

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8300 of 2015

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Shrinet & Shandilya Construction Private Limited having its registered office at 143, First Floor, Tribhuvan Complex, Ishwar Nagar, Mathura Road, New Delhi-110065 and its Project Office at C/o Md. Khalid Masud, Malik Tola, Near Vir Kunwar Singh Ground, District- Banka, through its authorized signatory Shri Kamlesh Kumar Singh, son of Shri Mahendra Singh, r/o Monain, P.S.- Sahebganj, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Chief Engineer (South), Road Construction Department, Govt. of Bihar, Patna.
4. The Superintending Engineer, Road Construction Department, Bhagalpur Circle, Bhagalpur.
5. The Executive Engineer, Road Construction Department, Road Division, Dhoraiya, Banka.
6. The Allahabad Bank through its CMD, Head office, 2 NS Road, Kolkata 700001.
7. The CMD, the Allahabad Bank, Head office, 2 NS Road, Kolkata 700001.
8. The Allahabad Bank, Abhay Khand-2, Indirapuram, Ghaziabad, U.P. through its Branch Manager
9. The Branch Manager, Allahabad Bank, Abhay Khand-2, Indirapuram, Ghaziabad, U.P.
10. The Allahabad Bank, Ansari Road Deoria, U.P. through its Branch Manager
11. The Branch Manager, Allahabad Bank, Ansari Road Deoria, U.P.
12. Allahabad Bank through its Branch Manager, Main Branch, Patna.
13. The Branch Manager, Allahabad Bank, Main Branch, Boring Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pritish Kumar Lal, Adv.

For the Respondent/s : SMT. Namrata Mishra, GA-13

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 02-11-2015

Heard learned counsel for the petitioner and
learned counsel for the respondents.

2. The present writ petition has been filed for
quashing the order dated 23.05.2015 passed by the Executive



Engineer, Road Division, Dhoraiya, Banka by which the agreement No. 03/OPRMC/45/BANKA 2013-14 has been rescinded, as well as for a direction to the respondents to accept the appointment of the Dispute Review Expert (D.R.E.) named by the petitioner in the bid document.

3. At the very outset, Mr. Y.V. Giri, learned Senior counsel appearing for the petitioner, submits that the name of Mr. Ramshankar Mahalaha had been proposed as the D.R.E. in the bid document itself and as such the dispute ought to be referred to him in terms of Clause 6.1 of the agreement dated 14.03.2014 entered into between the parties.

4. Learned counsel for the respondents, on the other hand, submits with reference to letter dated 17.03.2015 (Annexure-10) that the aforesaid Clause 6 of the agreement lays down the detailed procedure for the appointment of D.R.E. to be selected by mutual agreement between the parties. This has however not been done in the present case with reference to Package No. 45 being the subject matter of dispute in this writ petition. It is further submitted that there is also no provision for proposal/appointment of D.R.E. at the pre-bid stage as evident from the clarification of the queries raised in pre-bid meeting on 16.09.2013 wherein it was observed that the name of D.R.E. shall be decided in accordance with Clause 6.1.2 of the General Conditions.

5. Clause-6 of the agreement provides for the manner of resolution of dispute of appointment of D.R.E., the relevant portion whereof is extracted herein as follows:-

" 6.1 Dispute Review Expert

6.1.1 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Works and Services- whether during the progress of the execution or after completion and whether before or after the termination, abandonment or breach of the Contract- the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the matter in dispute shall, in the first place, be referred in writing by either party to the Disputes Review Expert ('DRE'), with a copy to the other party.

6.1.2 The DRE shall take up his functions after having signed a DRE's Declaration of Acceptance as required by the DRE's Rules and Procedures (which, along with the Declaration of Acceptance form, are attached to the Contract). The DRE shall be a person experienced with the type of construction and services involved in the Contract and with the interpretation of contractual documents and shall be selected by agreement between the Employer and



the Contractor. If the DRE is not selected within 28 days of the date of the Letter of Acceptance, then upon the request of either or both parties the DRE shall be selected as soon as practicable by the Appointing Authority specified in the PC.”

6. This Court finds merit in the submissions of learned counsel for the respondents, which find support from the specific provision made in Clause 6.1.2 of the agreement. The petitioner has also not brought on record any material including the Letter of Acceptance by the D.R.E. to indicate whether a D.R.E. has at all been appointed by mutual agreement between the parties. Clause 6.1.2 also contemplates that if a D.R.E. is not selected within 28 days of acceptance then a D.R.E. shall be selected by the Appointing Authority on the request of both parties.

7. In the above view of the matter, the writ petition is disposed of with liberty to the petitioner to approach the Appointing Authority, in the instant case admittedly being the Chairman, Institution of Engineers/I.R.C./Indian Institute of Arbitration, for selection of an appropriate D.R.E. in terms of and in accordance with the provisions of Clause 6.1.2 of the agreement, within four weeks from today. In such event, the Appointing Authority shall, without undue delay, proceed for appointment of an appropriate D.R.E. Needless to say, the respondents shall fully cooperate in the matter. It is made clear

that this Court is not entering into the merits of the case.

(Vikash Jain, J)

Md. Ibrarul/-

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