

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.52 of 2019

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M/s Baba Construction through its Proprietor Sri Shankar Jha, aged about 58 Years, Gender-Male, Son of Late Sri Satyanarayan Jha, Resident of Sipahi Tola, Purnea, P.S. K.Hatt. District-Purnea

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Bihar Rajya Pul Nirman Nigam, Patna.
2. The Bihar Rajya Pul Nigam Ltd. Patna-15 through its Managing Director, having Office at Mangles Road, Patna.
3. The Managing Director, Bihar Rajya Pul Niram Nigam Ltd. Mangles Road, Patna-15.
4. The Senior Project Engineer, Bihar Rajya Pul Nirman Niram Ltd, Works Division, Katihar.
5. The Deputy Chief Engineer, North Bihar Circle, Bihar Raiya Pul Nirman Nigam, Patna, having Office at Mangles Road, Patna-15.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kamal Nayan Choubey, Senior Advocate Mr. Prashant Kumar, Advocate Ms. Ritu Priyadarshiny, Advocate
For the Respondent/s	:	Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

5 20-09-2019 Heard Shri Kamal Nayan Choubey, learned Senior Counsel for the applicant and Dr. Anand Kumar, learned counsel for the respondent-the Bihar Rajya Pul Nirman Nigam Limited.

Clause 25 of the agreement is as follows:-

“Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in-before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim



right matter or thing whatsoever in any way arising out of or relating to contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter.

i) If the Agency considered any work demanded of him to be outside the requirements of the contract, or dispute any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 7 days request the Dy. Chief Engineer in writing for written instructions or decision. Thereupon, the Deputy Chief Engineer shall give his written instructions or decision within a period of fifteen days from the receipt of the Agency's letter.

If the Dy. Chief Engineer fails to give his instructions or decision in writing within the aforesaid period of if the Agency is dissatisfied with the instructions or decision of the Dy. Chief Engineer, the Agency may, within 15 days of the receipt of Dy. Chief Engineer decision, appeal to the Managing Director who shall afford an opportunity to the Agency to be heard, if the



latter so desires, and to offer evidence in support of his appeal. The Managing Director shall give his decision within 30 days of receipt of Agency's appeal. If the Agency is dissatisfied with this decision, the Agency shall within a period of 30 days from receipt of the decision, give notice to the Managing Director for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (I) above disputes or difference shall be referred for adjudication through arbitrator appointed by Managing Director, the administrative head of the said Bihar Rajya Pul Nirman Nigam Ltd. If the arbitrator so appointed is unable or unwilling to act or resign his appointment or vacates his office due to any reason whatsoever another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Managing Director of the appeal.



It is also a term of this contract that no person other than a person appointed by such Managing Director or administrative head of the Nigam as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitrator at all.

It is also a term of this contract that if the Agency does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 45 days of receiving the intimation from the Engineer-in-Charge that the final he is ready for payment, the claim of the Agency shall be deemed to have been waived and absolutely barred and the B. R.P.N.N. LTD. shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of the contract that if any fees are payable to the arbitrator these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the



parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

All arbitration shall be held at Patna and at no other place.”

The applicant has come up for the appointment of an Arbitrator in order to resolve the dispute which according to the applicant has arisen on account of non-payment as claimed by the applicant and which has been set up through applications that have been filed on record.

The main objection raised by Dr. Anand Kumar is that the matter ought to have been first placed before the Deputy Chief Engineer as per clause 25 and the procedure having not been followed, the request for appointment of an Arbitrator is premature.



On the other hand, Shri Kamal Nayan Choubey, learned Senior Counsel for the applicant, has invited the attention of the Court to the claim raised on 8th October, 2018 and then of the filing of the writ petition before this Court which was disposed of giving liberty to the applicant to approach the Arbitration Tribunal under the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2009.

The applicant approached the Tribunal in Reference Case No.21/2019, but the Tribunal declined to proceed with the matter as it had no jurisdiction for the same.

The Reference was, therefore, dismissed as withdrawn, whereafter the applicant has now approached this Court for appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

Having perused the affidavits on record and the arbitration clause referred to hereinabove, it is evident that an agreement exists and as per the said agreement clause 25(ii), the applicant is entitled to invoke the jurisdiction of this court on the facts of the present case.

Accordingly, in the exercise of the powers under Section 11(6) of the Arbitration and Conciliation Act, 1996, I hereby appoint Hon'ble Mr. Justice Jyoti Saran, a retired Judge



of the Patna High Court, as the sole arbitrator to enter upon the dispute and render his award in terms of the provisions of the 1996 Act.

Let the information of this order along with papers be transmitted by the Registrar General to the sole Arbitrator for proceeding in the matters.

The application stands disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

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