

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6412 of 2019

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M/s Surendra Prasad and Co. through its working partner Anup Kumar, aged about 53 years, male, S/o Late Surendra Prasad, Resident of Village/Mohalla-Anandpura, P.O.- Kadirganj, P.S.- Nawada, District- Nawada- 805104.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Vishweshwaraiya Bhawan, Bailey Road, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna-15.
4. The Chief Engineer, (Communication), North Bihar Wing, Road Construction Department Government of Bihar Patna.
5. The Superintending Engineer, Road Construction Department, Road Circle, Darbhanga.
6. The Executive Engineer, Road Construction Department, Road Division, Darbhanga.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.P. K. Shahi, Senior Advocate Mr.Alok Ranjan, Advocate
For the Respondent/s	:	Mr.Raj Ballabh Prasad Yadav (AAG-11)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 21-11-2019 Learned Senior Counsel for the petitioner submits that the forfeiture of earnest money deposited by the petitioner in terms of instruction to bidders of CMBD/SBD is wholly illegal, arbitrary and bad in law. However, after going through Clause C 25 of the SBD which relates to settlement of disputes and arbitration, learned Senior Counsel submits that given the mechanism provided under the SBD, the petitioner shall seek



his remedy in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

Learned Senior Counsel has, however, expressed his apprehension that in view of the conditions stipulated in Clause 25 it is only the Engineer-in-Chief or the administrative head of the department who can appoint an Arbitrator and now in view of the amendments brought in the Arbitration and Conciliation Act, 1996 w.e.f. 23rd October, 2015, the Engineer-in-Chief or the administrative head of the department would come within the category of ineligible person who can not appoint an Arbitrator.

Learned Senior Counsel, therefore, submits that if the petitioner seeks his remedy under the provisions of the Arbitration and Conciliation Act, 1996 as provided under Clause C 25, respondents-State must agree to a common name and the Arbitrator be appointed with the consent of the parties.

Learned counsel representing the State submits that in view of the amendments brought in the Arbitration and Conciliation Act, 1996, now the Engineer-in-Chief or the Administrative Head of the department shall not appoint Arbitrator and the arbitration proceeding shall be conducted by an arbitrator on whose name parties may agree.

In view of the stand taken on behalf of the State-



respondents, this Court while disposing off the writ application grants liberty to the petitioner to seek his remedy against the forfeiture of bid security in a duly constituted Arbitration proceeding under Clause C 25 of the SBD.

The writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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