

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.1 of 2020

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Baibhaw Construction Private Limited having office at ward No. 13 Mohalla Sareya P.O. and P.S. Gopalganj Distt. Gopalganj Through the Director Braj Kishore Singh gender male aged about 72 Years Son of Late Gorakh Singh, resident of Ward no. 13 Mohalla Sareya P.O. and P.S. Gopalganj, Distt.-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Road Construction Department at Visheshwaraiya Bhawan, Patna.
2. The Superintending Engineer, Road Construction Circle, Patna East, Patna.
3. The Executive Engineer, Patna City Road Construction Division, Gulzarbag, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jitendra Kumar
For the Respondent/s : Mr.Uday Shankar Sharan Singh (Gp 19)

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

3 26-02-2020 Heard learned counsel for the petitioner and learned counsel for the respondents.

The present petition has been filed for appointment of an arbitrator arising from contract agreement number 94/SBD/2011-12 duly executed under article 29 of the Constitution of India between the petitioner and the respondent number 3 dated 21/03/2012 for a total value of Rs.13,96,79,382/-.

Learned counsel for the petitioner invites attention of this Court to the decision rendered by the Hon'ble Apex Court in the case of State of Bihar & Ors. v. M/s Brahmaputra



Infrastructure Limited, reported in (2018) 17 SCC 444.

The submissions made on behalf of the respondents, of the petition not being maintainable in view of the provisions of Section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 are thus unsustainable, in view of the consideration made by the Hon'ble Apex Court in the case of State of Bihar & Ors. Vs. Brahmputra Infrastructure Limited (supra), wherein the Court has held in paragraphs 2 to 4 as under:-

“2. To appreciate the plea raised, it is necessary to refer to the scheme of the State Act as reflected in some of the key provisions. Sections 8, 9 and 22 of the State Act are as follows:

“8. Act to be in addition to Arbitration & Conciliation Act, 1996.-Notwithstanding anything contained in this Act, and of the provisions shall be in addition to and supplemental to Arbitration & Conciliation Act, 1996 and in case any of the provision contained herein is construed to be in conflict with Arbitration Act, then the latter Act shall prevail to the extent of conflict.

9. Reference to Tribunal and making of award.- (1) Where any dispute arises between the parties to the contract, either party shall, irrespective of whether such contract contains an arbitration clause or not refer, within one year from the date on which the dispute has arisen, such dispute in writing to the Tribunal for arbitration in such form and accompanied by such documents or other evidence and by such fees, as may be prescribed.

(2) On receipt of a reference under sub-section (10), the Tribunal may, if satisfied after such inquiry as it



may deem fit to make, that the requirements under this Act in relation to the reference are complied with, admit such reference and where the Tribunal is not so satisfied, it may reject the reference summarily.

(3) Where the Tribunal admits the reference under sub-section (2), it shall, after recording evidence if necessary, and after perusal of the material on record and on affording an opportunity to the parties to submit their argument, make an award or an interim award, giving its reasons therefor.

(4) The Tribunal shall use all reasonable dispatch in entering on and proceeding with the reference admitted by it and making the award, and an endeavour shall be made to make an award within four months from the date on which the Tribunal had admitted the reference.

(5) The award including the interim award made by the Tribunal shall, subject to an order, if any made under Section 12 or 13, be final and binding on the parties to the dispute.

(6) An award including an interim award as confirmed or varied by an order, if any, made under Section 12 or 13 shall be deemed to be a decree within the meaning of Section 2 of the Code of Civil Procedure, 1908 of the principal Court of original jurisdiction within the local limits whereof the award or the interim award has been made and shall be executed accordingly.

22. *Overriding effect of this Act.*

Notwithstanding anything contained in any other law, rule, order, scheme, or contract agreement entered into before or after commencement of this Act, any dispute as defined in Section 2(e) of this Act shall be regulated under the provisions of this Act, Rules and Regulations framed thereunder, and absence of arbitration clause in any contract agreement shall not have effect excluding any dispute from the purview of this Act.”

3. It is not in dispute that the parties have executed agreement dated 22-6-2012, providing for appointment of an arbitrator as per provisions of the Central Act. Relevant portion of Clause 25 of the said agreement is as follows:



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

4. The scheme of Sections 8, 9 and 22 of the State Act shows that in the absence of an agreement stipulating the applicability of the Central Act, the State Act applies to works contracts. Since in the present cases, an arbitration agreement exists and stipulates applicability of the Central Act, the State Act will not apply. We, thus, do not find any ground to interfere with the impugned order.”

The agreement arrived at between the parties was executed on 21.03.2012 in Bihar. The work relates to “Earth filling”.

Undisputedly, there is clause 25 in the agreement containing the provision for arbitration and as such, in view of the existence of the disputes, in relation to the said agreement, matter needs to be referred to an Arbitrator for arbitration, as the dispute can be adjudicated in terms thereof, about which there is no dispute.

As such, with the consent of the parties, Hon’ble Mr. Justice Ghanshyam Prasad, a Retired Judge of the Patna High Court is appointed as an Arbitrator to adjudicate the dispute inter se the parties.

Parties undertake to appear before the learned



Arbitrator on 30.04.2020 and apprise him of passing of this order. They also undertake to fully cooperate and request the learned Arbitrator to complete the proceedings at the earliest, which request, this Court, hope, would be considered appropriately.

Let Registrar General ensure that a copy of this order is made available to the learned Arbitrator by 20th April, 2020.

The parties shall file their statement of claims before the learned Arbitrator on the next date of hearing.

Needless to add, that arbitral proceedings shall be held in consonance with the settled principles of law and the provisions of the Arbitration and Conciliation Act.

Learned Arbitrator shall be entitled to fee as per schedule.

The petition stands disposed off in the aforesaid terms.

(Sanjay Karol, CJ)

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