

**The State of Madhya Pradesh Vs. M. Sons Engineering and Builders
Judgement Given By: Hon'ble Shri Justice Rajendra Menon**

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Court : Madhya Pradesh

Decided On : Jan-28-2014

Appellant : The State of Madhya Pradesh

**Respondent : M. Sons Engineering and Builders Judgement Given By: Hon'ble
Shri Justice Rajendra Menon**

Judgement :

Arbitration Revision No.4/2011 28/01/2014: Smt.

Nirmala Nayak, Government Advocate for the applicants.

This revision petition has been filed by the State under section 19 of the M.P. Madhastham Adhikaran Adhiniyam challenging the award dated 24th March, 2009 passed by the M.P. Administrative Tribunal in a reference proceeding held before the Tribunal under section 7 of the M.P. Madhastham Adhikaran Adhiniyam, 1983.

There is delay of 671 days in filing the revision petition and therefore I.A.No.5944/2011 has been filed seeking condonation of delay. Having heard the learned counsel for the applicants, we see no reason to interfere in the matter.

The dispute in question was raised by the respondent contractor in the matter of a works contract granted to them by the State Government. After the work was completed and in the final settlement when the amount due as per the agreement

was not paid the respondent raised a claim to the tune of Rs.1,73,07,094/ and a reference was made under section 7 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 before the Arbitration Tribunal. The Tribunal went into the question in detail by the award in question granted a decree to the tune of Rs.39,94,368/ only and rejected the remaining claim.

Even after the award was passed on 24.3.2009 and when amount in pursuance to the award was not paid and therefore, execution proceedings were filed in Execution case No.28/2009 before the District Court,Bhopal and after notices were issued in the execution proceedings and when the order for execution was passed by the Executing Court on 9.4.2010 this revision petition has been filed on 6.5.2011 i.e. after a delay of 671 days.

The delay of 671 days is explained in I.A. No.5944/2011 by saying that the State Government received knowledge about the award passed only when an order was passed on 26.4.2010 by the Executing Court.

This Contention of the Government cannot be accepted.

The dispute was pending before the Arbitration Tribunal right from the year 1996 upto 24.3.2009.

The State Government was appearing throughout and was represented by a Counsel and the judgment and award was pronounced by the Tribunal on 24.3.2009 and it was in the knowledge of the Government and the Advocate concerned.

That being so, the contention that the Government had no knowledge about the award being passed on 24.3.2009 seems to be incorrect.

According to the averments made in the application for condonation of delay, the State Government got knowledge of the award on 26.4.2010 when the order was passed by the executing Court thereafter the permission was sought from the Law Department on 6.1.2011.

The steps taken from 26.4.2010 to 6.1.2011 is not indicated thereafter this revision petition was prepared after four months on 3.5.2011. Again the reasons for delay from 24.3.2009 to 3.5.2011 is not properly explained. It is seen that the delay of more than 671 days is not properly explained in the application for condonation of delay.

That apart, the only ground taken in the revision petition is that in view of the law laid down by the Supreme Court in the case of V.A. Tech Eschor Wyass Flovel Ltd. Vs. MPSB Board and another 2010 Arp. WLJ 116 the Tribunal had no jurisdiction to deal with the matter and the jurisdiction to deal with the matter was with the Arbitrator to be appointed under clause 29 of the agreement and in accordance to the Arbitration and Conciliation Act. The main ground canvassed in the revision petition is that Tribunal has no jurisdiction to deal with the matter in view of the judgment in the case of V.A.Tech(supra), this contention of the petitioner cannot be accepted. The law laid down by the Supreme Court in V.A.Tech(supra) has been overruled in view of the Judgment in the case of M.P.State Rural Development Corporation versus L.G.Choudhary Engineers of Contractors 2012(3) SCC 495 and therefore jurisdiction to deal with the matter is with the Arbitrator constituted under M.P. Madhyastham Adhikaran Adhiniyam, 1983 and therefore there is no merit in the objections.

That apart, the other ground raised is that certain complaints were pending before the Lokayukt and therefore, the claim was not settled.

This contention also cannot be accepted. Once the work was concluded and on enquiry the Tribunal came to the conclusion that the Contractor was entitled to certain amount claimed, merely because some enquiry or investigation was pending before the Lokayukt Organization, finalization of the claim cannot be kept in abeyance. That being so, the second ground canvassed is also wholly unsustainable.

Apart from the aforesaid, a perusal of the award goes to show that out of total claim made for Rs.1,73,07,094/ most of the claim have been rejected and only a partial claim to the extent of about Rs.39,94,368/ is awarded for which reasonable justification is given and we see no error in the award passed by the Tribunal

warranting interference in this proceeding under Section 19 of the Adhiniyam.

Accordingly, for the grounds and reasons indicated herein above, we see no reason to interfere into the matter.

Petition is therefore, dismissed.

(Rajendra Menon) (A.K.Sharma) Judge Judge b The delay of 671 days is explained in I.A.No.5944/2011 by saying that the State Government received knowledge about the award passed only when an order was passed on 26.4.2010 by the Executing Court.

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The State Government was appearing throughout and was represented by a Counsel and the judgment and award was pronounced by the Tribunal on 24.3.2009 and it was in the knowledge of the Government and the Advocate concerned.

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Apart from the aforesaid, a perusal of the award goes to show that out of total claim made for Rs.1,73,07,094/- most of the claim have been rejected and only a partial claim to the extent of about Rs.39,94,368/- is awarded for which reasonable justification is given and we see no error in the award passed by the Tribunal warranting interference in this proceeding under Section 19 of the Adhinyam.

Accordingly, for the grounds and reasons indicated herein above, we see no reason to interfere into the matter.

Petition is therefore, dismissed.

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