 'buts', which is not the basis of determining the period of limitation to avail a legal remedy. In **Ram Niwas Shukla**'s case (supra) it has been held that when the final Authority has not been restricted to take a final decision within six months then how the petitioner can be restricted to file a petition after decision of the final Authority, is misreading of the provision of law. The period of limitation in terms of Sub-section (1)(b) of Section 7-B of the Act is one year from the date of decision of the final Authority but in case the final Authority is unable to decide within six months, the cause of action will be complete to an aggrieved person to invoke the jurisdiction of the Tribunal within one year thereafter.

34. Still further, conferring cause of action on an aggrieved person to invoke the jurisdiction of the Tribunal as and when the final Authority decides the matter is doing violence to the provision of Sub-section (1)(b) of Section 7-B of the Act. The Legislative provision cannot be set at naught by such a queer reasoning. The Larger Bench in **Sanjay Dubey**'s case (supra) has explained the scope of Sub-section (2-A) of Section 7-B of the Act to hold that such provision would be applicable only in respect of agreement where there is no clause similar to clause 29 of the agreement. In the case in hand, there is clause 29, which is similar to clause 29 under consideration in **Sanjay Dubey**'s case (supra). There is, thus, Sub-section 1(b) of Section 7-B of the Act, which will determine the period of limitation for making a reference.

35. The Judgment **in Ram Niwas Shukla**'s case (supra) was distinguished by another Division Bench of this Court in **Aggyaram**'s case (supra) wherein it has been held that once limitation has commenced and come to an end, it would not be revived by rendering a decision on an incompetent reference. Such is the view of the Supreme Court as well that a reference which has become barred by limitation in view of the statutory provision, cannot be revived. In other words, if an aggrieved person has failed to seek reference within one year of the final decision of the Authority or after deemed decision of the final Authority within six months of making a reference, the remedy to seek resolution of dispute stands exhausted. Therefore, we hold that proviso to Sub-section (1) of Section 7-B of the Act would be applicable in a situation where final Authority has not given any decision within six months from the date of reference to it. We find that the

Judgment in **Ram Niwas Shukla**'s case (supra) does not lay down good law and is, thus, overruled.

36. The word "dispute" as defined under Section 2(d) of the Act means "claim of ascertained money valued at Rs.50,000/- or more, arising out of the execution or non-execution of a works-contract or part thereof". Such expression has been examined by a Full Bench of this Court in **Shri Gouri Ganesh Shri Balaji Constructions "C" Class Contractor v. Executive Engineer, PWD, (2018) 3 MPLJ 163** wherein Judgment of the Supreme Court in **Civil Appeal No.4017/2018 (M/s Gangotri Enterprises Ltd. vs. Madhya Pradesh Road Development Corporation and Another**) decided on 18.04.2018 was referred to, wherein it has been held that "ascertained money" means "ascertained money arrived at by the Arbitral Tribunal at the time of adjudication of the claim". The relevant extract of the Full Bench decision reads as under:-

> **"**46. In fact, in Civil Appeal No.4017/2018 (M/s Gangotri Enterprises Ltd. vs. Madhya Pradesh Road Development Corporation and Another) decided on 18.04.2018, the Supreme Court held that the expression "ascertained money" as used in Section 2(1)(d) of the State Act will include not only the amount already ascertained but the amount, which may be ascertained during the proceedings on the basis of the claims/counter claims of the parties. The relevant extract reads as under:-
>
> > "2. Our attention has been drawn to the definition of "dispute" under Section 2(d) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 ("1983 Act") which is as follows:
> >
> > > "'dispute' means claim of ascertained money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof."

> 3. We consider it appropriate to clarify that the expression "ascertained money" as used in Section 2(d) of the 1983 Act will include not only the amount already ascertained but the amount which may be ascertained during the proceedings on the basis of claims/counter claims of the parties."

> Therefore, in addition to the consequential relief which an aggrieved person has to claim in a reference under Section 7-A of the State Act even the expression "ascertained money" includes the amount which may be ascertained during the proceedings on the basis of the claims/counter claims of the parties. The said order concludes that ascertained amount is not only the claim raised but also the amount determined."

37. Therefore, any dispute in respect of works-contract as defined under Section 2(d) of the Act is required to be referred for the decision of the final Authority in terms of clause 29 of the agreement in question. In terms of clause (b) of Sub-section (1) of Section 7-B of the Act, the reference is required to be made within one year from the date of communication of the decision of the final Authority. The proviso gives six months to the final Authority to take a decision. If the final Authority fails to take a decision within six months, it amounts to deemed rejection of the reference of an aggrieved person. Thus, cause of action crystallises on the expiry of six months from the date of reference to it.

38. Thus, the question framed is answered that the proviso to Sub-section (1) of Section 7-B of the Act would be applicable even if the final Authority has not given any decision within six months as the failure to decide within six months leads to deemed rejection of the claim.

39. 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.

40. In view of the above opinion, the matter be placed before the Bench in accordance with the Roster for final disposal.

(Hemant Gupta)	**(Vijay Kumar Shukla)**	**(Sanjay Dwivedi)**
Chief Justice	**Judge**	**Judge**

S/