

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4337 of 2015

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1. Vijay Kumar Son of Late Ramashray Singh Vill - Kawala, P.S. -
Pakribarama, District - Nawada.

.... Petitioner/s

Versus

1. The State of Bihar through Principle Secretary, Department of Transport
Nirman Building Bailey Road, Patna.
2. Managing Director, Bihar State Road Transport Corporation Pariwahan
Bhawan, B.C. Patel Path, Patna.
3. Chief Mechanical Engineer, Bihar State Road, Transport Corporation,
Pariwahan Bhawan B.C. Patel Path, Patna.
4. Divisional Manager Bihar State Road Transport Corporation at Gaya,
Dist - Gaya.
5. Divisional Superintendent, Nawada, BSRTC Department at Nawada, Dist
- Nawada.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.5358 of 2015

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1. Vijay Kumar. Son of Sri Mishri Prasad. Vill.- Giriak, P.S.- Giriak,
District - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Transport
Nirman Building Bailey Road, Patna.
2. Managing Director, Bihar State Road Transport Corporation Pariwahan
Bhawan, B.C. Patel Path, Patna.
3. Chief Mechanical Engineer, Bihar State Road Transport Corporation
Pariwahan Bhawan, B.C. Patel Path, Patna.
4. Divisional Manager, Bihar State Road Transport Corporation at Gaya,
Dist.- Gaya.
5. Divisional Manager, Bankipur BSRTC Depot at Patna.
6. Depot Superintendent BSRTC, Bankipur, Patna.

.... Respondent/s

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Appearance :

(In CWJC No.4337 of 2015)

For the Petitioner/s : Mr. Badri Prasad

Mrs. Renu Jha

Mr. Sanjay Kumar Pandey

For B.S.R.T.C. : Mr. P.K. Verma, Senior Advocate

Mr. S.K. Saraf

For the State : Mr. Pratik Kumar Sinha, A.C. to G.A.V

(In CWJC No.5358 of 2015)

For the Petitioner/s : Mr. Badri Prasad



		Mrs. Renu Jha
		Mr. Sanjay Kumar Pandey
		Mr. Sanjay Kumar Pandey
For the Petitioner/s	:	Mr. Badri Prasad
		Mrs. Renu Jha
		Mr. Sanjay Kumar Pandey
For B.S.R.T.C.	:	Mr. P.K. Verma, Senior Advocate
		Mr. S.K. Saraf
For the State	:	Mr. Pratik Kumar Sinha, A.C. to G.A.V

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL ORDER

7 19-10-2016 Heard learned counsel for the petitioners and learned Senior Standing Counsel for the Bihar State Road Transport Corporation in both the writ applications.

The petitioners are aggrieved with the action of the respondent Bihar State Road Transport Corporation in seizing the buses which had been sold to them under P.P.P mode scheme under separate agreements dated 30.08.2012 and 28.08.2012 respectively. Under the terms of the agreement, the petitioners had to pay the purchase price by or in instalments and the buses were to remain registered in the name of Corporation for a period of two years from the date of signing of the agreement or up to a period of ten years from the date of registration of the buses whichever was longer. The agreement also provided for the buses being seized on failure of the petitioners to pay the amount on the ground that the petitioner had not deposited the full purchase price and 10% of the total income. The buses have been seized by the



respondent Bihar State Road Transport Corporation. Aggrieved by the same, the petitioners have approached this Court.

At the outset, learned counsel for the Corporation points out that there is an arbitration clause under clause 45 of the agreement. It is submitted that where disputed questions of facts arise, as in the present matter, the writ jurisdiction will not be appropriate proceedings for deciding the matter.

Learned counsel for the petitioner, however, submits that the Secretary, Transport Department has been designated as an arbitrator under the agreement and in view of the provisions of Section 12 (5) of the Arbitration and Conciliation Act as brought into force on 31.12.2015 read with Schedule VII, it is submitted that the present matters are squarely covered under Item No.12 of Schedule VII read with the Rules of the Executive Business with regard to Transport Department Item No.8.

This Court finds sufficient force in the submission of learned counsel for the respondent B.S.R.T.C. that in view of the existence of the arbitration clause, the writ applications are not to be entertained considering that there are disputed issues of facts involved in the present matters with regard to payments made and whether they were sufficient or not and other issues arising therefrom.



However, this Court is in agreement with the submission of learned counsel for the petitioners that the Secretary may not be a fit person to arbitrate the matter under Section 12 (5) read with Seventh Schedule of the Arbitration and Conciliation Act, unless under the proviso to sub-section (5) of Section 12 of the Act, the parties express their agreement to waive the objection.

In the aforesaid circumstances, both the writ applications are dismissed on the ground of maintainability. However, it will be open to the petitioners to raise the dispute under the arbitration clause.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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