

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3616 of 2016

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Tata Motors Limited & Anr

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chittarnjan Sinha, Senior Advocate Mr. Sanjeev Kumar Mr. Dayanand Singh
For the BUIDCO	:	Mr. Lalit Kishore, Senior Advocate Mr. Ravindra Priyadarshi
For Respondent No.1:		Mr. Sanuj Kumar, A.C. to S.C.11

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**
ORAL ORDER

4 25-10-2016 Heard learned counsel for the petitioners and Mr. Lalit Kishore, learned Senior Counsel for the Bihar Urban Infrastructure Development Corporation Ltd.

The writ application has been filed for a direction on the respondent authorities to immediately accept delivery of remaining 138 buses having been designed and manufactured strictly as per the specifications provided by the Bihar Urban Infrastructure Development Corporation (in short 'BUIDCO') in terms of the agreement and for consequential reliefs.

The petitioners, pursuant to request for proposal, were the successful bidders and accordingly letter of acceptance dated 11.12.2013 was issued by the Corporation for supply of 300 city buses for operation in Patna and Bodh-Gaya under JNNURM. The



city buses were to be delivered by petitioner No.2, M/s. Maurya Motors Private Ltd., which is a dealer of petitioner No.1, who had participated pursuant to the request for proposal. In terms of the agreement, certain supplies were made, whereas with respect to 138 buses it is alleged that they were kept ready as per the specification provided by the respondent Corporation for which an inspection was also made by the authorized inspecting agency at Pune but thereafter the respondents have refused to accept the delivery, which has led to the filing of the present writ application.

During the course of arguments, it has come out that clause 20.2 provides for arbitration in which it is prescribed that any dispute, which is not resolved amicably as provided in clause 20.1 (a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996; the arbitration shall be by a committee of three arbitrators chosen from a panel of arbitrators on the list of arbitrators available with or furnished by BUIDCO. One arbitrator is to be chosen by each party and the third, who shall be the Chairman to be appointed by the two arbitrators chosen by the parties and if either party fails to choose its arbitrator, the other party shall take steps in accordance with the Arbitration and Conciliation Act, 1996.

It is submitted by Mr. Lalit Kishore, learned Senior



Counsel for the BUIDCO that the BUIDCO has no objection if the matter is resolved through an arbitration and it should be conducted by the Tribunal under Bihar Public Works Contracts Disputes Arbitration Tribunal Act.

It is further submitted by learned Senior Counsel that the statutory provision of the Act would override any terms and conditions of the contract to the contrary as provided by Section 8 of the said Act and, therefore, the said Tribunal has an exclusive jurisdiction in the matter.

Learned counsel for the petitioners submits that the agreement in question does not relate to any work contract, rather it is a contract for supply of goods and, therefore, there is no application of the provisions of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act in the present matter, as the said Tribunal is confined to disputes arising out of works contract only and evidently, the present case does not relate to work contract.

Learned counsel for BUIDCO in this regard relies upon the definition of the words 'works contract' which also includes the supply of any other goods as given in the said definition.

Learned counsel for the petitioner, however, relies upon a decision of this Court in Request Case No. 7 of 2016: A.B. Grain Spirits Pvt. Ltd. vs. Bihar Urban Infrastructure Development



Corporation Ltd. and another, in which by order dated 20.10.2016 in paragraph Nos. 13 to 15 the above issue has been authoritatively decided in the following terms:-

“13. The question, therefore, is: whether the disputes, which have arisen in the present case, are to be adjudicated upon by the Tribunal, which has been constituted under 2008 Act, or whether disputes at hand are to be resolved in terms of the provisions of the Arbitration and Conciliation Act, 1996.

14. The question, posed above, brings us to yet another question and the question is: whether 2008 Act is applicable only to works contract or other contracts as well?

15. While considering the question posed above, it needs to be pointed out that Section 2 (b) of 2008 Act defines an arbitration clause to mean a clause, in the works contract, to submit present or future differences to arbitration. The definition, so given, clearly shows that the 2008 Act applies to only works contract and not to other contracts. The word “dispute”, as defined by Section 2 (e) of 2008 Act, means any difference, relating to any claim arising out of the execution or non-execution of the whole or part of a contract for works or services or both including the rescission thereof. This definition



of dispute necessarily means that the differences, relating to arbitration, must have arisen out of works contract or such services, which relate to works contract”.

The contract in question in the above matter was with regard to the operation and plying of buses, whereas the present matter relates to supply of buses and it is thus the very buses which are to be operated at Patna and Bodh-Gaya by the aforesaid A.B.Grain Spirit. The case in hand is certainly not a case of works contract and therefore, the provisions of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act cannot be applicable to the present matter.

At this stage, learned counsel for the petitioner and for BUIDCO submit in one voice that as per their instructions the arbitration should be conducted by a single Arbitrator and the parties are agreed that the arbitration should be conducted by a single Arbitrator. Both the parties are also agreed that the same may be conducted by Mr. Justice Chandramauli Kumar Prasad, a former Judge of the Supreme Court of India.

The writ application is, accordingly, disposed of with the direction that the disputes between the parties are referred to arbitration by a single Arbitrator as agreed by them, namely, Mr.



Justice Chandramauli Kumar Prasad, a former Judge of the Supreme Court of India.

Let the parties appear before the learned Arbitrator within a period of eight weeks from today. The entire dispute between the parties including the issue of closure of the contract may be raised before the learned Arbitrator.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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