

M/s. C.E.C. Ltd. Vs. State of M.P. and Others

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Court : Madhya Pradesh

Decided On : Feb-20-2015

Judge : Rajendra Menon & C. V. Sirpurkar

Appeal No. : Civil Revision No. 80 of 2004

Appellant : M/s. C.E.C. Ltd.

Respondent : State of M.P. and Others

Judgement :

1. This revision petition has been filed by the petitioner under Section 19 of the Madhya Pradesh Madhyastham Adhiniyam, 1983 being aggrieved by an award dated 29th October, 2003 passed by the M.P. Arbitration Tribunal, Bhopal, in a proceeding held under the M.P. Madhyastham Adhiniyam, 1983 (herein after refer to as the Adhiniyam of 1983).

2. Facts in brief which are necessary for deciding the issue in question goes to show that the State Government issued a notice inviting tender for the purpose of constructing right and left rockfill dam in the Ban Sagar Project, District Shahdol. Petitioner submitted their offer for both the right and left rockfill dam. Petitioner's tender was accepted and a contract was given to the petitioner for the purpose of right rockfill dam. The contract for left rockfill dam was given to M/s Bihar State Construction Corporation. An agreement was entered into between the petitioner and respondent No.4 on 3.10.1983 and the agreement stipulated conclusion of the

work within three calendar years excluding rainy season. As per the agreement, petitioner was required to do the following :-

- (i) Excavation by wedging and barring for final founding grades/ seats of the Dam.
- (ii) Balance excavation of cut off trench (COT) and its back filling.
- (iii) All filters in the down stream seat and around the Central Earth Core.

The total value of the contract was Rs.6.93 Crores. The work order was issued on 3.10.1983. Petitioner commenced the work on 18.10.1983 and as per the agreement the work was to be completed on or before 15.6.1986. However, the fact remains that due to various reasons the time limit for conclusion of the work was extended from time to time and the records do indicate that final extension granted to the petitioner for conclusion of the work was upto 31.3.1989 .

3. However, it is the case of the petitioner that from the very inception the department failed to discharge its obligation under the agreement and therefore, petitioner was handicapped in completing the work within the scheduled period. Some of the allegations made by the petitioner against the department which resulted in non-conclusion of the work are detailed by the Arbitration Tribunal in para 5 of its award and therefore, for the present it is not necessary to go into the same in detail.

4. Based on the work concluded and the dispute between the parties, petitioner raised various claims categorized as Claim 'A' to 'P', details of these claims are as under :-

1.	Claim No.'A'	Lead for sand carriage.	Rs.2,94,000/-
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2.	Claim No.'B'	Clearance of Rockfill area of slush, debris, muck, materials and approach road area left over by M/s N.P.C.C. during the whole period.	Rs.11,63,981/-
3.	Claim No.'C'	For loss on account of irregular and interrupted supply of electricity.	Rs.14,71,658/-
4.	Claim No.'D'	Construction of approach road	Rs. 3,38,000/-
5.	Claim No.'E'	Right Nose Hill Excavation	Rs.1,79,50,793/-
6.	Claim No.'F'	Revision of rate of Rockfill material after 15.6.1986.	Rs.1,75,27,091/-
7.	Claim No.'G'	Illegal termination of contract.	Rs. 15,30,000/-
8.	Claim No.'H'	Cost of material	Rs. 9,38,117/-
9.	Claim No.'I'	Excess recovery for cost of HSD.	Rs.77,046/- (Claim has been withdrawn)
10.	Claim No.'J'	For doing screening of rockfill material taken from stock pile.	Rs.87,319/-

11.	Claim No.'K'	Compensation to loss of production due to idling of labour, machines and materials and on account of various breaches of contracts and hindrances resulting prolongation of work.	Rs.81,37,949/-
12.	Claim No.'L'	In respect of sanction of rate on account of excavation beyond 30% of the agreed quantity.	Rs.23,83,375/-
13.	Claim No.'M'	Escalation.	Rs.52,49,211/-
14.	Claim No.'N'	On account of loss due to detention of petitioner's machinery and equipment after illegal termination of contract agreements.	Rs. 4,84,080/-

15.	Claim No.'O'	Excess and wrongful recoveries from final bill this claim is being withdrawn as the respondents have paid substantial amount after filing of petition.	Rs.4,79,452/- (claim has been withdrawn)
16.	Claim No.'P'	Due to infructuous overhead expenses incurred by the petitioner on account of unnecessary prolongation time for work on account of breaches done by the Department.	Rs.83,86,287/-
		TOTAL	Rs.6,60,18,905/-

5. The petitioner submitted that there has been an illegal termination of contract, the petitioner was not permitted to work after 31.3.1989 and as the respondents have not settled the claim of the petitioner in accordance to the work done by the petitioner, he was entitled to a total sum of Rs.6,60,18,905/- as detailed herein above.

6. When repeated representations and approach to the department failed, a reference was made by the petitioner under Section 7 of the Adhiniyam of 1983 before the Arbitration Tribunal. The department filed a detailed reply and challenged the action of the petitioner and came out with a case that the petitioner was responsible for the delay, he was not willing to work and in fact, after 31.3.1989, left the work and did not do work. As a result it was stated that he is not entitled for any benefit. However, a serious objection was raised by the department to say that the claim of the petitioner was rejected by the Superintendent Engineer on 15.4.88 vide Exhibit P-55 and Exhibit D-14 and as the reference made under Section 7 was after a period of three years, i.e. on 22.4.1991, the reference was not maintainable, it was barred by time and therefore, the reference should be rejected as time barred. A preliminary objection in this regard was raised apart from raising various grounds on merit to say that the claim is not maintainable.

7. The Tribunal formulated certain questions and the first question which fell for consideration before the Tribunal was as to whether the claim is within time or not ?

8. After dealing with the facts of the case, which included the claim of the petitioner and objection of the respondents upto para 104, the Tribunal proceeded to decide the first question of limitation from para 105 onwards. It was recorded by the Tribunal in para 108 that with regard to various claims as were detailed by the petitioner, a dispute was filed before the Superintending Engineer who rejected the same on 15.4.1988, in view of the fact that the claim of the petitioner arose for a period which was prior to coming into force of Section 7(A) and

(B) of the Adhiniyam of 1983, the claim should have been filed within three years from its rejection on 15.4.1988 and as the claim was filed on 22.4.1991 i.e. beyond the period of three years, it was held that the entire reference was barred by time and accordingly, the Tribunal rejected the claim. However, having done so, it was also found by the Tribunal that the petitioner willfully refused to perform the work after 31.3.1989, he is responsible for not discharging his obligations under the agreement, did not co-operate with the department and therefore, it was found that

he is not entitled to any benefit. After having held so, the Tribunal went to consider various claims and rejected the entire claim of the petitioner except a claim to the tune of Rs.4,84,158/- along with interest on this amount @ 8% per annum from the date of filing of the petition till 22.4.1991. In fact, this amount of Rs.4,84,158/- have been calculated by granting the amount pertaining to claim 'B', to the tune of Rs.1,82,188/- as allowed by the Superintendent Engineer and further an amount of Rs.3.3 Lacs which was allowed against a claim for Rs.23,83,375/- in respect of sanction of rates on account of excavation beyond 30% of the agreed quantity and was claimed as claim No.'L'.

9. Challenging the award in its totality, including the findings to say that the claim is beyond limitation, this revision petition has been filed under Section 19 of the Adhiniyam of 1983.

10. Shri N. S. Ruprah, learned counsel appearing for the petitioner took us through the factual aspects of the matter, the material available on record and the legal question involved to say that the claim has been illegally rejected, not only by the department but also by the Tribunal while rejecting the reference.

11. Shri Ruprah submitted that on 3.10.1983 the work order was given to the petitioner. The work was to commence from 18.10.1983 and was to conclude on 15.6.1986. He took us through various provisions of the agreement including clause 50 of the agreement providing for extension of time and argued that extension of time upto 31st March, 1989 was granted to the petitioner vide Exhibit D-62. It was submitted by him on the ground of limitation that the reference was made by the petitioner on 22.4.1991 and even though the Superintending Engineer had rejected various claims on 15.4.1988 except claim No.B but thereafter the matter was again taken up and the petitioner was permitted to do the work upto 31.3.1989 and it is only after 31.3.1989 that according to the respondents themselves that the contract came to an end. According to Shri Ruprah, if that be the factual position, then the cut-off date for counting limitation for calculating the period for institution for reference i.e. three years should be from 31.3.1989 when according to the Tribunal itself the contract was terminated because of the act of the petitioner and if that be so, then the claim was within

limitation. That apart, on the question of limitation as an alternate submission was raised. Shri Ruprah invited our attention to the amendment made to the Adhiniyam of 1983, incorporation of Section 7(A) and (B) sub section 2 vide amending Act 1990 w.e.f. 24.4.1990 and argued that according to this amending provision the petitioner has a right to initiate a claim within a period of one year from the date the amended provision of Section 7(A) and (B) came into force on 24.4.1990 and on such consideration also, it is stated that the claim is within limitation.

12. As far as the question of applicability of the provisions of the amendment after introduction of Section 7(A) and 7(B) is concerned, it was submitted by Shri Ruprah that this aspect has been considered by a Division Bench of this Court in the case of Raml Construction, New Delhi Vs. State of M.P. - 2006(1) MPLJ 234 . Shri Ruprah took us to the provisions of Section 7, 7(A) and 7(B) of the Adhiniyam of 1983, proviso thereto, and argued that for a period of one year after coming into force of the amended provisions of Section 7(3)(ii), the claim of the petitioner was tenable and without taking note of all these aspects of the matter, the claim petition has been rejected which is unsustainable.

13. That apart, he also emphasized that considering the cut-off date as 15.4.1988 by the Tribunal based on the letter of the Superintending Engineer was wholly unsustainable because even after this letter was issued by the Superintending Engineer on 15.4.1988, on 30th of June, 1998 the Executive Engineer wrote to the Superintending Engineer vide Exhibit P-51 making certain recommendation. Thereafter on 11.2.1989 vide Exhibit P- 158 the Superintending Engineer accepted certain queries and issues raised by the petitioner and his communication to the Chief Engineer after accepting the points of the petitioner recommended for increasing the rate of rockfill work at Rs.102/- per cu.m. which is thereafter further clarified in the communication between the Superintending Engineer and Chief Engineer as is evident from Exhibit P-80 and finally the Execution Committee of the Ban Sagar Control Board in its meeting held on 11th March, 1989 even though accepted the contention of the petitioner for increase of the rate for rockfill work, recommended that rate given to the petitioner as per the contract is not workable, the rate for enhancement claimed by the petitioner was not accepted as permitting any increase of rate to the petitioner will result in

serious repercussions on other contract, the Board recommended that without imposing any penalty or damages the contract be terminated on 30th June, 1989 after the period of extension is over. It was argued by Shri Ruprah that if this is the position then the claim of the petitioner was alive even on 11th of March, 1989, which such a recommendation was made by the Board and as the Tribunal has rejected the claim by treating the claim to be rejected on 15.4.1988 the same is a perverse and illegal finding, therefore, interference should be made in the matter. Thereafter, Shri Ruprah referred to a detailed written arguments submitted by him, various documents referred to therein and pointed out that after rejecting the claim on the ground of delay, the Tribunal went into the question on merits and in a very arbitrary, casual and perverse manner rejected the claim without considering various documents including Exhibit P-58 an admission by the Superintending Engineer to the Chief Engineer recommending for settling various claim of the petitioner. Shri Ruprah also invited our attention to the fact that NPCC which was working in the adjoining area did not conclude its work and vacate the premises, as a result, petitioner did not commence its work and various grounds detailed in the written argument to say that the Tribunal did not accept various claims of the petitioner in an arbitrary and unreasonable manner. Shri Ruprah argued that even if the claim of the petitioner was rejected on the ground of limitation, this Court should exercise its jurisdiction and direct for payment of the admitted claim and in support thereof, he took us through various documents and material available on record, which we may refer to as and when required subsequently. The details of such submission made by Shri Ruprah are available in the written argument submitted by him. Shri Ruprah submitted that in the light of the admitted position even if the finding of the Tribunal is found to be perverse, the matter be not remanded and claim be decided as it is an old claim pending since 1989. Shri Ruprah vehemently argued that the claim of the petitioner should be allowed.

14. Shri Rahul Jain, learned Dy. Advocate General appearing for the respondents took us through the provisions for limitation, the findings recorded by the Tribunal from para 106 onwards and argued that once the claim was rejected by the Superintending Engineer on 15.4.1988 then in view of the fact that the dispute arose prior to coming into force of the amended Adhiniyam on 20th April, 1991, the claim should have been filed within the period of three years from the date of its

rejection and in rejecting the claim, the Tribunal has not committed any error. He further argued that on merit the Tribunal has given detailed reasons and justification to say that the claim is not tenable. This is a finding of fact and now exercising its limited jurisdiction in a proceeding under Section 19 of the Adhinyam of 1983 which has the only power of revision, this Court should not interfere into the matter. In support of his contention he placed reliance on a Division Bench judgment of this Court in the case of Mahavir Construction Company vs State Of M.P. 1998(1) MPLJ 69 to say that the entire claim should now be rejected.

15. Having considered the rival contentions and on going through the material available on record, it is clear that the first and the foremost question which was considered by the learned Arbitration Tribunal and based on which the claim of the petitioner was rejected, was the ground of limitation. As far as rejection of the claim on the ground of limitation is concerned, a perusal of the award passed by the Arbitration Tribunal goes to show that Arbitration Tribunal has held that the claim of the petitioner was rejected by the Superintendent Engineer on 15.4.1988 and as the reference was not made under Section 7 of the Adhinyam of 1983 within a period of three years, placing reliance on a judgment of this Court in the case of Secretary to the State of Madhya Pradesh Vs. Jasvant Singh Dhillon 1999 AWLJ 654, it is held that the claim is barred by time as it was filed after a period of three years which lapsed on 15.4.1991. It is found that the petition was filed on 22.4.1991, therefore, it is barred by time.

16. It is also held by the Tribunal that as the claim arose prior to coming into force of the amended provision of Section 7(B) of the Adhinyam of 1983, therefore, the claim is barred by time.

17. We are of the considered view that while doing so, various aspects of the matter both with reference to fixing the cut-off date for counting the limitation as 16.4.1998 so also with regard to applicability of amended provision has been wrongly applied in the present case.

18. In the case of Ramla Construction (supra) the effect of amendment introduced vide Section 7(B)(2) of the Adhinyam of 1983 has been considered and if the

aforesaid judgment is analyzed, it would be seen that the Division Bench has held in the aforesaid case that by introducing sub section (2) of Section 7, the legislature in its wisdom provided a special limitation to file reference application with respect to those matters in which no reference application was filed during the amendment was incorporated on 23.4.1990, though the cause of action arose prior to insertion of Section 7(B). The matter has been so dealt with by the Division Bench :

6. ...Before Section 7-B, no period of limitation was provided for filing reference application before the Tribunal. Whether the provision of Section 113 of Limitation Act, 1963 was applicable or not, it has become immaterial after insertion of sub-section (2) which provide a special limitation for filing reference application within a period of one year from the date of insertion of Section 7-B w.e.f. 24-4-1990.

Even if it is assumed that the provisions of Limitation Act were applicable prior to insertion of Section 7-B and residuary Art. 113 of Limitation Act was applicable, even then the legislation has provided one year limitation to meet out all the exigencies and permitted the concerned person to file reference application within a period of one year from 24-4-1990. In this regard the provision of sub-section (2) of Section 7-B is very specific. This provision specifically provide that in spite of limitation prescribed under sub-section (1) of Section 7-B, if any reference petition has not been filed irrespective of fact that a decision has been taken or not by the final authority of the agreement, such reference petition shall be entertained within one year from the date of commencement of the Amending Act of 1990.

7. It is a special enactment which provides a special limitation of one year in respect of all the matters which may be filed before the Tribunal. Special limitation has been extended to all the cases which ought to have been filed before the amendment but could not be filed. When the legislation provided special limitation covering a wide field, no narrow interpretation can be made to reject the matters though entertainable under Section 7-B of the Act.

If the aforesaid principle of law is applied in the present case, then admittedly, the application for seeking reference can be filed on or before 24.4.1991 and as this application was filed before the said date, the action of the Tribunal in rejecting the

reference petition on the ground of limitation was not correct.

19. As far as fixing the cut-off date as 16.4.1988 to calculate the period of limitation is concerned, this is based solely on the ground that vide Exhibit P-55 dated 15.4.1988 the Superintendent Engineer decided the claim, rejected most of the claim and allowed one claim amounting to Rs.1,82,188/- namely Claim NO.'B'. However, it is pertinent to note that after 15.4.1988, things did not come to an end instead various important events took place after 15.4.1988 which had the result of keeping the dispute alive and the Tribunal totally failed to consider all these aspects of the matter.

20. On 9.6.1988 vide Exhibit P-74 the Chief Engineer of the Project made a communication to the Chairman of Ban Sagar Control Board recommending that the case of the petitioner be considered in the Sub Committee Meeting for revision of various rates particularly with regard to rate of rockfill. Thereafter, on 30th June, 1988 vide Exhibit P-51 the Executive Engineer again made a recommendation to the Superintendent Engineer to reject some of the claim and to allow some of the claim. Again on 22.8.1988 vide Exhibit P-75 the Senior Project Manager entered into further communication with the Superintendent Engineer for evaluating the claim of the petitioner and taking a decision. Thereafter, on 11.2.1989 vide Exhibit P-158 the Superintendent Engineer made a communication to the Chief Engineer accepting many grounds raised by the petitioner and also made recommendation for enhancement of the rate for rockfill @ 102/- per Cu.M. After this communication was made on 11.2.1989, it is seen that a meeting of the Executive Committee of the Ban Sagar Control Board was held on 11th March, 1989. This Committee considered various aspects of the matter, the progress of the work of the petitioner and made the following recommendation :-

While the committee appreciated that the rates are unworkable, in order not to have repercussions on other contracts, decided to recommend to Control Board without imposing any penalty and disqualification termination of both the existing contracts from 30.6.1989 in case the contractors are unwilling to complete the works at the existing rates. Thereafter, fresh tenders should be invited for the balance work of both the contracts together, for which M/s B.S.C.C. Ltd. as well as

M/s C.E.C. Pvt. Ltd. will be eligible to tender.

It is therefore, clear from the aforesaid that even on 11th March, 1989, the highest authority of the Project, the Control Board was seized of the matter and came to a conclusion that the rate at which the work was given to the petitioner was unworkable but instead of permitting enhancement taking note of the repercussions in doing so, a decision in favour of the petitioner would have effect in any other contract, it was recommended that without imposing any penalty and disqualification the contract be terminated w.e.f. 30.6.1989, in case the petitioner was unwilling to complete the work at the existing rate. This clearly shows that even on 11th March, 1989 the dispute was kept alive and has not come to an end. Thereafter, there are documents available on record i.e. Exhibit P-78 dated 27.2.1989 wherein the petitioner indicated that it is impossible for them to work at the very low rate and thereafter there are various documents available on record to say that the petitioner was still willing to work but indicate that the matter be referred for Arbitration. Finally, it is seen that the work was terminated on 31.3.1989 on the ground that the petitioner is not willing to work and accepting the recommendation of the Board which was held on 11th March, 1989, the contract was deemed to have been terminated on 31.3.1989. That being so, the subsequent events that are available on record even after 15.5.1988 and at least upto 31.3.1989 clearly goes to show that the contract was terminated in accordance to law on 31.3.1989 and if the provisions of Section 7 as was applicable prior to amendment, it would be seen that as per the provision for limitation a dispute can be raised within a period of three years from the date when the cause of action accrues. In this case on the facts that have been narrated herein it can be safely concluded that if not later, the cause of action for raising the dispute accrues to the petitioner at least on 31.3.1989 when the contract is said to have been terminated and finally on the prayer for enhancement of claim was rejected based on recommendation made by the Control Board. That being the admitted factual position, we are of the considered view that the claim and reference made was within three years of 31.3.1988, was well within limitation and by fixing the cut-off date as 15.4.1988 and rejecting the claim on the ground that it was not filed within three years, a perverse and unsustainable finding has been recorded by the Tribunal. It is a case where the Tribunal has misconstrued itself in

treating the entire claim to have been rejected on 15.4.1988 for the purpose of calculating limitation. While doing so, the factual aspects pertaining to various correspondence and act of terminating the contract on 31.3.1989 was totally lost sight of.

21. Having held that the claim is barred by time in para 108 and 109 and having come to the conclusion that the claim is beyond limitation and is liable to be rejected and claim No.B pertaining to Rs.1,82,188/- is payable. From para 110 onwards the Tribunal in a very casual manner discussed the merits of each claim and thereafter has rejected the claim on merits also but on going through the award passed while analyzing the claim on merits from para 110 upto para 139, we find that in the backdrop of the fact that the claim was not maintainable on account of delay, a very casual approach has been adopted by the Tribunal for dealing with the questions on merit. In fact, on analyzing the findings recorded on merit and scrutinizing it in the light of the material available on record, we find that it is a perverse finding which we are unable to uphold. The detailed analysis in this regard made by us indicates the following facts :-

(a) In para 108 of the award it is said that so far as merits of the matter is concerned, the rival claims of the parties have been discussed and after discussing so, it is held that the claim made by the petitioner is unwarranted and is not tenable. Thereafter, reference is made to the meeting of the Ban Sagar Control Board dated 11th March, 1999 which is reproduced by us in para 20 and it is said that petitioner was unwilling to carry out the contract and therefore, he is not entitled to any relief. However, while doing so, some of the important documents available on record, particularly Exhibit P-159 has not been considered by the Tribunal in its right perspective. Exhibit P-159 pertains to certain recommendations made by the department wherein, there is a proposal to grant enhanced rate for rockfill. It is also categorically recorded that the rate given to the petitioner is unworkable. In spite thereof, the finding recorded is that the contract be terminated without imposing any penalty or damages. However, Exhibit D-94 is a document available at page 2240 of the paper book wherein the petitioner categorically says that he is willing to work without revision of rate subject to the question of revision of rate being referred for arbitration. Thereafter, there are various documents

available on record which goes to show that the petitioner could not complete the work because the respondents were insisting upon doing the work at the existing rate and were not even willing to refer the matter for arbitration. Without advertent to consider all these grievance of the petitioner, it is held that even though the department had taken a lenient view the petitioner instead of being thankful to the department, made baseless allegations against the department and the act of the petitioner is found to be unjustified by the Tribunal. In fact, the Tribunal has given a perverse finding.

(b) As far as claim No.G is concerned, it is simply held that as the claim of the petitioner is rejected on the ground of delay, there is no reason for grant of any further benefit. When we analyze the entire findings on merit, we find that the Tribunal has not gone into various important aspects of the matter and has simply recorded a perverse finding with regard to the entitlement of the petitioner.

(c) As far as the question of non vacation of premises by the N.P.C.C. and the liability imposed upon the petitioner due to non commencement of work in time is concerned, it is clearly seen from the material available on record that the agreement was executed by the State Government with M/s N.P.C.C. in the year 1979 for the purpose of construction of masonry dam. The work was not completed by the N.P.C.C. upto 7.5.1989. In fact, for a sufficiently long period of time upto 7.5.1989, this area was occupied by N.P.C.C. Sometimes in April-May 1989 when N.P.C.C. vacated the premises, the petitioner had to clean up the site and dig up to 3 ft. depth in the entire area. That apart, the respondents themselves in the communication available on record had admitted that there has been some delay in handing over site occupied by N.P.C.C. to the petitioner. In this regard, the request made by the petitioner in his application to the Executive Engineer vide Exhibit P-71 dated 14.5.1986 indicating these hindrances and further the request made by the petitioner in Exhibit D-52 are proof of all these facts and the State Government in rebuttal has not given any material to show that these contentions are incorrect. On the contrary the documents available on record do show that the extension granted to the petitioner on 17.6.1987 vide Exhibit D-52 was also on the ground that there has been hindrances in providing the site to the petitioner free from any obstruction.

(d) With regard to claim made by the petitioner pertaining to Claim No.'K' i.e. compensation to loss of production due to idling of labour, machines and materials and hindrances and various other breaches to the tune of Rs.81,37,949/- and claim No.'P' pertaining to infructuous overhead expenses incurred by the petitioner due to unnecessary prolongation of time for the work is concerned, it is seen that the petitioner has produced various documents in support of all these claims but without adverting to consider all these claim in its right perspective, it has been rejected only on the ground that the petitioner's application having been rejected, no further indulgence into the matter can be made.

(e) As far as claim No.'E' of the petitioner pertaining to Right Nose Hill excavation is concerned, records indicate that part of the work was also given to another agency M/s Mohan Construction Company and the petitioner did deployed one 2.5 cu.m. bucket capacity hydraulic excavator for the purpose of conducting this work but due to peculiar situation available in the site, the petitioner could only achieve 25% of this capacity as blasting for an area beyond 2 meters depth was not permissible. All these factors though highlighted by the petitioner and indicated in the evidence has not been considered by the authorities. With regard to Claim No.'B' pertaining to clearance of Rockfill area and cleaning of the left over debris by M/s N.P.C.C. is concerned, the Tribunal has simply held that due to delay in limitation the petitioner is not entitled to any benefit. However, relevant documents produced in this regard as Annexure F, H and I have not been taken note of by the Tribunal.

22. Similar is the position with various other claims. If the written arguments submitted by the learned counsel is seen from para 40 onwards with reference to various claims and the documents referred to therein the petitioner in this regard under various heads including the cost of excavation made a detailed claim as indicated in the written argument, however, the Tribunal has refused to interfere only on the ground that petitioner is responsible for the illegal termination and therefore, the claim cannot be permitted. Even though by referring to the written argument in detail and the documents available on record, an argument was advanced by Shri Ruprah to say that the claim should now be allowed by this Court, but Shri Rahul Jain, learned Dy. Advocate General points out that this is

only a revision petition under Section 19 of the Adhiniyam of 1983, and therefore, the same is not permissible. We are of the considered view that exercising our limited jurisdiction in the matter, it is not appropriate for us to go into the merits of the claim and pass an award based on documents available on record. The documents available on record may suggest that a prima facie strong case on behalf of the petitioner is available, but all these documents has to be maticulously analyzed and thereafter a positive finding recorded with regard to the payment of claim of the petitioner. This cannot be done by exercising revisional jurisdiction available to us. Matter would have been different if jurisdiction available to us was the appellate jurisdiction but in revisional jurisdiction, we cannot go into these factual aspects on merits, but at the same time, if we analyze the manner in which the award is passed by the Tribunal, we do find that Tribunal has dealt with the matter in a very casual and perverse manner. Most probably the Tribunal was carried away with the fact that it is the petitioner who was responsible for the termination of the contract and as the claim was beyond time, the Tribunal did not deal with the matter in its right perspective. This was not permissible. Once the Tribunal had indicated that it was going to deal with the matter on merits, then analysis of the evidence available on record both orally and documentary should have been done meticulously and then a finding recorded. The analysis of evidence done and the findings recorded by the Tribunal in this case does not meet this requirement. That being so, it is a fit case where once we have find that the claim was within the period of limitation, the matter should be remanded back to the Tribunal with a direction to reconsider the claim and take a decision in accordance with law.

23. We may observe that any observation made by us with regard to tenability of the claim and the reasons for interference indicated in the body of this order are nothing but a prima facie assessment made by us for considering the submission of Shri Ruprah for grant of benefit to the petitioner or to consider the question of remanding the matter back to the Tribunal, that being so the Tribunal is now free to decide the claim without being influenced by observations. We have only analyzed the merits of the case to find out whether the Tribunal has exercised the jurisdiction in rejecting the claim on merits in a proper way or not ? On being satisfied that the assessment of merit made by the Tribunal is not in accordance

with law, we are of the considered view that the matter should be remanded back to the Tribunal.

24. Accordingly, we allow this revision in part. We hold that the claim made by the petitioner for the reasons as indicated herein above is within limitation. The finding of the Tribunal that the claim was barred by limitation was not a correct finding. To that effect, finding of the Tribunal is quashed. That apart, as the Tribunal has not analyzed the claim of the petitioner properly and in a perverse manner has rejected the same without adverting to consider the documents and evidence available on record in its right perspective, we quash the findings of the Tribunal on merit also with regard to each of the claim and direct the Tribunal to decide each of the claim made by the petitioner afresh in accordance with law. We may further request the Tribunal that on the parties appearing before the Tribunal to make endeavor and decide the claim preferably within a period of six months from the date of passing of order.

25. With the aforesaid, this revision stands allowed and disposed of.

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