

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.126 of 2017

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M/s Vasishta Construction Pvt. Ltd., having registered office at Plot No.- 23, Rao & Raju Colony, Road No.- 2, Banjara Hills, Hyderabad having local office at Flat No.- 406, 4th Floor, Meerambika Aparatment, Boring Road, Patna, Bihar through one of its Director, namely Sri M.S.K. Subba Raju, son of Sri Surya Narayan Raju, resident of 38, Ashwani Layout, Jubilee Hills, Hyderabad.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resources Department, Bhagalpur, Bihar.
4. The Superintending Engineer, Irrigation Circle, Jamui, Bihar.
5. The Executive Engineer, Irrigation Division, Sikandra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate
For the Respondent/s	:	Mr. ANJANI KUMAR (AAG 4)
		Mr. Shailendra Kr. Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 20-09-2017

Invoking the jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 1996 Act) this application has been filed for constitution of an Arbitral Tribunal for adjudicating the dispute that has arisen in execution of an agreement dated 24.4.2010



entered into between the parties. The agreement in question was entered into for the purpose of construction of Kundghat Dam, Sillway, Outlet and Distribution System and in execution of the agreement as the dispute had arisen, in view of the arbitration clause contained in the agreement, the application in question has been filed. Clause 25 of the agreement contemplates a settlement of dispute mechanism which provides that in the event of violation of the departmental mechanism, an Arbitrator shall be appointed and the arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-engagement thereof.

Inter alia contending that now as the departmental mechanism has failed, the Arbitral Tribunal be constituted by this Court. On notice being issued, respondents have filed a detailed counter affidavit and made a two-fold submission. Their first objection is to the effect that the agreement in question was entered into between the petitioner and the State Government and, therefore, the provisions of the Arbitration and Conciliation Act, 1996 would not apply. Instead, the petitioner has to invoke the jurisdiction under the Bihar Public Works Contract Dispute Arbitration Tribunal Act, 2008 (hereinafter referred to as 2008 Act). That apart, it is stated that the petitioner having already



invoked the jurisdiction of the District Judge under Section 9 of the 1996 Act, this application is not maintainable. As far as the second objection is concerned, the same is only misconceived and has to be rejected. The jurisdiction of this Court under Section 11 and that of the District Judge under Section 9 of 1996 Act are entirely different.

That being so, merely because the petitioner for getting some interlocutory benefit has invoked Section 9 jurisdiction of the District Judge, this application cannot be held not maintainable. The said objection of the respondents is rejected.

As far as the 1st objection with regard to availability of a remedy under the 2008 Act and non-applicability of 1996 Act is concerned, this issue has already been considered and decided by a co-ordinate Bench of this Court in Request Case No.1/14 (M/s. Nil Kamal Limited vs. State of Bihar & Ors.) wherein after considering similar objections raised, in para 39 and 40, the objection has been rejected in the following manner:

“39. In view of the judgments aforesaid it is apparently clear from the State Act and Central Act both are supplemental to each other and State Act is no derogation to the Central Act. In this situation it is very difficult to arrive to the conclusion of excluding the jurisdiction of this Court in entertaining the



application for appointment of arbitrator when the agreement provides that the dispute will be resolved through Arbitration Act, 1996.

40. In support of his contention learned counsel for the respondent has relied on the judgment of the Hon'ble Supreme Court in the case of Madhya Pradesh Rural Road Development Authority (supra) where similar Arbitration Act has been enacted by the State of Madhya Pradesh. The question arose about the applicability of the State Act vis-a-vis Central Act. The two Judges Bench of Hon'ble Supreme Court could not arrive to a conclusion, matter referred to larger Bench, there the State Act received the assent of the President of India as provided under Article 254 of the Constitution of India but in the present case the State Act was not reserved for assent of President of India and so much so Section 8 of the State Act makes it clear that in case of conflict Central Act will prevail."

Keeping in view the aforesaid, it is clear that the provision of the State Act will not be applicable and the dispute in question is covered by the provisions of the Central Act and as the parties have resolved to get the disputed adjudicated by taking recourse to the remedy available under Section 25 of the agreement, this Court does not find any ground to uphold the objection. There being a dispute and there being an arbitration clause, this application is allowed.



Hon’ble R.K. Datta, a retired Judge of this Court, as has already been appointed as Arbitrator for resolving similar issue, is appointed as Arbitrator in this case also to adjudicate the dispute.

(Rajendra Menon, CJ)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	5.10.2017
Transmission Date	

