

**P.B. Enterprises, Engineers and Contractors Vs. Eastern Coalfields Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/521741](http://sooperkanoon.com/521741)

**Court :** Jharkhand

**Decided On :** Sep-05-2003

**Reported in :** AIR2004Jhar71; 2004(2)ARBLR171(Jhar); [2003(4)JCR596(Jhr)]

**Judge :** Gurusharan Sharma and; S.J. Mukhopadhaya, JJ.

**Acts :** [Arbitration and Conciliation Act, 1996](#) - Sections 11(6); [Limitation Act, 1963](#)  
- Schedule - Constitution of India - Article 137

**Appeal No. :** W.P. (C) No. 5144 of 2002

**Appellant :** P.B. Enterprises, Engineers and Contractors

**Respondent :** Eastern Coalfields Ltd.

**Advocate for Def. :** M.M. Banerjee and; Ananda Sen, Advs. for Respondents 1 to 3

**Advocate for Pet/Ap. :** Binod Poddar, Sr. Adv. and; D.K. Chakraverty, Adv.

**Disposition :** Petition dismissed

**Judgement :**

Acts/Rules/Orders:

[Arbitration and Conciliation Act, 1996](#) - Section 11(6); [Limitation Act, 1963](#) -  
Schedule - Constitution of India - Article 137

## Cases Referred:

Konkan Railways Corporation Limited v. Rani Construction P. Ltd., 2002 (2) SCC 388; State of Orissa and Ors. v .Gokulananda Jena, 2003 (6) SCC 465

## Disposition:

Petition dismissed

## ORDER

1. The Eastern Coalfields Limited terminated the work order given to M/s. P.B. Enterprises in March, 1990 for construction of 64 units of 'B' type quarters (D/S) at Rajmahal area on 31.5.1995. Certain disputes arose between therein in respect of the said work order. By letter dated 12.2.1996 M/s. P.B. Enterprises, petitioner herein requested the respondents concerned to refer the matter to an Arbitrator as per Clause 9 of the General Terms and Conditions of the Contract within thirty days of the receipt thereof.

2. The Chairman-cum-Managing Director of the Eastern Coalfields Limited, Rajmahal area, being the appointing authority of the Arbitrator as per the Arbitration agreement failed to appoint the Arbitrator inspite of receipt of the said letter dated 12.2.1996 and the reminders thereof. The petitioner, therefore, filed Request Case No. 45 of 1999(R) in this Court under Section 11 of the [Arbitration and Conciliation Act, 1996](#) (hereinafter to be referred to as the Act) seeking reference of the dispute to the Arbitrator. The Chief Justice passed the following orders.

'On the own showing of the petitioner, the cause of action to file the petition, i.e. the date when the claimant's right to receive the claims accrued, was on 15.6.1995. At best this could be stretched to 12.2.1996 when the claimant-petitioner sent notice to request to the respondents for payment of the amount in question on for reference of disputes to the Arbitrator. The petition for appointment of Arbitrator was filed on 12.10.1999, i.e. clearly beyond the prescribed period of limitation. The petition accordingly being time barred is dismissed.'

3. The petitioner has challenged the said order dated 8.6.2001 in the present writ petition.
4. In *Konkan Railways Corporation Limited v. Rani Construction P. Ltd.*, 2002 (2) SCC 388, the Apex Court held that an order made by the designated judge under Section 11(6) of the Act is not an order in which designated judge adjudicates upon the parties' right, hence it is in a nature of an administrative order. In *State of Orissa and Ors. v. Gokulananda Jena*, 2003 (6) SCC 465, the Apex Court held that a writ petition under Article 226 of the Constitution of India is maintainable as against the order made by the designated judge under Section 11(6) of the Act on limited grounds.
5. It is not in dispute that on 12.2.1996 the petitioner sent letter to the Deputy Chief Engineer 'C' Rajmahal area of the Eastern Coalfields Limited stating therein that the decision to terminate the contract in question and proposed penalty communicated by letter dated 31.5.1995 was not proper and denial of the claims in respect of the contract by the Superintending Engineer 'C'. Urjanagar Township, Rajmahal area conveyed by letter dated 3.8.1995 was also improper. Thus the dispute arose concerning the contract and, therefore, request was made to refer the matter to an Arbitrator as per Clause 9 of the General Terms and Conditions forming part of the contract to adjudicate the disputes. It was also indicated in the said letter that the appointment of Arbitrator must be made within thirty days from the date of the letter (12.2.1996), failing which the contractor would be at liberty to seek redressal to the Court of law.
6. Section 11(4)(a) of the Act provides that if a party fails to appoint Arbitrator within thirty days from the receipt of a request to do so from the other party, the appointment shall be made upon request of a party by the Chief Justice or any person or institution designated by him. The appointment procedure is provided under Section 11(6) of the Act.
7. It is clear that Section 11(2) provides that subject to Sub-section (6) the parties are free to agree on procedure for appointing the arbitrator or arbitrators and Sub-section (3) provides that failing any agreement referred to in Sub-section (2) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the

two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator. If the appointment procedure in Sub-section (3) applies and a party fails to appoint an arbitrator within thirty days from the receipt for the Request to do so from the other party under Sub-section (a), the appointment of the arbitrator shall be made upon request of a party by the Chief Justice or any person or institution designated by him.

8. No doubt the Act provides cause of action for moving the Chief Justice for appointment of arbitrator on expiry of thirty days from the receipt of a request to appoint arbitrator from the other party, but any period of limitation from the said cause of action to move the Chief Justice for appointing an arbitrator under Section 11(6) is not provided under the Act.

9. Section 21 of the Act provides that unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred arbitrator under Section 11(6) of the Act takes place after commencement of the arbitral proceedings. Sub-section (1) of Section 43 of the Act provides that [Limitation Act, 1963](#), shall apply to arbitrations as it applies to proceedings in Court and Sub-section (2) provides that for the purpose of this section and the [Limitation Act, 1963](#), an arbitration shall be deemed to have commenced on the date referred in Section 21. Consequently, the provisions of the [Limitation Act, 1963](#), are applicable for the purpose of Request Case filed under Section 11(6) of the Act for appointment of arbitrator.

10. Article 137 of the [Limitation Act, 1963](#), provides the limitation period of three years for filing any other application for which no period of limitation is provided elsewhere in the third division of the Schedule of the Act from the day when the right to apply accrues. It is the residuary article in regard to the applications and it can only be applied if no other article is applicable. It would only apply to an application where it is required by law to be made. It is restricted to applications for the exercise of the Acts and powers which the Court is not bound to perform suo motu.

11. We are, therefore, of the view that when no specific period of limitation has been prescribed for filing a petition under Section 11(6) of the Act, limitation of

three years under Article 137 is applicable and the limitation is to be counted from the date on which thirty days from the date of notice, by one party to other party for appointing arbitrator expired and the arbitrator was not appointed by the other party. It is also made clear that Section 11(6) of the Act is only machinery for referring the disputes and appointing arbitrator by the order of the Court passed by the Chief Justice or any person or institution designated by him. The question whether the claims/disputes made in reference to arbitration was valid or not is a question to be decided by the arbitrator and not by the appointing authority of the arbitrator under Section 11(6) of the Act. The appointing authority is certainly required to see whether the application under Section 11(6) of the Act was barred by time or not.

12. In the present case, we find that admittedly the petitioner sent notice on 12.2.1996 to the respondents to refer the dispute to the Arbitrator within thirty days from the date of receipt of the letter and on expiry of the said thirty days, he became entitled under the law to approach the Chief Justice of this Court for appointment of Arbitrator under Section 11(6) of the Act. He was neither required to send reminders after expiry of the thirty days' period or lawyer's notice nor was required to wait until reply of its request was received which according to the petitioner was sent by the respondents on 10.1.1997. The petitioner filed Request Case under Section 11 of the Act on 12.10.1999, i.e. after more than three and half years from 14.3.1996.

15. We, therefore, find no reason to interfere with the impugned order dated 8.6.2003. There is no merit in this writ petition. It is dismissed.