

The Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983

CHHATTISGARH

India

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Act 29 of 1983

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The Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 Act No. 29 of 1983 [Dated 7th October, 1983] Received the assent of the President on 7-10-1983; assent first published in the "Chhattisgarh Gazette (Extraordinary)", dated 12-10-1983. An Act to provide for the establishment of a Tribunal to arbitrate in disputes to which the State Government or a Public Undertaking wholly or substantially owned or controlled by the State Government, as a party, and for matters incidental thereto or connected therewith. Be it enacted by the Chhattisgarh Legislature in the thirty-fourth Year of the Republic of India, as follows :-

Chapter I Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983. (2) It shall extend to the whole of Chhattisgarh. (3) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions.

(1) In this Act, unless the context otherwise requires (a) "Arbitration Act" means the [Arbitration and Conciliation Act, 1996 (No. 26 of 1996)] [Substituted by C.G. Act No. 8 of 2005 (w.e.f. 30-7-2005).]; (b) "Bench" means a Bench of the Tribunal constituted under Section 9; (c) "Chairman" means the Chairman appointed under Section 4; (d) "dispute" means claim of ascertained money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof; (dd) "Judicial Member" means a Member possessing the qualifications prescribed under clause (i) or (ii) of sub-section (3) of Section

4;(e)"member" means a member of the Tribunal appointed under Section 4;(f)"Party" shall include successors, executors, administrators or assignee;(g)"Public Undertaking" means a Government Company within the meaning of Section 617 of the Companies Act, 1956 (No. 1 of 1956) and includes a Corporation or other statutory body by whatever name called in each case, wholly or substantially owned or controlled by the State Government;(h)"Tribunal" means an Arbitration Tribunal constituted under Section 3 and includes a Bench thereof constituted under Section 9;(i)"works-contract" means an agreement in writing for the 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, powerhouse, transformers or such other works of the State Government or Public Undertaking as the State Government may, by 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 or material and all other matters relating to the execution of any of the said works.(2)Words and expressions used but not defined in this Act, but defined in the Arbitration Act shall have the meanings assigned to them in the Arbitration Act.

Chapter II

Constitution of the Tribunal

3. Constitution of Tribunal.

- The State Government shall by notification constitute an Arbitration Tribunal for resolving all such disputes or differences pertaining to works contract or arising out of or connected with execution, discharge or satisfaction of any such works contract.

4. Chairman and members of Tribunal and their qualifications.

(1)Subject to sub-sections (2) and (3), the State Government may appoint a Chairman and as many members to the Tribunal as it may consider necessary.(1-a) The State Government may, in consultation with the Chairman, designate one of the Judicial Members as the Vice-Chairman who in the event of occurrence of any vacancy in the office of the Chairman by reason of his death, resignation, leave or otherwise, shall during such vacancy, discharge the functions of the Chairman.(2)No person shall be appointed as Chairman of the Tribunal, unless he is or has been a Judge of a High Court.(3)No person shall be qualified for appointment as a member of the Tribunal, unless-(i)he is or has been a District Judge of not less than seven years standing; or(ii)he is or has been a Revenue Commissioner or has held a post equivalent to the rank of Revenue Commissioner for a total period of not less than five years, or(iii)he is or has been :-(a)Chief Engineer in the service of the State Government in Public Works, Irrigation or Public Health Engineering Department; or(b)a Chief Engineer in the service of the Chhattisgarh Electricity Board; or(c)a Senior Deputy Accountant General of the Office of the Accountant General, Chhattisgarh,for a period of not less than five years :Provided that in the case of clause (iii), in exceptional circumstances, the State Government may relax the prescribed minimum period of five years to three years.

5. Term of office of Chairman and members.

(1)The Chairman and members of the Tribunal shall be whole time salaried officers.(2)The Chairman shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of 67 years whichever is earlier :Provided that the Chairman shall continue to hold office till his successor enters upon his office or for six months whichever is earlier.(2-A) The member shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years whichever is earlier.(3)Omitted

6. Salaries, allowances and perquisites to Chairman and members.

- The Chairman and the members shall be paid such salary, allowances and other perquisites if any, as may be prescribed, and until the rules are made as may be determined by the State Government by order in writing.

Chapter III

Commencement of Proceeding Before Tribunal and Procedure of Tribunal

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 so satisfied it may summarily reject the reference after recording reasons therefor.

7A. Reference petition.

(1)Every reference petition shall include whole of the claim which the party is entitled to make in respect of the works contract till the filing of the reference petition but no claims arising out of any other works contract shall be joined in such a reference petition.(2)Where a party omits to refer or intentionally relinquishes any claim or any portion of his claim, he shall not afterwards be entitled to refer in respect of such claim or portion of claim so omitted or relinquished.(3)Notwithstanding anything contained in sub-section (1) or sub-section (2) disputes relating to works contract which may arise after filing of the reference petition may be entertained as and when they arise, subject to such conditions as may be prescribed.

7B. 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 the Chhattisgarh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990, a reference petition shall be entertained within one year of the date of commencement of Chhattisgarh 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.[(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:Provided that if a reference petition is filed by the State Government, such period shall be thirty years.] [Added by C.G. Act No. 3 of 2005.]

8. Procedure on receipt of reference.

(1)As soon as a reference mentioned in Section 7 is received in office of the Tribunal, the same along with affidavit and documents shall be scrutinized by such responsible official of the stall of the Tribunal as the Chairman may, by general or special order authorise in that behalf.(2)The reference if found in order or after removal of any defect or deficiency if discovered shall be registered, numbered and placed before the Chairman.(3)The Chairman shall having regard to the nature of the dispute the amount involved and other relevant factor, if any, assign it to a Bench for giving the award.(4)The Bench to which the reference is so assigned shall cause notice thereof to be issued to opposite party to show cause. The notice shall be in such form as may be prescribed and shall specify date for appearance :Provided that if the Tribunal is satisfied that there is no ground for reference, nothing in this section shall prevent it from dismissing the reference at any stage of the case, for reasons to be recorded in writing.(5)The Opposite Party on or before the date specified in the notice for appearance, may file a reply in writing signed by the Opposite Party or its authorised agent, along with an affidavit verifying the averments made in the reply.

9. Constitution of Benches and Chairman's power of distribution of business.

(1)The Chairman may, for the convenient transaction of business constitute one or more Benches consisting of two or more numbers of members as he thinks fit :Provided that if the Chairman is not himself presiding on the Bench atleast one member shall be a Judicial Member :Provided further that for recording evidence in any matter, the Chairman may constitute a Bench consisting of single Member.(2)The Chairman may in his discretion distribute business amongst the Benches and may withdraw any case from one Bench and assign it to another.(3)The Chairman may change the

composition of any Bench as he may deem fit.

10. Regulations for procedure of Tribunal and Benches.

- The Tribunal may make regulations for transaction of business before it or before its Benches. The regulations so made shall be published in Official Gazette and shall come into force on the date of their publication in Official Gazette or such other later date as may be specified by the Chairman in this behalf

11. Tribunal or Bench to regulate its own procedure.

- Notwithstanding anything to the contrary contained in Arbitration Act but subject however to any regulations that may be made under Section 10, the Tribunal shall regulate its own procedure as it may think just and fair, but a party shall not be denied its right of being represented by an advocate or a recognised agent.

12. Power of Tribunal or Bench regarding discovery, production of evidence, affidavit etc.

(1)The Tribunal shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (No. 5 of 1908), when trying a suit in respect of the following matters, namely :-(a)discovery and inspection;(b)enforcing the attendance of any person and examining him on oath;(c)examining or allowing either party to a reference to examine an expert on any point at issue where opinion of such expert would be relevant under the provisions of the Evidence Act, 1872 (No. 1 of 1872);(d)compelling the production of books of account and other documents subject to the provisions of Sections 123 and 124 of the Evidence Act, 1872 (No. 1 of 1872).(e)issuing commissions;(f)calling proof of facts by affidavit of the party or of any witness and ordering that such affidavit may be read at the hearing on such conditions as the Tribunal or the Bench concerned, thinks fit.

13. Place of sitting.

- The Tribunal shall for the transaction of business before it ordinarily hold sittings at [Raipur] [Substituted by C.G. Act No. 8 of 2005 (w.e.f. 30-7-2005).] and may whenever deemed necessary or convenient also hold sittings either for hearing or for spot inspection, at any other place within the State as the Chairman may allow.

14. Proceeding and award not to be challenged under certain circumstances.

- No proceedings before the Tribunal shall be rendered invalid and no award shall be called in question on account of any defect in the appointment of the Chairman or member or on account of any irregularity in the proceedings before the Tribunal or any Bench thereof, not affecting the merits of the case or the inherent jurisdiction of the Tribunal.

15. Continuance of proceedings under certain circumstances.

(1) In a case pending before the Tribunal it may act notwithstanding the absence of the Chairman or any member or the existence of any vacancy in the office of the Chairman or any member. Proviso-Omitted. (2) Where during the course of any proceeding, a change has taken place in the constitution of the Tribunal by reason of any vacancy having been filled or by any reason, it shall not be necessary to commence the proceedings afresh and the proceedings may be continued from the stage at which the change took place, and it shall be lawful for the Tribunal to act on evidence, affidavits and other material already placed before it prior to change in constitution as aforesaid.

Chapter IV

Award and Orders of Tribunal or its Benches

16. Award.

(1) The Tribunal shall after recording evidence, if necessary and after perusing the material on record and on affording opportunity to parties to submit their arguments, make an award : Provided that the Tribunal may make an 'interim' award : Provided further that the Tribunal shall give reasons in brief for an award including an interim award. (2) The Tribunal shall, as far as possible, make its award within four months from the date of service notice of reference on Opposite party. (3) The Tribunal may award costs and interest at such rate as may appear reasonable to it. (4) The award shall be as per opinion of the majority of the members. If the Members of Bench differ in opinion on any point, the points shall be decided according to the opinion of majority if there is a majority, but if the members are equally divided, the point or points on which they differ shall be stated for reference of the case for hearing on such point or points by one or more of the other Members of the Tribunal, or by the Chairman himself, as the case may be, and then such point or points shall be decided according to the opinion of the majority of the Tribunal, who have heard the case including those who had first heard it. (5) The award shall spell out clearly the relief granted, the party in whose favour and against whom relief has been granted and by whom and in whose favour costs and interest, if any, are payable. (6) Copies of the award, certified under hand and seal of an officer of the Tribunal authorised in that behalf by the Chairman, shall be supplied to all the parties.

17. Finality of award.

- Notwithstanding anything to the contrary contained in any law relating to arbitration but subject to Section 19, an award including an 'interim' award, made by the Tribunal under this Act, shall be final and binding on the parties thereto.

17A. Inherent powers.

- Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Tribunal

to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal: Provided that no interim order by way of injunction, stay or attachment before award shall be granted: Provided further that the Tribunal shall have no power to review the award including the interim award.

17B. Correction of clerical or arithmetical mistakes.

- Clerical or arithmetical mistakes in awards, interim awards or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.

18. Award to have force of decree of District Court.

- An award, including an 'interim' award as confirmed, rescinded or varied by an order in revision if any made under this Act, shall be deemed to be decree within the meaning of Section 2 of the Code of Civil Procedure, 1908 (No. 5 of 1908) of the Principal Civil Court of original jurisdiction within the local limits whereof the award or the interim award has been made and it shall be executable accordingly.

Chapter V

High Court's Power of Revision

19. High Court's power of revision.

- [(1) The High Court may suo motu at any time or on an application for revision made to it within three months of the award by an aggrieved party, call for the record of any case in which an award has been made under this Act by issuing a requisition to the Tribunal, and upon receipt of such requisition, the Tribunal shall send or cause to be sent to that Court the concerned award and record thereof: Provided that any application for revision may be admitted after the prescribed period of three months, if the applicant satisfies the High Court that he had sufficient cause for not preferring the revision within such period. Explanation. - The fact that the applicant was misled by any order, practice or judgement of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this sub-section.] [Substituted by C.G. Act No. 3 of 2005.](2) If it appears to the High Court that the Tribunal-(a) has exercised a jurisdiction not vested in it by law; or (b) has failed to exercise a jurisdiction so vested; or (c) has acted in exercise of its jurisdiction illegally, or with material irregularity; or (d) has misconducted itself or the proceedings; or (e) has made an award which is invalid or has been improperly procured by any party to the proceedings, the High Court may make such order in the case as it thinks fit. (3) The High Court shall in deciding any revision under this section exercise the same powers and follow the same procedure as far as may be, as it does in deciding a revision under Section 115 of the Code of Civil Procedure 1908 (No. 5 of 1908). (4) The High Court shall cause a copy of its order in revision to be certified to the Tribunal. Explanation. - For the purposes of this section, an award shall include an 'interim' award.

Chapter VI

Miscellaneous

20. Bar of jurisdiction of Civil Court.

(1)As from the date of the constitution of the Tribunal and notwithstanding anything contained in [Arbitration and Conciliation Act, 1996 (No. 26 of 1996)] [Substituted by C.G. Act No. 8 of 2005 (w.e.f. 30-7-2005).] or any other law, for the time being in force, or in any agreement or usage to the contrary, no Civil Court shall have jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal under this Act.(1-A) Notwithstanding anything contained in sub-section (1), a Civil Court may entertain and decide any dispute of the nature specified in the said sub-section referred to it by a person in the capacity of indigent person.Explanation. - For the purpose of this sub-section "indigent person" shall have the meaning assigned to it in the Code of Civil Procedure, 1908 (No. 5 of 1908).(2)Nothing in sub-section (1) shall apply to any arbitration proceeding either pending before any arbitrator or umpire or before any Court or authority under the provisions of Arbitration Act, or any other law relating to arbitration, and such proceedings may be continued, heard and decided in accordance with agreement or usage or provisions of Arbitration Act or any other law relating to arbitration in all their stages, as if this Act had not come into force.

21. Officers and servants of the Tribunal.

(1)The Chairman may with the previous approval of the State Government create as many posts of officers and servants as may be necessary, and may appoint officers and servants for administrative or other work of the Tribunal:Provided that appointment to posts other than ministerial posts of Class III and Class IV grades shall not be made by the Chairman without-(i)obtaining previous approval of the State Government; and(ii)following the general instructions issued by the State Government on the subject from time to time.(2)The pay and allowances and other conditions of service of the officers and servants of the Tribunal may be such as may be prescribed and until the rules are made, as may be determined by the Chairman with previous approval of the State Government.

22. Chairman, members etc. to be public servants.

- The Chairman, every member, officer and servant appointed under this Act or by virtue of powers conferred by or under this Act shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (No. 45 of 1860).

23. Protection of action taken in good faith.

- Save as otherwise provided by this Act, no suit or other legal proceeding shall lie against the State Government, Chairman, member, officer or servant of the Tribunal for anything done in good faith or omitted to be done in good faith or for any loss or damage caused or likely to be caused by

anything done or intended to be done as aforesaid in pursuance of this Act.

24. Jurisdiction and powers of Tribunal etc. as regards offence affecting administration of justice.

(1)The Tribunal in relation to any reference or legal proceeding before it shall be deemed to be Civil Court and any reference or legal proceeding before it shall be deemed to be a judicial proceeding, for the purposes of any offence affecting administration of justice in so far as it is connected with such reference or legal proceeding.(2)The Tribunal shall have such jurisdiction and may exercise such of the powers under Sections 340, 342, 344, 345, 346, 348, 349 and 350 of the Code of Criminal Procedure, 1973 (No. 2 of 1974) as if may in its discretion deem necessary or expedient so to do.

25. Power to delegate.

- The Chairman may by order in writing and subject to such restrictions and conditions, if any, as he may specify therein, direct that any power relating to-(i)appointment of officers and servants of the Tribunal;(ii)administrative matters of the Tribunal; and(iii)financial powers which may be exercised by the Chairman by or in pursuance of this Act;may also be exercised by Vice-Chairman and/or one or more members or by one or more officers of the Tribunal

26. Seal.

- The Tribunal or its Bench and officers may use such seals and bearing such inscription in Hindi and English, as the Chairman may approve.

27. Inspection and copies of documents.

- Subject to such conditions and the previous payment of such fees as the State Government may prescribe in this behalf, the records and documents forming part of such records shall be open to inspection of all parties or their agents or legal practitioners during office hours of the Tribunal and subject, as aforesaid, copies of award, interim award, and other documents as the parties, their agents or legal practitioners may apply, shall be given under certificate of such officer of the Tribunal as the Chairman may by general or special order in that behalf, appoint.

27A. Determination of fees to Advocate.

- The fee payable to an Advocate appearing in proceeding on behalf of either party before the Tribunal shall be such as may be prescribed.

28. Power of State Government to direct Tribunal to maintain records, registers etc. and to furnish information and statistics.

- The State Government may, by a notified order direct the Tribunal to-(a) maintain such books, including books of accounts, registers, records, and files and for such period, as may be specified in such order; (b) furnish to the State Government such information or statistics with regard to the constitution and the working of the Tribunal, the number of cases instituted, pending and disposed of, or with regard any other connected matter, and in such form and within such time as may be specified in such order.

29. Power to make rules.

(1) The State Government may make rules generally for the purposes of carrying into effect the provisions of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-(a) salaries, allowances and other perquisites (if any) payable to the Chairman and members under Section 6; (b) form of reference under sub-section (2) of Section 7; (bb) (i) the fees for reference under sub-section (3) of Section 7; (ii) the fee for service or execution of processes and documents or other evidence to be accompanied with a reference under sub-section (4) of Section 7; (bbb) condition subject to which a reference petition may be entertained under sub-section (3) of Section 7-A; (c) form of notice under sub-section (4) of Section 8; (d) the pay, allowances and other conditions of service of the officers and servants of the Tribunal under sub-section (2) of Section 21; (e) the fees for inspection of records and documents and the conditions subject to which such inspection may be made, and the fees for supply of certified copies of documents aforesaid under Section 27; (f) the size and description of seals to be used by the Tribunal, its Benches and by Chairman, members and officers of the Tribunal; (g) the fees payable in connection with reference application and affidavits, vakalatnama, and on documents, applications or for preparation of certified copies of award, interim award, order, opinion, certificate and record of proceedings before the Tribunal or Bench thereof, and the manner of paying such fees; (gg) the fee payable to Advocates under Section 27-A; (h) any other matter that is or that may be prescribed. (3) Every rule made under this Act shall be laid on the table of the Legislative Assembly.

30. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act or any rule or notified order made thereunder, the State Government may, by order in writing which shall not be inconsistent with the provisions of this Act or rules or notified order made thereunder, remove such difficulty : Provided that no such order shall be made after the expiry of two years from the date of coming into force of this Act.

31. Laying of regulations and certain orders before Legislative Assembly.

- Every regulation under Section 10 and every order under Section 30 shall be laid on the table of the Legislative Assembly and the provisions of Section 24-A of the Chhattisgarh General Clauses Act, 1957 (No. 3 of 1958) shall apply thereto they as apply to rules.