

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.5 of 2016

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M/s Mora Tollways Limited

.... Petitioner/s

Versus

The Bihar State Road Development Corporation Ltd. & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Sanjeev Kumar, Advocate
Mr. Dayanand Singh, Advocate
For the Respondent/s : Mr. Chitranjan Sinha, PAAG-II
Mr. Vikas Kumar, Advocate
Ms. Pragya Ohri, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 16-08-2016

Heard Mr. Y.V. Giri, learned Senior Counsel,
appearing on behalf of the petitioner, and Mr. Chitranjan Sinha,
learned Principal Additional Advocate General No.II, appearing
on behalf of the State-respondents.

By this order, I propose to dispose of the present
Request case preferred by M/s Mora Tollways Limited against
the Bihar State Road Corporation Ltd, the respondents herein.

The petitioner had entered into a Concession
Agreement with the respondent Corporation for four way laning
of Mohania-Ara section. The petitioner states that with respect
to its demand for damages, a dispute arose and in terms of the
Concession Agreement, the petitioner initiated the process of
resolution of disputes through arbitration and accordingly, vide
letter, dated 20.01.2016, the petitioner informed the



respondents about the nomination of Mr. Justice B.P. Singh, a former Judge of the Supreme Court of India, as its arbitrator. The respondents, however, informed the petitioner that the nomination of arbitrator is contrary to the provisions of Concession Agreement inasmuch as Clause 44.3 of Concession Agreement contained a clause that any dispute, which is not resolved amicably by conciliation, shall be finally decided by reference to Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008.

The petitioner challenges the jurisdiction of the Bihar Public Works Contracts Disputes Arbitration Tribunal to decide the disputes primarily on the grounds, which are briefly stated as follows;

i. That the contract, in question, is Design, Build, Finance, Operate and Transfer Contract and since it is not a works contract within the meaning of Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008, the Bihar Public Works Contracts Disputes Arbitration Tribunal has no jurisdiction to decide the dispute.

ii. That the dispute, raised by the petitioner, is related to initiation of project and not *per se* related to execution of project and, hence, only the provisions of the Arbitration and Conciliation Act, 1996, would apply.

The petitioner, thus, invoked the provisions of

Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of arbitrator by the Court.

The respondent Corporation challenged the contentions of the petitioner and asserted that the contract, in question, is a works contract and that the Bihar Public Works Contracts Disputes Arbitration Tribunal only has jurisdiction to decide the disputes and, consequently, Arbitration and Conciliation Act, 1996, has no application in the present case.

In the course of hearing of the petition, the parties have, however, entered into a compromise with the respect to the forum of resolution of disputes between them.

Resisting, initially, the present petition, though the respondents had contended that in terms of the subsequent modification, which had been carried out by the parties concerned in their Concession Agreement, the dispute is referable to Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008, it is, now, submitted by Mr. Chitranjan Sinha, learned Principal Additional Advocate General No.II, that the respondents, too, have agreed to refer the disputes and differences between the parties concerned to arbitration in terms of the provisions of Arbitration Act, 1996.

It has been submitted, on behalf of the petitioner, that they have taken the consent of Mr. Justice B.P. Singh, a former Judge of Supreme Court of India, for being appointed as

an arbitrator by the petitioner. So far as the respondents are concerned, they have submitted that they have taken the consent of Mr. Justice R.M. Lodha, former Chief Justice of India, for being appointed as an arbitrator.

In view of the above and keeping in view the disputes/differences, which have arisen between the parties, this Court appoints Mr. Justice B.P. Singh, a former Judge of Supreme Court of India, and Mr. Justice R.M. Lodha, former Chief Justice of India, as arbitrators on behalf of the petitioner and the respondents respectively.

In terms of the above observations and directions, this application is disposed of.

However, there shall be no order as to costs.

(I. A. Ansari, CJ)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.08.2016
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