

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.551 of 2016

Central Diagnostics, Boring Road, West Boring Canal Road, District- Patna
through its Proprietor Anjana Singh, D/o R.P. Thakur, R/o 30 Kasturba Path,
Noth S.K. Puri, P.S. S.K. Puri, Dist- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna
2. The State Health Society, Bihar, Under Dept. of Health & Family Welfare, Pariwar Kalyan Bhawan, Sheikhpura, Patna
3. The Principal Secretary, Dept. of Health & Family Welfare, Patna
4. Civil Surgeon, Araria, District- Araria
5. Medical Officer, In-charge (hereafter MOIC), Jokihat, Araria, District- Araria
6. Incharge- Pathology and Radiology, SIIS, Bihar, District- Araria
7. ED, SIIS, Bihar, District- Araria
8. Civil Surgeon, Arwal, District- Arwal
9. Civil Surgeon, Aurangabad, District- Aurangabad.
10. MOIC, Haspura, Aurangabad, District- Aurangabad.
11. MOIC, Kutumba, Aurangabad, District- Aurangabad.
12. Civil Surgeon, Begusarai, District- Begusarai.
13. Deputy Superintendent, Begusarai, District- Begusarai.
14. MOIC, Barauni, Begusarai, District- Begusarai.
15. MOIC, Chhria Bariyarpur, Begusarai, District- Begusarai.
16. Civil Surgeon, Bettiah, District- Bettiah
17. Deputy Superintendent, Bagha (I), District- Bettiah.
18. Medical Superintendent, Bettiah, District- Bettiah.
19. MOIC, Bairia, Bettiah, District- Bettiah.
20. MOIC, Chanpatia, Bettiah, District- Bettiah.
21. MOIC, Mainatand, Bettiah, District- Bettiah.
22. MOIC, Narkatiaganj, Bettiah, District- Bettiah.
23. MOIC, Nautan, Bettiah, District- Bettiah.
24. MOIC, Ramnagar, Bettiah, District- Bettiah.
25. MOIC, Sikta, Bettiah, District- Bettiah.
26. Civil Surgeon, Ara, District- Ara
27. Deputy Superintendent, Ara, District- Ara.
28. MOIC, Agiaon, Bhojpur, District- Ara.
29. MOIC, Charpokhari, Bhojpur, District- Ara.
30. MOIC, Garhani, Bhojpur, District- Ara.
31. MOIC, Piro, Bhojpur, District- Ara.
32. MOIC, Ref. Jagdishpur, Bhojpur, District- Ara.
33. MOIC, Sahar, Bhojpur, District- Ara.
34. Civil Surgeon, Buxar, District- Buxar.
35. Deputy Superintendent, Buxar, District- Buxar.
36. MOIC, Itarhi, Buxar, District- Buxar.
37. MOIC, Nawanagar, Buxar, District- Buxar.
38. Civil Surgeon, Chapra, District- Saran.
39. MOIC, Baniapur, District- Saran.
40. MOIC, Dariapur, District- Saran.
41. MOIC, Dighawara, District- Saran.
42. MOIC, Ekma, District- Saran.
43. MOIC, Garkha, District- Saran.
44. MOIC, Jalalpur, District- Saran.
45. MOIC, Manjhi, District- Saran.
46. MOIC, Marhaura, District- Saran.
47. MOIC, Mashrak, District- Saran.



48. MOIC, Revilganj, District- Saran.
49. MOIC, Sonapur, District- Saran.
50. MOIC, Taraiyan, District- Saran.
51. Civil Surgeon, District- Gaya
52. Deputy Superintendent, Sherghati, District- Gaya.
53. Deputy Superintendent Lady Algin, District- Gaya.
54. MOIC, Amas, District- Gaya.
55. MOIC, Banke Bazar, District- Gaya.
56. MOIC, Bodhgaya, District- Gaya.
57. MOIC, Dumaria, District- Gaya.
58. MOIC, Khizarsarai, District- Gaya.
59. Civil Surgeon, District- Gopalganj.
60. MOIC, Barauli, District- Gopalganj.
61. MOIC, Hathua, District- Gopalganj.
62. MOIC, Kuchayakote, District- Gopalganj.
63. MOIC, Manjhi, District- Gopalganj.
64. Civil Surgeon, District- Kishanganj.
65. Civil Surgeon, District- Madhepura.
66. Civil Surgeon, Biharsharif, District- Nalanda.
67. Deputy Superintendent, Biharsharif, District- Nalanda.
68. Civil Surgeon, District- Nawada.
69. Deputy Superintendent, Nawada, District- Nawada.
70. MOIC, Gobindpur, District- Nawada.
71. MOIC, Kashichak, District- Nawada.
72. MOIC, Kawakol, District- Nawada.
73. MOIC, Nardiganj, District- Nawada.
74. MOIC, Narhat, District- Nawada.
75. MOIC, Pakribarawan, District- Nawada.
76. MOIC, Rajauli, District- Nawada.
77. MOIC, Roh, District- Nawada.
78. MOIC, Sirdala, District- Nawada.
79. MOIC, Warsaliganj, District- Nawada.
80. Civil Surgeon, Patna, District- Patna
81. Director, LNJP Hospital, Rajvanshi Nagar, Patna, District- Patna
82. Deputy Superintendent, Rajendra Nagar, Patna, District- Patna.
83. Civil Surgeon, District- Rohtas.
84. Deputy Superintendent, District- Rohtas.
85. Civil Surgeon, District- Sheikhpura.
86. Deputy Superintendent, District- Sheikhpura.
87. Civil Surgeon, District- Sheohar.
88. Civil Surgeon, District- Sitamarhi.
89. Deputy Superintendent, District- Sitamarhi.
90. MOIC, Belsand, District- Sitamarhi.
91. MOIC, Riga, District- Sitamarhi.
92. MOIC, Sonvarsa, District- Sitamarhi.
93. Civil Surgeon, District- Supaul.
94. Deputy Superintendent, District- Supaul.
95. Civil Surgeon, Hazipur, District- Vaishali.
96. Deputy Superintendent, Hazipur, District- Vaishali.
97. MOIC, Mahnar, District- Vaishali.
98. MOIC, Mahua, District- Vaishali.
99. MOIC, Raghampur, District- Vaishali.



100. MOIC, Vaishali, District- Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli
For the Respondent/s	:	Mr. Sarnesh Kumar Singh, AAG-13
		Mrs. Sunita Kumari, AC to AAG-13
For Society	:	Mr. Kishore Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 06-09-2018

The petitioner herein had entered into a contract with the State Health Society, Bihar, under the Department of Health and Family Welfare, Government of Bihar, which is dated 14.12.2010 and 23.03.2006.

It appears that the work as per the contract was undertaken by the petitioner, however, subsequently, some dispute has arisen with regard to the payments pertaining to the works carried out by the petitioner herein. The petitioner has alleged withholding of payment of certain admitted dues and it is stated at bar that the dues may be admitted and during the pendency of the present writ petition, some portion of the outstanding amount of the bills raised by the petitioner has already been paid.

The learned counsel for the respondents has disputed the payments to be made to the petitioner herein, hence, this Court is left with no option but to relegate the parties to the mechanism of arbitration provided for in the contract dated



14.12.2010 and 23.03.2006, under Clause 24, which reads as follows:-

“24. Redressal of Disputes:

The disputes if any arising out of this agreement shall be settled amicably between the two parties and not in any court of law. If any disputes persists between the two parties for more than 30 days then either of the parties can take the matter to the Development Commissioner, Govt. of Bihar, who will settle the dispute under the provisions of the Arbitration and Conciliation Act, 1996 and the decision of the Development Commissioner, Govt. of Bihar shall be final and binding on both parties.”

In view of the provision in the agreement for arbitration, this Court is of the opinion that this Court cannot be detained with such matters involving disputed questions of facts regarding payment of bills, hence, it could be in the fitness of things to relegate the parties to the arbitral mechanism for adjudication of the disputes.

This Court, with the consent of the parties, deems it fit and proper to appoint Hon’ble Justice Mr. Jayanandan Singh, a retired Judge of this Court to adjudicate all the disputes arising out of the contract dated 14.12.2010 and 23.03.2006. The respective parties would be free to agitate their claims and counter claims before the learned Arbitrator. It is expected that the arbitral proceedings would be concluded as per the mandate



of the Arbitration and Conciliation (Amendment) Act, 2015.

Now, in view of the amendment in the Arbitration and Conciliation Act, 1996 in the year 2015, there cannot be any doubt with regard to the 'Neutrality of Arbitrators', hence, the provision in the agreement for appointing an interested person i.e. the Development Commissioner, Government of Bihar, in the present case, stands nullified in view of Section 12 of the Arbitration & Conciliation (Amendment) Act, 2015 read with fifth schedule and seventh schedule thereof since his appointment gives rise to justifiable apprehension of bias and even otherwise, according to the amended Act, 2015, he is incompetent to perform the role of an arbitrator and now, an independent arbitrator is required to be appointed. Reference, in this connection, be had to a judgment of the Hon'ble Apex Court reported in **(2017) 4 SCC 665 (M/s. Voestalpine Schienen GMBH v. Delhi Metro Rail Corporation Ltd.)**.

It is needless to state that the learned Arbitrator shall act within the framework of the provisions of the Arbitration and Conciliation (Amendment) Act, 2015.

It may also be not out of place to mention that the respondent-society is not any manner precluded by the present order to make payment of the admitted dues.



The writ petition is disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2018
Transmission Date	NA

