

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No. 39 of 2019

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Kamladiya Construction Pvt. Ltd Through its authorized signatory Vinod Kumar Singh aged about 48 years, (Male), son of Late Lalan Singh resident of Plot No.- 201, Cooperative Colony, Bokaro Steel City, Bokaro (Jharkhand) and local address at Shivpuri, Road No.- 23, Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Engineer -in- Chief Central, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer Water Resources Department, Siwan, Bihar.
4. The Executive Engineer Saran Canal Division, Siwan, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.

Mr. Ashish Giri, Adv.

For the Respondent/s : Mr. Anjani Kumar (AAG 4)

Mr. Shailendra Kumar Singh, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

2 05-07-2019 Heard Shri Y.V. Giri, learned senior counsel for the applicant and Shri Anjani Kumar, learned Additional Advocate General for the respondent State.

This request case has been filed praying for the appointment of an arbitrator invoking Clause 25 of the arbitration agreement.

It has been urged that earlier the applicant had filed



C.W.J.C.No. 19802 of 2018 which was disposed of granting liberty to the applicant to approach the Bihar Public Work Contract Disputes Tribunal. With the pronouncement of the Apex Court in the case of State of Bihar Vs. M/s. Brahmputra Infrastructure Ltd. (Civil Appeal No.3344 of 2018), the review application was filed before the learned Single Judge contending that the Tribunal will have no jurisdiction and, as a matter of fact, the Tribunal is stated to have orally observed that it would have no jurisdiction whereafter a review application was filed stating this and a review application was allowed on 13th May, 2019 where paragraph 13 recites as follows:

“13. Having regard to the facts and circumstances of the case and the law laid down by the Hon’ble Apex Court in the case of M/S Brahmputra Infrastructure Ltd. (supra), it is held that since the agreement in question dated 26.2.2015, governed by the provisions of the Standard Bidding document and Clause-25 of the General Condition of contract, provides for settlement of dispute and arbitration to be conducted in terms of the provisions of the Arbitration and Conciliation Act, 1996, the Bihar Public Works Contract Dispute Arbitration Act, 2008 will not apply and the provisions of the Arbitration and Conciliation Act, 1996, the Bihar Public Works Contract Dispute Arbitration Act, 2008 will not apply and the provisions of the Arbitration and Conciliation Act, 1996 will apply. Therefore, since the parties have agreed to resolve the disputes amongst them by taking recourse to the remedy available under Clause-25 of the



agreement, i.e. in terms of the provisions of the Arbitration and Conciliation Act, 1996, this Court deems it fit and proper to recall the order dated 4.10.2018 passed in CWJC No.13292 of 2018, whereby and whereunder the petitioner was directed to move the Bihar Public Works Contract Disputes Arbitration Tribunal, and grants liberty to the petitioner to take recourse to appropriate remedy available under the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator for resolving the dispute, which has arisen in between the parties. It is directed accordingly.”

Having considered the submissions raised and having gone through the counter affidavit filed by the opposite parties, the fact that an appeal is stated to have been filed to the order arising out of the black-listing order as well as the order dated 30th November, 2018, it cannot be said that the present request case would not be maintainable. The clause of arbitration as contained in the agreement, therefore, binds the parties to the same and, accordingly, for all the aforesaid facts and in view of the powers conferred under Clause 11(6) of the Arbitration and Conciliation Act, 1996, I hereby appoint Hon’ble Justice R.K. Datta (Retd.) as an Arbitrator to enter upon the dispute and render his award as expeditiously as possible.

The Registrar General to take steps accordingly for information as well as for sending the records to the Arbitrator.



With the above, this request case is disposed of.

(Amreshwar Pratap Sahi, CJ)

K.C.Jha/-

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