

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2319 of 2020

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Suvidha, N. G. O Ist Floor, Jagdishlok Apartment, West Boring Canal Road, Patna-800001, through its Secretary Salini Singh, Female aged about 46 years, wife of Ashok Kumar singh, resident of Flat No. 201, Pratap Palace Apartment, Near Krishi Nagar, Shiv Mandir, A.G. Colony, Police Station-Shastrinagar, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Bihar, Patna
2. The Executive Director, State Health Society, Bihar, Patna
3. The Deputy Development Commissioner, Siwan
4. The District Magistrate cum President, District Health Society, Siwan
5. The Civil Surgeon-cum-Member Secretary, District Health Society, Siwan
6. The Civil Surgeon, Siwan
7. Bhabha Institute of Social Services, Prabhu Nath Nagar Tari, Chapra, P.s.- Chapra, District- Saran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Lokesh Kumar Singh
For the Respondent/s	:	Mr.Chitranjan Sinha (Paag2)
	:	Ratna Kumari
For respondent no. 7	:	Mr. Sardeo Singh
	:	Mr. Rajesh Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 25-02-2020

1. The present writ petition has been filed for quashing the letter/ memo no. 26 dated 09.01.2020 issued under the signature of the Civil Surgeon- cum-Member Secretary, District Health Society, Siwan (respondent no. 5) whereby and whereunder the respondent no. 5 has been pleased to cancel the agreement between the petitioner with respondent no. 5 for providing facility of generator, laundry service, dietary service and cleaning services in Primary Health Centres, Referral



Hospitals, Sub-divisional Hospitals, Sadar Hospitals in the district of Siwan, through outsourcing, pursuant to office order issued vide memo no. 573 dated 24.06.2019.

2. At the outset, the learned counsel for the State has submitted that the petitioner has got an alternative remedy of approaching the ***Bihar Public Works Contract Disputes Arbitration Tribunal, Patna*** by filing an appropriate reference case, to which the learned counsel for the petitioner has got no objection and has submitted that the petitioner be relegated to the aforesaid remedy of filing reference case before the aforesaid Tribunal.

3. I have heard the learned counsel for the parties and perused the materials on record. In this connection, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court, reported in ***AIR 2018 SC 2640 (State of Bihar & Ors. v. M/s Brahmaputra Infrastructure Limited)***, wherein it has been held that in the absence of an agreement stipulating the applicability of the Central Act, the State Act shall apply to the work contract.

4. This Court finds that in the present case, as far as the agreement in question is concerned, there is no reference to the ***Arbitration and Conciliation Act, 1996*** under the relevant



Clause i.e. Clause no. 8 (Resolution of disputes), hence this Court is of the view that the said Act, 1996 would not apply to the facts and circumstances of the present case, hence the matter can be referred to the ***Bihar Public Works Contract Disputes Arbitration Tribunal, Patna***. In this connection, yet another judgment reported in ***AIR 2019 Patna 145 (Kamladitya Construction Pvt. Ltd., Bihar vs State of Bihar & Ors.)*** has also been referred, paragraphs no. 10 to 13 whereof are reproduced herein below:-

“10. Thus, from a bare reading of the aforesaid judgment rendered in the case of Nilkamal Ltd.(supra), it is apparent that firstly in the present case pertaining to the State of Bihar, the Bihar Public Works Contract Dispute Arbitration Act, 2008 was not reserved for the asset of a President of India, hence, the same has not received the asset of the President of India, as provided for under Article 254 of the Constitution of India, secondly it is clear that in case of conflict between the State Act and the Central Act, Central Act would prevail in view of Section 8 of the Bihar Public Works Contract Dispute Arbitration Act, 2008, thirdly, only in cases where the agreement in between the parties is silent with regard to the arbitration being conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 or in case there is Patna High Court C. REV. No.20 of



2019 dt.09-05-2019 specific stipulation of resolution of the dispute by reference to the State Tribunal, the parties would have a forum of Tribunal under the Bihar State Act, 2008 for resolution of the dispute.

11. The aforesaid view expressed by the judgment dated 17.10.2014 rendered by this Court in the case of Nilkamal Ltd. (supra) was also expressed in a judgment dated 29.3.2017 passed in Request Case No. 45 of 2017 (M/S Brahmaputra Infrastructure Ltd. Vs. The State of Bihar & Ors.), following the law laid down in the case of Nilkamal Ltd. (supra), however, the State Government had challenged the aforesaid judgment dated 29.3.2017 before the Hon'ble Apex Court and the Hon'ble Apex Court, by the aforesaid judgment dated 22.3.2018 has upheld the view taken by this Court in the case of Nilkamal Ltd. (supra) as also has upheld the judgment dated 29.3.2017 passed in the case of M/S Brahmaputra Infrastructure Ltd. (supra) by a co-ordinate Bench of this Court and has held that in cases where arbitration agreement exists and stipulates applicability of the Central Act, the Bihar Act, 2008 will not apply, however, in absence of an agreement stipulating the applicability of the Central Act, the Bihar Act, 2008 will apply to the works contract. This Court finds that there is no inconsistency in the judgment rendered by the Hon'ble Apex Court dated 22.3.2018 passed in the case of Patna High Court C. REV. No.20 of 2019 dt.



09.05.2019 Brahmaputra Infrastructure Ltd. (supra) and the one dated 8.3.2018 passed in the case of M.P. Rural Road Development Authority & Anr. vs. L.G. Chaudhary Engineers and Contractors, inasmuch as both the judgments are based on the provisions of the State Act of both the respective States as also have been rendered considering the fact that the M.P. Madhyastham Adhikaran Adhiniyam, 1983 has received the presidential assent whereas the Bihar Public Works Contract Dispute Arbitration Act, 2008 has not received presidential assent.

12. In any view of the matter, judicial propriety and judicial discipline requires this Court to follow the decision rendered by the Hon'ble Apex Court in identical matters and since the Hon'ble Apex Court by the aforesaid judgment dated 22.3.2018, rendered in the case of M/s Brahmaputra Infrastructure Ltd. (supra) has authoritatively laid down the law to be followed with regard to the recourse to be taken in case such as the present one, especially in paragraph-5 thereof, which has already been reproduced herein above in the preceding paragraph, the same is required to be followed in the present case as well.

13. Having regard to the facts and circumstances of Patna High Court C. REV. No.20 of 2019 dt. 09-05-2019 the case and the law laid down by the Hon'ble Apex Court in the case of M/S Brahmaputra 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 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. 19802 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.”

5. Having regard to the facts and circumstances of the case, considering the submissions advanced by the learned counsel for the parties and taking into account the judgment rendered by the Hon'ble Apex Court in the case of



M/s. Brahmaputra Infrastructure Limited (supra) and by this Court in the case of *Kamladitya Construction Pvt. Ltd., Bihar* (supra), I deem it fit and proper to grant liberty to the petitioner to approach the *Bihar Public Works Contract Disputes Arbitration Tribunal, Patna* by filing appropriate reference case and in case, such a reference case is filed within a period of six weeks from today, the same shall be adjudicated on merits.

6. The present writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.03.2020
Transmission Date	NA

