
(2005) 05 MP CK 0056

In the Madhya Pradesh High Court

Case No : Civil Rev. No's. 1193 of 1998 and 51 of 1999

Rajawat and Company

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-05-2005

Acts Referred:

Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — Section 7B, 7B(1)(a), 7B(1)(b)

Citation : (2006) 1 MPJR 304 : (2005) 4 MPLJ 16

Hon'ble Judges : Shraavan Shanker Jha, J; P.K Jaiswal, J

Bench : Division Bench

Advocate : R.S. Solanki, for the Appellant; Ami Prabal, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Jha, J.

These two revisions are disposed of by this common order. Civil Revision No. 1193/1998 is filed by the contractor challenging the award passed by the M. P. Arbitration Tribunal, Bhopal, Respondents-State has also preferred Civil Revision No. 51/99 challenging the same award passed by M.P. Arbitration Tribunal, Bhopal.

Facts of the case are that petitioner M/s Rajawat and Company has preferred a claim and raised a dispute before the Arbitration Tribunal. Petitioner claimed that he was required to execute the balance work which was not completed by the original contractor. Measurements of the work carried out by the previous contractor was not finalised by the respondents. The petitioner was not given any instruction pertaining to the work required to be executed by him. Petitioner claimed that immediately after the work order was issued and he started the work, execution of the work was delayed on account of non-supply of the copy of the agreement, drawing, designs specifications and non-finalisation of the work done by the previous contractor. Layout of the administrative block was delayed

and after completion of foundation, respondents had issued instructions to stop the work. In October, 1990, petitioner was directed to complete 15% work and 85% work was withdrawn. Petitioner submitted a claim of Rs. 12,750/- against the expenditure incurred for arranging the water supply and electrical connections. Rs. 24,650/- claim for carrying out preliminary work such as hutments etc., Rs. 72,760 against idle wages paid by the petitioner, Rs. 11,350/- for bringing material on the site and has not been paid as final bill, Rs. 2,00,000/- towards overhead expenses and Rs. 20,000/- towards loss of profits. He claimed total sum of Rs. 3,41,510/-.

Respondents raised a preliminary objection that the claim submitted by the petitioner is not maintainable. Respondents-State submitted that under Clause 29 of the agreement, in the event of dispute between the parties regarding designs, drawings and specifications etc., dispute should be referred to the Superintending Engineer within thirty days of the dispute and the Superintending Engineer is required to decide the dispute within sixty days and, the party not satisfied by the decision of Superintending Engineer, can file appeal before Chief Engineer within thirty days from the decision and the decision of the Chief Engineer shall be final in the matter and after the orders are passed by the Chief Engineer then only dispute can be referred to the Tribunal. Petitioner has not submitted dispute before the Superintending Engineer within the specified time. Dispute was submitted by the petitioner to the Superintending Engineer on 18-5-1991 which was rejected by the Superintending Engineer on 22-7-1994. But no appeal has been preferred before the Chief Engineer as required within thirty days. Since the contractor has not preferred an appeal under Clause 29 of the agreement, therefore, Claim petition before the Arbitration Tribunal is not maintainable. Petitioner has not exhausted the remedy available to him and the claim as filed is premature.

First question involved in the case is whether claim as filed is within limitation. As per Clause 29 of the agreement, appeal was required to be submitted within thirty days before the Superintending Engineer and the Superintending Engineer was required to decide the appeal within sixty days. Thereafter, reference can be filed. Petitioner has not submitted an appeal within thirty days and the dispute was submitted before Superintending Engineer on 18-5-1991 which was rejected by the Superintending Engineer on 22-7-1994. Under Clause 29 of the agreement, Superintending Engineer was required to decide the dispute within sixty days. Claimant should not have waited beyond the period of sixty days the date of decision on 22-7-1994. The cause of action accrued to him on 18-11-1991. The appeal preferred by the contractor was deemed to be rejected as the appeal is not decided within sixty days from 18-11-1991. u/s 7-B of the M.P. Madhyastham Adhikaran Adhiniyam (hereinafter, referred to as the "Adhiniyam"), claim was deemed to be rejected, if not decided within six months from 18-5-1991. Claimant was required to file dispute within one year from the date of deemed rejection. Section 7-B provides that after deemed rejection, dispute should be preferred within one year.

Only question is whether the claimant can claim to wait till the final orders are passed or was required to prefer dispute within one year from January, 1991. Whereas the claim has been preferred on 20-7-1995 claiming limitation from 22-7-1994.

Section 7-B of the Adhiniyam relates to limitation for filing appeal. Section 7-B is reproduced below :

7-B. Limitation. - (1) The Tribunal shall not admit a reference,-

(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;

(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.

(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.

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.

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 v. 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 Adhinyam 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 Adhinyam 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.

In the result, Civil Revision No. 1193/1998 filed by the Contractor fails and is dismissed and Civil Revision filed by State of Madhya Pradesh succeeds and is allowed. Impugned award passed by M.P. Arbitration Tribunal, Bhopal is set aside and the reference petition filed by the contractor is dismissed. Parties to bear their own costs.