

(2005) 01 MP CK 0098

In the Madhya Pradesh High Court

Case No : Civil Revision No"s. 65, 282, 785, 787, 869, 891, 909, 925, 953, 954, 955, 968, 973, 1127, 1129, 1130 and 1131 of 2003 and 183, 248, 347, 359, 372, 390 and 488 of 2004

Sermen (India) Road Makers Pvt. Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Arbitration Act, 1940 — Section 20, 37, 37(1), 8
Limitation Act, 1963 — Article 113, 137, 10, 11, 12
Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990 — Section 7B
Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — Section 2(1), 20, 7, 7(5), 7B

Citation : (2005) 3 MPHT 292

Hon'ble Judges : U.C. Maheshwari, J;Dipak Misra, J

Bench : Division Bench

Advocate : V.R. Rao, for the Appellant; S.K. Yadav, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—In this batch of civil revisions as singular question has emerged for consideration, it was thought seemly to hear the cases analogously and accordingly, they were heard together and are disposed of by this common order.

2. The spinal issue that has spiraled to this Court is whether a contractor can approach the Final Authority under the contract at any point of time, or should there be an acceptable fixed normative procedure so that the conception of ad infinitum does not get a liberal entry to the arena of adjudication. In the cases at hand, the M.P. Arbitration Tribunal (in short, "the Tribunal") has expressed the view that Article 113 of the Limitation Act, 1963 would be applicable from the date of accrual of cause of action, i.e., completion of work in question and, therefore, Section 7-B of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (for brevity, "the Act") would not save the lis and has to be thrown over board. To put it differently, whether a contractor would be at liberty

to approach the Final Authority under the agreement at his pleasure or would he be constricted and restricted by certain acceptable, reasonable and permissible duration. Be it noted, in all these cases where the orders of the Tribunal have been impugned, the Tribunal has rejected the claims of the claimants on the ground that they had not raised the claims under the agreement before the Final Authority within a period of three years from the date of completion of the work in question.

3. Assailing the aforesaid orders, it is submitted by Mr. Rao and Mr. John, learned Counsel for the petitioners that the Indian Limitation Act, 1963 does not apply since special limitation has been provided u/s 7-B of the Act. It is contended by them, once it is held that the Limitation Act is not applicable, Section 7-B would be allowed to have full play and the Final Authority can be approached at any point of time, as no time has been stipulated for approaching the Final Authority. Submission of learned Counsel for the petitioners is that when a period of limitation is not provided, it would be inappropriate to provide a limitation as that would tantamount to legislating which is impermissible. To bolster the aforesaid submission, the learned Counsel for the petitioners have placed reliance on the decisions rendered in the cases of Sakuru Vs. Tanaji, , Lachmandas v. State of M.P. and Anr. 2002 (3) MPLJ 21 and an unreported decision rendered in Civil Revision No. 922 of 2003, S. Sermon (India) Road Makers Pvt. Ltd. v. State of M.P. and Ors. 2004 Arb.W.L.J. 461 (MP).

4. Countering the aforesaid submissions, it is contended by Mr. S.K. Yadav, learned Govt. Advocate and Mr. Pillai, learned Counsel appearing for the respondent Nagar Panchayat, Ramnpur and Nagar Panchayat, Churhat and Mr. Babar, learned Counsel for the Bhopal Development Authority that the Tribunal has erroneously referred to Article 113 of the Limitation Act whereas it should be Article 137. Submission of learned Counsel for the respondents is that though the Limitation Act is not applicable but it would be travesty of justice if no time frame is fixed for raising a dispute before the Final Authority under the agreement as that would give rise to old, stale and unwarranted claims to be put forth before the Tribunal for adjudication. It is also urged by them that when no limitation is prescribed a reasonable period has to be grafted into the scheme of things to raise claims so that uncalled for results do not eventuate. It is also highlighted by them that the decision rendered in the cases of Lachmandas (supra) and Serman (India) Road Makers (supra) is distinguishable on facts. It is their further submission that raising of a dispute for the purpose of cause of arbitration is sine qua non and keeping that in view, a reasonable period has to be fixed.

5. To appreciate the revalised submissions raised at the Bar, it is appropriate to mention here that before Section 7-B of the Act was amended with effect from 24-4-1990 no Limitation was prescribed. Keeping that in view a Division Bench of this Court in the case of Secretary of Secretary, State of M.P. Irrigation Deptt., Bhopal and Others Vs. Jaswant Singh Dhillon, expressed the view as under :--

"9. The second limb of submission of Mr. Gupta is that the proceeding before the

Tribunal was barred by limitation. As has been stated earlier the disputes had arisen on 24-4-1982 vide Ex. D-31. The District Judge, Durg the disputes had directed for appointment of an arbitrator vide order dated 6-8-1983. When no arbitrator was appointed application u/s 8 was moved again on 15-6-1984 and it was returned by the District Judge on 19-7-1985. Thereafter petition was filed on 13-7-1988. The Tribunal has entertained reference application on the ground that no limitation was prescribed under the Adhiniyam when it came into force, but later on, u/s 7-B of the Adhiniyam provisions relating to limitation were inserted. It has been held by the Tribunal that in absence of any prescription for limitation under the Adhiniyam at the time of presentation of the application for reference the reference petition could not be held to be barred by time. The Tribunal has referred to a number of decisions rendered by it. The real crux of the matter is whether the cause of action was still alive to be agitated before the Tribunal and whether the claims of the claimant were time barred, and hence not entertainable u/s 7-B of the Adhiniyam. It is to be borne in mind that in the Principal Act which came into force on 1-4-1985 there was no provision prescribing a period of limitation for filing of reference petition in the Tribunal. The said provision was introduced into the Adhiniyam by M.P. Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990 (Act No. 9 of 1990). By virtue of the said amendment, Section 7-B has been substituted. In the case at hand, it has been held that by the time the reference application was presented, Section 7-B was not therein in the Adhiniyam but, a significant but, whether the petitioner could approach the Tribunal for agitating his grievance relating to his claims. The Adhiniyam was enacted initially with an object to provide for the establishment of a Tribunal to arbitrate the disputes to which the State Government or a Public Undertaking is a party and for the matters incidental thereto or connected therewith. Later on, by amendment Act No. 9 of 1990, the Public Undertaking was qualified by adding wholly or substantially owned or controlled by the State Government. Thus, the purpose of establishment of the Tribunal was for adjudication or resolving of disputes. The term "disputes" has been defined under Sub-section (2) (1) (d) of the Adhiniyam. The scheme of the Act makes it quite clear that the Tribunal was brought into existence for resolving the disputes or the differences pertaining to works contract. But the disputes must be the disputes and they must survive in law for determination. The Tribunal was brought into existence as a statutory forum for determination of the disputes. True it is, there was no provision providing a period of limitation to approach the Tribunal. To clear the area and to provide certain condition-precedents as well as certain guidelines for entertainment of disputes. Section 7-B was engrafted for providing the starting point of limitation. It is to be noted that u/s 7-B the Tribunal has not been conferred with power to condone the delay if the claims are not preferred by way of filing a reference petition within the time-frame stipulated therein. In the case at hand, Section 7-B is not applicable inasmuch as the reference petition was filed much before the amendment had come into existence. The Tribunal has referred to a catena of its decisions to hold that the reference petition could not be held to be barred by time in absence of

prescription of period of limitation u/s 7 (i) of the Adhiniyam. Filing of application before the Tribunal is nothing but an application for adjudication. In this context, we may refer to Section 7 occurring in Chapter III of the Adhiniyam which reads as under :--

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.

(2) Such reference shall be drawn up in such form as may be prescribed and shall be supported by an affidavit verifying the averments.

(3) The reference shall be accompanied by such fee as may be prescribed.

(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 to be satisfied it may summarily reject the reference after recording reasons therefore.

On a perusal of Sub-section (5), it is graphically clear that the Tribunal has to be satisfied of a reference is fit case for adjudication. If the claims are barred by time the question dealing with the said category of claims for the purpose of adjudication is an exercise in futility. The Tribunal, a statutory forum, was not established or brought into existence to give a new lease of life to already time-barred claims. The purpose of the Adhiniyam was not to imbibe a life-spark to the dead claims and make them come alive like a phoenix. If the claims were barred by time under the Limitation Act, 1963 and the right to agitate those claims had been extinguished under the remedies which were in vogue before the Adhiniyam came into force, the same can not be allowed to revive. If the claims are ex facie barred by time, they are not to be entertained. In the case at hand, as is apparent from the order of the Tribunal the application u/s 20 of the Act so the District Judge directed for the appointment of arbitrator. For some reason or the other it was not done. Thereafter an application u/s 8 of the Adhiniyam was filed. We are not going to comment whether such an application was maintainable or not. The fact remains that the District Judge, Durg by order dated 19-7-1985 held that he had no jurisdiction and returned the application for proper presentation. It may be construed that by that time the claims were alive in law deserving to be adjudicated. The claimant chose not to challenge that order. He also did not approach the Tribunal immediately. As per the decision rendered in the case of Chahal and Co. (supra) the proceeding before the Civil Court relating to application for appointment of arbitrator was saved. Though the order was passed on 19-7-1985 the claimant accepted the same. He filed the reference application u/s 7 (i) of the Adhiniyam before the Tribunal on 13-7-1988. The Tribunal opined that the Limitation Act did not apply and by that

time Section 7-B was not in force, hence the petition could not be held to be barred by time. The approach is obviously erroneous. As has been stated earlier the Tribunal was not brought into existence for revival of the time-barred claims. What happened before the District Judge, Durg is of no consequence as the petitioner conceded to the said order. Thus, it can safely be concluded that the claimant approached the Tribunal for the first time on 13-7-1988. As the fact situation unfolds the disputes had arisen in the year 1982 and they are obviously barred by time. At this juncture, we may observe that in an application u/s 20 of the Adhinyam, the Court is required to see that difference or disputes had arisen between the parties. There are two aspects, namely, whether there is any valid claim for reference u/s 20 and whether the application was filed within time. Ordinarily the second aspect is to be decided by the arbitrator. In this context, we may profitably refer to the decision rendered in the case of Wazirchand Mahajan and Another Vs. Union of India (UOI), wherein it has been laid down as follows :--

"There is no doubt that Clause (I) of Section 37 of the Arbitration Act deals only with the authority of the arbitrator to deal with and decide any dispute referred to him : it has no concern with an application made to the Court to file an arbitration agreement and to refer a dispute to the arbitrator. After an agreement is filed in Court and the matter is referred to the arbitrator, it is for the arbitrator to decide by the application of the law contained in the Limitation Act, whether the claim is barred. But Section 37(1) does not confer authority upon the Court to reject the application under for filing of an arbitration agreement u/s 20 of the Arbitration Act because the claim is not made within three years from the date on which the right to apply arose. In dealing with an application for filing an arbitration agreement, the Court must satisfy itself about the existence of a written agreement which is valid and subsisting and which has been executed before the institution of any suit, and also that a dispute has arisen with regard to the subject-matter of the agreement which is within the jurisdiction of the Court. But the Court is not concerned in dealing that application to deal with the question whether the claim of a party to the arbitration agreement is barred by the law of limitation that question falls within the province of the arbitrator to whom the dispute is referred."

Thus, the Apex Court has held whether the claims are barred by law of Limitation or not, are to be adjudicated by the arbitrator but, whether the application u/s 20 of the Act is barred by limitation or not, is within the domain of the Court. In this context, we may profitable refer to the decision rendered in the case of the Union of India (UOI) and Another Vs. L.K. Ahuja and Co., , wherein the Apex Court laid down the following principles :--

"8. In view of the well-settled principles we are of the view that it will be entirely wrong to mix up the two aspects, namely, whether there was any valid claim for reference u/s 20 of the Act, and secondly, whether the claim to be adjudicated by the arbitrator, was barred by lapse of time. The second is a matter which the

arbitrator would decide unless, however, if on admitted facts a claim is found at the time of making an order u/s 20 of the Arbitration Act, to be barred by limitation."

The purpose of referring to the aforesaid decisions is that at the time of seeking reference under the Act the Court is required to see whether the application is within time or not. To elaborate, whether the right to sue on the foundation of cause of action is still alive or not. It is to be borne in mind that, it is the duty of the Court not to proceed with an application if it is beyond the period of limitation. In this context, we may refer to the decision rendered in the case of Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, , wherein Their Lordships have registered the view as under :--

"Under Section 3 of the Limitation Act, it is the duty of the Court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court has no choice."

10. In the case at hand, as has been indicated earlier the dispute arose in 1982. The proceedings taken by the claimant- respondent were given a go by at his instance as he acquiesced and acceded to the order passed by the District Judge. In effect, he approached the Tribunal for the first time in 1988 for adjudication of his claims. The Tribunal on an erroneous assumption of law that it could entertain any claim in absence of prescription of limitation, adjudicated the claims. But by the time, the claimant knocked at the doors of the Tribunal, his claims ex-fade, were barred by time as per his assertion disputes had arisen way back in 1982. This factual position is perceptible from the order of the Tribunal itself. If the claims were not entertainable or no more available to be remedied, the Tribunal, a statutory Forum which had come into existence under the Adhiniyam could not have decided the claims on the ground that no period of limitation had been prescribed to approach the Tribunal. Such a conclusion would lead to a chaos and bring in unwarranted and uncalled for results for the simple reason, claims which were decades old could have been entertained before Section 7-B had come into force. Every Forum comes into being with a purpose and indubitably that was not the purpose when the Tribunal was established. By 1988 the claimant could not have approached the Civil Court or taken any steps for realization of his dues by any adjudicatory process. Establishment of the Tribunal could not have conferred a new lease of life on the dead and frozen claims. The Tribunal has fallen into grave error by holding that the law of the limitation did not hinder the jurisdiction of the Tribunal."

6. True it is, the aforesaid decision was rendered while dealing with the claim before amended Section 7-B came into force. There can be no cavil over the proposition that after a special period of limitation has been prescribed and in most peremptory manner u/s 7-B of the Act, the Limitation Act would not be applicable. We say so since Section 7-B after the 1990 Amendment reads as under :--

"7-B. Limitation.-- (1) The Tribunal shall not admit a reference petition unless--

(a) the dispute is first referred for the decision of the final authority under the terms of the works contract, and

(b) the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority :

Provided that if the final authority fails to decide the 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 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."

7. On a perusal of the language in which Section 7-B has been couched and what has been enjoined therein it would clearly as noon day that it is peremptory in nature and the Tribunal can not entertain a reference unless the application is preferred within the period as has been provided therein. To put it differently, Sections 4 to 25 of the Limitation Act would not be applicable to a proceeding before the Tribunal. The crux of the matter is not the applicability of the Limitation Act to a proceeding before the Tribunal, but whether the contractor would be at liberty to approach the final authority as envisaged in the contract/agreement at any point of time or there has to be a constriction. Submission of Mr. Rao and Mr. Johri that the agreement provides for an inbuilt mechanism for the time frame, which is administrative in nature for the purpose of guidance of the authorities and that can not curtail or smother the action to be taken by the contractor. To buttress the submission, a passage from Lachmandas (supra), has been read out to us :--

"5. We have heard the learned Counsel for the State and perused the record. Shri N. Nagrath, learned Counsel for the State, contended in support of the impugned order of the Arbitration Tribunal and submitted that the starting point of limitation in this case is 1-5-1991/3-5-1991. The applicant did not file appeal before the Superintending Engineer within a period of 30 days of submission of claim before the Executive Engineer. Thus, counted, the reference before the Arbitration Tribunal is barred by time. We find ourselves unable to agree with this contention. Reading the arbitration agreement and the Adhiniyam together, it would be crystal clear that the limitation for approaching the Tribunal u/s 7-B of the Adhiniyam, as substituted by M.P. Act No. 9/1990, commences from the date of communication of decision of the final authority. The Final Authority is Superintending Engineer. No period has been prescribed for approaching the

Superintending Engineer for deciding the dispute. However, proviso to Sub-section (1) of Section 7-B of the Adhiniyam envisages that if the final authority fails to decide the dispute within a period of six months from the date of reference to it, petition to the Tribunal shall be made within one year of the expiry of the said period of six months. There is no limitation for approaching the Executive Engineer. The period of 30 days prescribed in the contract agreement is administrative in character object being to lay down some period for decision by the Executive Engineer, failing which to enable the aggrieved party to approach the final authority. Till the dispute reaches the final authority, the period spent before the Executive Engineer is not counted towards limitation under the Adhiniyam, which provides for the starting point of limitation not from the date when cause of action arises, but from the date when it is approached with the dispute for settlement."

8. Highlighting the view expressed in the aforesaid case that the said provision is administrative in character, submission of Mr. Rao and Mr. Johri is that the same puts the controversy to rest that no period has been prescribed for approaching the Superintending Engineer for deciding the dispute and hence, one can approach the authority at any point of time. In the aforesaid case, the Division Bench observed, till the dispute reaches the final authority, the period spent before the Executive Engineer is not counted towards limitation under the Adhiniyam, which provides for the starting point of limitation not from the date when cause of action arises, but from the date of approach to the authority with a dispute for settlement. It is submitted that in the aforesaid case, the final bill was prepared in May, 1991 and the petitioner therein approached the Superintending Engineer, the final authority of 20th July, 1992. Thereafter, he approached the Tribunal on 9-2-1993. In that backdrop, the aforesaid decision was rendered. The Division Bench has really not stated what should be the time duration to approach the final authority. It is well settled in law that a decision is a precedent for what has been decided therein and can not become a precedent what can be inferred from it. This view of ours is fortified by the decision rendered in the case at *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 , wherein it has been held as under :--

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not that logically follows from it."

9. Recently the Apex Court in the case of *Kalyan Chandra Sarkar etc. v. Rajesh Ranjan alias Pappu Yadav and Anr.* 2005 AIR SCW 536, has ruled thus :--

"A case is only an authority for what it actually decides, and not what logically follows from it. See :

(1) *Quinn v. Leathern*, (1901) AC 495.

(2) *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, .

(3) *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 ."

10. In view of the aforesaid, we are of the considered opinion, this facet was not really decided in the aforesaid case and in any case the facts were different and, therefore, it is distinguishable. At this juncture, the learned Counsel pressed into service the decision rendered in the case of *Serman (India) Road Makers* (supra). In the aforesaid case, another Division Bench distinguished the decision rendered in the case of *Jaswant Singh* (supra) and came to hold that general law of Limitation can not apply. The correctness of the said proposition is beyond any scintilla of doubt inasmuch as after insertion of Section 7- B, which provides special limitation, provisions of the Limitation Act would not be applicable. It is worth noting here in Paragraph 9 of the aforesaid case, it has been held that the limitation commences as provided u/s 7-B (1) and (2) of the Act. At this stage, we are inclined to state that in the aforesaid case, there was reference to some observation in W.P. No. 2976 of 2002 which reads as under :--

"A return has been filed by the State Govt. and its functionaries averring that the petitioner has to satisfy certain formalities. If the petitioner satisfies the formalities required by the State Govt. and its authorities the State shall consider the case of petitioner. Needless to emphasise, if the petitioner still has the grievance he may agitate the same as per terms and conditions of contract."

11. On the basis of the aforesaid order, the petitioner therein raised a dispute before the final authority, the Chief Engineer, on 26-2-2002 under Clauses 12 and 29 of the agreement and there was no response. This aspect was taken into consideration as its impact and import could not be marginalized. In view of the aforesaid, we are disposed to think that the aforesaid decision is also distinguishable.

12. What actually is required to be decided in this batch of Civil Revisions is relatable to the acceptable duration for approaching the final authority. The Tribunal has held that the duration should be three years from the date of completion of the work. On a query being made how such a finding is sustainable, Mr. S.K. Yadav, learned Govt. Advocate fairly stated that the said finding of the Tribunal is not presentable inasmuch as on completion of work, no dispute would ensue. It is well settled in law that unless a dispute arises, the question of raising a claim before the final authority does not arise. The term "dispute" has been defined u/s 2(1)(d) to mean a claim of ascertain money valued at Rs. 50,000/- or more relating to any difference arising out of execution or non-execution of a works contract or part thereof. In view of the aforesaid definition in the dictionary clause, we are of the considered view that the opinion expressed by the Tribunal that cause of action would arise within three years from the date of completion of the work is sensitively susceptible and we do not think it apposite to give stamp of approval to the same and accordingly we decline to concur.

13. Once, we have held that the limitation is not applicable and the cause of

action does not arise from the date of completion of the work, the short and straight forward question that emerges for consideration is what should be the date of commencement of cause of action for the purpose of determination of approaching the final authority and what should be the period of duration requires to be spelt out. Be it noted, the present Act is not a beneficial legislation. In the matters relating to industrial disputes, though there is no limitation, it has been held that if the claim has become stale and no effort has been made to keep the dispute propelled and make it alive, it would not warrant adjudication on the ground of delay and laches. In our considered view because no limitation has been provided in a dispute of this nature, it would be an anathema to concept of justice to say that a contractor can approach the Final Authority at his pleasure and leisure. The doctrine of delay and laches has to be allowed to have full play. Delay in approaching a legal forum mars the claim. He, who enters into the state of hibernation, can not wake up one fine morning to put forth a claim. In commercial transaction or dispute relating to works contract the contractors can not sleep like Reap Van Winkle to find a new world, a fresh one where the cause of action would arise in their favour. At this stage, we think it condign to refer to the decision rendered in the case of Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, . In the aforesaid case, a two Judge Bench of the Apex Court has expressed the view, and application u/s 8 or 20 of the Arbitration Act, 1940 is to be preferred within a period of three years from the date claimant asserted the claim and the payment was denied. A difference of dispute was regarded as a condition precedent. To quote Their Lordships :

"In order to be entitled to order of reference u/s 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. But in order to be entitled to ask for a reference u/s 20 of the Act there must not only be an entitlement to money but there must be a difference or a dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28th February, 1983 and there was non- payment, the cause of action arose from that date, that is to say, 28th of February, 1983. It is also true that a party can not postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator u/s 8 or a reference u/s 20 of the Act."

14. In this context, we may also refer with profit to the decision rendered in the

case of State of Orissa and another etc. Vs. Sri Damodar Das, . In the aforesaid case, in Paragraphs 5 and 6, Their Lordships expressed the view as under :--

"5. Russel on Arbitration by Anthony Walton (19th Edition) at pages 4-5 state that the period of limitation for commencing an arbitration runs from the date on which the "cause of arbitration" accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned. The period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued : "just as in the case of action the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued". Even if the arbitration clause contains a provision that no cause of action shall accrue in respect of any matter agreed to be referred until an award is made time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause.

6. In Law of Arbitration by Justice Bachawat at page 549 commenting on Section 37, it is stated that subject to the Limitation Act, 1963, every arbitration must be commenced within the prescribed period. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) "action" and "cause of arbitration" should be construed as arbitration and cause of arbitration. The cause of arbitration when the claimant becomes entitled to raise the question that is, when the claimant acquires the right to require arbitration. An application u/s 20 is governed by Article 137 of the Schedule of the Limitation Act, 1963 and must be made within 3 years from the date when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. It must, therefore, be clear that the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arises in a civil action."

15. We have referred to the aforesaid two paragraphs only to show that Their Lordships have used two sets of expressions, namely "action" and "cause of arbitration". A cause of arbitration may be the date of preparation of the final bill or the date when any dispute has arisen. Definitely it can not be the date of completion of work. Irrefragably, it can not be a period ad infinitum. Ergo the date of accrual of cause of arbitration would be the date and that period has to be fixed and fixation of such period is not to be regarded or treated as period fixed under the Limitation Act. We may repeat at the cost of repetition that the Limitation Act does not apply but definitely there has to be a reasonable period within which contractor has to approach the Final Authority. It is noticed in

certain statute powers are conferred on the higher authority for the exercise of suo motu power. While conferring of suo motu jurisdiction, no period of limitation has been prescribed, yet it has to be done within a reasonable period of time. The fixation of reasonable period does depend upon the facts of each case for the purpose of exercise of suo motu power. In the present case as the matter relates to works contract and the statute provides an alternative forum and bars the claim it is definitely not a beneficial statute. We are disposed to think a contractor has to approach the final authority within a period of three years from the date of accrual of (cause of) arbitration. We may repeat at the cost of space that the cause of arbitration has no nexus on the completion of work but may have nexus with other factors which may include preparation of final bill. We do not intend to exhaustively state or enumerate the situations. That is for the Tribunal to determine on the appreciation of factual matrix in each case.

16. At this juncture, for the sake of completeness, we think it appropriate to refer to the recent amendment by which Section 7-B has been further amended. The amended provision reads as under :--

"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."

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 un-amended provision and only referred to the amended provision as it was brought to our notice.

18. Resultantly, we set aside the awards passed by the Tribunal and remit the matters to the Tribunal to decide the matters afresh in accordance with law as has been laid down above. There shall be no order as to costs.