

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

**BEFORE**

**HON'BLE SHRI JUSTICE SHEEL NAGU**

**&**

**HON'BLE SHRI JUSTICE VINAY SARAF**

**ON THE 12<sup>th</sup> OF JANUARY, 2024**

**MISC. PETITION No. 6406 of 2022**

**BETWEEN:-**

**M.P. MADHYA KSHETRA VIDYUT VITRAN COMPANY LTD. (A GOVT. OF M.P. UNDERTAKING) THROUGH CHANDRAKANT PAWAR S/O LATE SHRI JAGDISH PAWAR AGED ABOUT 58 YEARS GENERAL MANAGER O AND M REGISTERED OFFICE AT NISHTHA PARISAR BIJALI NAGAR GOVINDPURA BHOPAL THROUGH R/O M.P. MADHYA KSHETRA VIDYUT VITRAN COMPANY LTD. SEHORE (MADHYA PRADESH)**

**....PETITIONER**

***(BY SHRI ABHISHEK ARJARIA-ADVOCATE)***

**AND**

**PSR AMRCL (JV) THROUGH HAVING ITS REGISTERED OFFICE AT PLOT NO. 88 SARI KONDA MANSION GROUND FLOOR PHASE III, KAMALAPURI COLONY HYDERABAD (TELANGANA)**

**....RESPONDENTS**

***(NONE)***

**MISC. PETITION No. 6411 of 2022**

**BETWEEN:-**

**M.P. MADHYA KSHETRA VIDYUT VITRAN COMPANY LTD. (A GOVT. OF M.P. UNDERTAKING) THROUGH CHANDRAKANT PAWAR S/O LATE SHRI JAGDISH PAWAR AGED ABOUT 58 YEARS GENERAL MANAGER O AND M HAVING ITS REGISTERED OFFICE AT NISHTHA PARISAR BIJALI NAGR GOVINDPURA BHOPAL THROUGH R/O M.P. MADHYA KSHETRA VIDYUT VITRAN COMPANY LTD. SEHORE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ABHISHEK ARJARIA-ADVOCATE)

**AND**

PSR AMRCL (JV) THROUGH HAVING ITS REGISTERED OFFICE AT PLOT NO. 88 SARI KONDA MANSION GROUND FLOOR PHASE III, KAMALAPURI COLONY HYDERABAD (TELANGANA)

.....RESPONDENTS

(NONE )

.....

*This petition coming on for admission this day, Justice Vinay Saraf passed the following:*

**ORDER**

As both the cases are between the same parties and issue involved in both the cases is identical in nature therefore this order will decide M.P.No.6406/2022 and M.P.No.6411/2022.

2. Shri Jaideep Sirpurkar, Advocate who was representing sole respondent, M/s PSR-AMRCL(JV) moved an application to withdraw his *Vakalatnama* on behalf of the respondent as he has no instructions.

3. Accordingly, the application for withdrawal of *Vakalatnama* is allowed. Shri Jaideep Sirpurkar, Advocate is permitted to withdraw his *Vakalatnama* filed on behalf of respondent.

4. Heard learned counsel for the petitioner on the question of admission.

5. For disposal of the present petitions, the facts of M.P.No.6406/2022 are being taken.

6. By the present miscellaneous petition filed under Article 227 of the Constitution of India, the petitioner, M.P. Madhya Khetriya Vidyut Vitran Co. Limited (for short, 'the MPMKVVCL) has challenged the order dated

22.9.2022 passed in MJC No.14/2020 by the M.P. State Arbitration Tribunal, Bhopal whereby learned tribunal allowed the application filed by the respondent/claimant under Section 14 of the Limitation Act and excluded the time spent in prosecuting proceeding bonafidely with due diligence before another forum.

7. The short facts for deciding the present miscellaneous petition are that the respondent/Company preferred a reference under Section 7 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (herein after referred as 'Adhiniyam, 1983') claiming an award for recovery of Rs.31,40,26,457 along with interest. Along with petition, the respondent also filed an application under Section 14 of the Limitation Act, 1963 (for short, 'the Act, 1963') read with Adhiniyam 1983 seeking exclusion of time spent in prosecuting proceedings bonafidely by the respondent before other forum. On 7.12.2010, petitioner, MPMKVVCL issued letter of acceptance in favour of the respondent/Company for supply of material, survey, consumer indexing, installation, testing and commissioning of 11 KB feeder separation programme, installation of distribution transformers and L.T. works for segregation of domestic and agricultural consumers in Sehore District of M.P. scheduled to be completed within 18 months. On 23.12.2010, the contract/agreement was signed and work order was issued by MPMKVVCL and effective date was finalized as 31.1.2011 for scheduled completion of work in 18 months i.e. up to 31.7.2012.

7.1 According to the respondent/Company, the work was started and could not be completed in scheduled time due to several reasons and the Company requested for grant of appropriate extension of time to MPMKVVCL and the contract was extended till 31.12.2014. The work was continued till 30.5.2014 and on 30.5.2014, MPMKVVCL terminated instant contract and

encashed CPBG and advanced bank guarantee. On 11.6.2014, the respondent/Company replied to above action of MPMKVVCL and submitted that termination of contract is unjustifiable and requested for revocation of termination order and encashment of bank guarantee. MPMKVVCL has not replied to the said letter and raised liabilities of respondent/Company under the contract and demanded the payment. The respondent/Company denied the liabilities and invoked the arbitration clause by issuance of notice for constitution of arbitration tribunal for settlement of disputes arisen as postulated in Clause 45.5 General Conditions of Contract (for short, 'the GCC') but MPMKVVCL did not reply to the arbitration notice and the matter remained pending till 14.4.2017.

7.2 When the respondent/ompany issued reminder for appointment of arbitrator, however MPMKVVCL failed to appoint the arbitrator according to Clause 45.5 of GCC. On 22.7.2017, the respondent/Company filed A.C. No.42/2017 under Section 11(6) of the Arbitration and Conciliation Act, 1996 (herein after referred to as 'the Act 1996') before the High Court of Madhya Pradesh, Jabalpur for appointment of sole arbitrator, but the High Court deferred the hearing of the matter awaiting decision of the larger Bench of Supreme Court in case of *MP Rural Road Development Authority Vs. L.G. Choudhary*. After pronouncement of judgment of larger Bench of Supreme Court in *L.G. Choudhary (supra)* whereby it was held that dispute arising out of terminated contract are also required to be filed before Madhyasthan Tribunal. The High Court disposed of the applications filed under Section 11(6) of the Act, 1996 on 19.12.2018 with a liberty to approach to the tribunal to avail the appropriate remedy.

7.3 Thereafter, the respondent/Company preferred a reference petition under Section 7 of the Adhinyam, 1983 on various grounds claiming monetary awards of Rs.31,40,26,457/- along with interest. Along with the reference petition, an application under Section 14 of the Act, 1963 was also filed for exclusion of time spent in prosecuting the remedy before the competent officer as well as before the High Court under the bonafide belief that according to Clause 45.5 of GCC, the forum for redressal of dispute is arbitration. Said application was opposed by MPMKVCL, however, the same was allowed by the tribunal on 22.9.2022 and the period was excluded from calculating the limitation. The said order of tribunal passed on application filed under Section 14 of the Act, 1963 is under challenge in the present miscellaneous petition.

8. Learned counsel for the petitioner submits that delay caused in approaching to the M.P. Madhyastham Adhikaran Adhinyam could not have been condoned as the respondent/Company did not file the same within the limitation period prescribed under Section 7 (B) of the Adhinyam, 1983 and instead of approaching the tribunal, the respondent/Company has preferred and chose to file an arbitration case before this Court for appointment of arbitrator and the same was also time barred as the contract was terminated on 30.5.2014, whereas the application under Section 11(6) of the Act, 1996 was filed on 22.7.2017 i.e. after lapse of three years.

9. Learned counsel for the petitioner further submits that according to the provisions of Section 7(B) of the Adhinyam, 1983, the reference petition was hopelessly time barred and in view of the provisions contained under Section 7-B(2-A) of the Adhinyam, 1983, the period of limitation is provided as three years from the date on which the work contract is terminated, foreclosed, abandoned or comes to an end on any other manner and admittedly, the

reference was not filed within three years thus the same was barred by limitation and the tribunal has committed serious error of law in allowing the application under Section 14 of the Act, 1963.

10. Heard learned counsel for the petitioner and perused the documents filed along with the petition and impugned order.

11. It is not in dispute that Clause 45.1. and 45.3 of the GCC provides mechanism for resolution of dispute between the parties and Clause 45.5 of GCC provides for settlement of dispute through arbitration as per the Act, 1996, therefore, the respondent/Company invoked the arbitration clause and issued a notice for constitution of arbitration tribunal for settlement of dispute arose in instant contract. However, MPMKVVCL avoided to start the arbitration proceeding for adjudication of disputes and therefore, the respondent/Company after waiting for long period patiently again took up the matter of settlement of disputes through arbitration by issuance of reminder and thereafter filed the petition under Section 11(6) of the Act, 1996 before this Court for appointment of arbitrator under the belief that as the Clause 45.5 of GCC provides for arbitration, the remedy lies to initiate arbitration proceedings. The application filed under Section 11(6) of the Act, 1996 was not time barred and the respondent/Company was pursuing the remedy according to the Act, 1996 therefore, the respondent/Company preferred an application for appointment of sole arbitrator by this court within the limitation prescribed under the Act, 1996. However, the same was remained pending awaiting the decision of larger Bench of Supreme Court in the case of **L.G. Choudhary (supra)**. The said matter was originally decided and reported in **(2012) 3 SCC 495** but for the purpose of clarity regarding terminated contract, the matter was

referred to the larger Bench and therefore to avoid the technicalities, the respondent/Company persuaded the remedy according to Clause 45.5 of GCC and when the larger Bench pronounced the judgment and clarified the issues, the application was decided with a liberty to approach to the tribunal and thereafter the present claim/reference petition was filed.

12. The application filed under Section 14 of the Act, 1963 for exclusion of time spent in prosecuting bonafidely in Court without jurisdiction should be decided on the basis of the peculiar facts and circumstances of each case and the approach of the Court must be liberal at the time of deciding the application under Section 14. As the matter was pending before the larger Bench, it cannot be said that the respondent/Company acted under the provisions of the Act, 1996 without due diligence or good faith. The Apex Court in the matter of *Ghasi Ram & Ors. Vs. Chetram Soni & Ors., 1998 6 SCC 200* after considering the provisions of Section 14 of the Act, 1963 has held as under:

*"5. A perusal of the aforesaid provision would show that in order to get the benefit of sub-section (1) of section 14 of the Act, the party seeking its benefit must fulfil the following four conditions:-*

- (1) The plaintiff who filed the suit had been prosecuting another civil proceeding with due diligence.*
- (2) The earlier proceeding resorted by the plaintiff was based on the same cause of action.*
- (3) The former proceeding was prosecuted by the plaintiff in good faith in a court.*
- (4) The court, due to the defect of jurisdiction or other cause of a like nature, was unable to entertain such proceeding."*

13. The arguments raised by counsel for the petitioner that filing of

arbitration application under Section 11 (6) of the Act, 1996 cannot be said to be a proceeding instituted in good faith and was not an appropriate remedy in view of the judgment passed by the Apex Court in case of **L.G. Choudhary (supra)** and, therefore, it cannot be said to be a defect of jurisdiction or other cause of like nature within the meaning of Section 14 of the Limitation Act. It is trite law that Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to the cases where the prior proceedings were failed on account of other cause or like nature. Any circumstance, legal or factual, which inhabits entertainment or consideration by the Court of the dispute on the merits comes within the scope of this Section and a liberal touch must inform the interpretation of Limitation Act which deprives the remedy of one who has a right.

14. Learned tribunal has considered the facts and circumstances of the case and held that the period spent in prosecuting the remedy according to Clause 45.5 of GCC are liable to be excluded from computation of the limitation. After detailed discussions the tribunal held that the period of 11.6.2014 to 27.5.2017 and thereafter 22.7.2017 to 19.12.2018 are liable to be excluded on account of pursuing the matter before the Chairman for appointment of Arbitrator and before this Court under Section 11(6) of the Act of 1996. Similarly, the period from 15.3.2020 to 7.6.2020 was also excluded in compliance of order passed by the Apex Court in *suo moto* W.P.(Civil) No.3/2020. In the present matter, the conditions prescribed by the Apex Court in the matter of **Ghasi Ram (supra)** were duly fulfilled and therefore, the tribunal has rightly excluded the period spent in prosecuting the other remedy.



15. In view of the above, we do not find any illegality or irregularity or perversity in the orders passed by the learned tribunal whereby the time spent in prosecuting the other remedy was excluded and consequently, the admission is declined.

16. Accordingly, The present petitions are *dismissed*. There shall be no order as to costs.

(SHEEL NAGU)  
JUDGE

P/-

(VINAY SARAF)  
JUDGE

