

**HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT
JABALPUR**

Arbitration Case No. 04 of 2008

Vastushilpi Projects & Consultants Private Limited

Versus.

Executive Engineer

For applicant : Shri Ajay Ojha, Adv.

For Respondent : Smt. Janvi Pandit, Govt. Adv.

O R D E R
(17.12.2015)

Per S.K. Gangele, J.

1. The applicant has filed this application under Section 11 (6) of the Arbitration & Conciliation Act 1996 for appointment of an arbitrator. The applicant was awarded the work of arbitral and alive services including the development of land for construction of Judicial Complex at old jail road, Bhopal, vide work order dated 26.10.1996. As per the applicant, he had fulfilled all the contractual liability honestly. However, certain payments were not made to the applicant. He served a notice on the respondent on 25.8.2007 and requested for appointment of Arbitrator. The same has not been done. The applicant further pleaded that as per Clause 11 of the agreement he has a right of appointment of Arbitrator.
2. The non applicant in his reply pleaded that the work awarded to the applicant comes within the definition of works contract in accordance with Section 2 of the M.P. Madhyastam Adhikaran 1983, in short "The Act of 1983". Hence, the court has no jurisdiction to appoint an arbitrator.

3. The following work was awarded to the applicant as per article of agreement submitted alongwith the petition :-

Scope of work :-

The Architects shall provides services in respect of the following works:-

- (i) Architectural work and site development,
- (ii) Structural Engineering work,
- (iii) Sanitary, plumbing, drainage, water supply and sewerage work,
- (iv) Electrical work,
- (v) Heating, ventilation and air conditioning work (HVAC),
- (vi) Acoustical work,
- (vii) Landscape work,
- (viii) Interior designing and graphic signage,
- (ix) Any other services.

Clause IV of the agreement prescribes the schedule of services which reads as under:-

3.00 Schedule of services :-

For each of the items includes in the scope of work the Architect shall render the following services :-

"3.01 Take clients instructions and prepare the sketch designs with reference to requirements given and prepare approximate stage -I estimate of cost by cubic measurements or on area basis on the rates at the place of construction based on current schedule of rates of M.P., PWD for the place of construction.

3.02 Modify the sketch designs incorporating required changes and prepare final concept designs and model for the Clients approval along with revised estimates of cost (stage-I).

3.03 Prepare drawings necessary for submission to statutory bodies for sanction.

3.04 Prepare complete working drawings, specification and schedule of quantities to prepare details estimate of cost (stage -II) and its submission.

3.05 Prepare complete working drawings, detailed specifications and schedule of quantities to enable the Client to invite tenders on sound basis (the client shall compile and issue the final tender document) to commence work at site and for the proper execution during construction.

3.06 Visit the site of work (on intimation by the client) to clarify any decision or interpretation of the drawing and specifications that may be necessary and attend conference and meetings as and when required.”

4. The contract was provided to the applicant relating to construction of judicial complex on Old Jail Road, Arera Hills, Bhopal and the applicant had to provide services for construction of the judicial complex.

5. Section 2 (i) of the Act of 1983 defines the works contract, which reads as under :-

“Works contract means an agreement in writing for execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work shop power house, transformers or such other works of the State Government or Public Undertaking as the State Government may be notification specify in this behalf at any of its stages entered into by the State Government or by an official of the State Government or public undertaking or its official for and on behalf of such public undertaking and includes an agreement for the supply of goods of

material and all other matters relating to the execution any of the said works”.

6. From reading of definition of works contract, it is clear that the definition includes for supply of goods or material and all other material relating to the said work.
7. The applicant was awarded work of supply of service. This court in the case of **Smt. Kamini Malhotra Vs. State of M.P. and others**, reported in **2002 (5) M.P.H.T. 245** has held as under in regard to word “any used” in Section 2 (i) of the Act of 1983 :-

19. In the above context learned counsel for respondents submitted that, the word 'any' has been explained in Black's Law Dictionary and it has been stated therein that the word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and subject matter of statute. It is often synonymous with 'either', 'every' or 'all'. The Supreme Court in [Lucknow Development Authority v. M. K. Gupta](#) AIR 1994 SC 787 had considered the meaning and purport of word 'any' in the context of [Consumer Protection Act](#), 1986 and has quoted the above definition of the said word in Black's Law Dictionary and has observed that its meaning in a given statute depends upon the context and subject matter of the statute.

20. In the instant case, it is clear that the word 'any' in Section 2(i) of the Adhiniyam appears to have a very wide spectrum, because it relates to the execution of any work relating to construction, repairs or maintenance of 'any' building or superstructure, tank, canal, reservoir, etc. The repetition of word 'any' in the

said definition prior to the word 'work' as well as before the nature of construction, e.g. building, superstructure, etc., clearly indicates the intention of legislature to provide for its wide amplitude and application. Therefore, it appears that the definition of 'Works Contract' as given in [Section 2\(i\)](#) of the Act, applies to all works of construction, repairs or maintenance of all types of buildings, superstructures, reservoirs, tanks, etc.

8. This court has specifically held that Section 2 (i) of the Act applies to all works of all types of building and includes the work which is in relation to the aforesaid building. In the present case the work of the applicant was in relation to construction of Judicial Complex. In my opinion, the applicant can not invoke the jurisdiction of this court in regard to appointment of an Arbitrator under Section 11 (6) of the Arbitration & Conciliation Act. The applicant has a remedy to approach the Arbitration Tribunal under the provisions of the Act of 1983. The application is disposed of accordingly.
9. No order as to costs.

(S.K. Gangele)
JUDGE

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ORDER

Post for : .12.2015

**(S.K. Gangele)
JUDGE
16.12.2015**