

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.27 of 2020

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NCC Limited (formerly known as Nagarjuna Construction Company Limited) through its authorized signatory Mr. Dwivedi Chandra Harish, aged about 64 Years, (Male), Son of Sri Dwivedi Ram Raja, Pilli Kothi, Near Shiva Temple, Katra Shamshekhan Etawah, Uttar Pradesh- 206001, **Present Official Addresss.** Mohalla- Boring - Patliputra Road (Near Alpana Market), A/3 2nd Floor, Road No. A, Vivekanand Park, Patna - 13 State - Bihar.

... .. Petitioner/s

Versus

1. Bihar Rajya Pul Nirman Nigam Limited (a unit of Govt. of Bihar), through its Chairman, 7, Sardar Patel Marg, Patna- 800015.
2. The Chairman, Bihar Rajya Pul Nirman Nigam Limited (a unit of govt. of Bihar), 7, Sardar Patel Marg, Patna- 800015.
3. The Managing Director, Bihar Rajya Pul Nirman Nigam Limited (a unit of Govt. of Bihar), 7, Sardar Patel Marg, Patna- 800015.
4. The Dy. Chief Engineer (South Bihar), Bihar Rajya Pul Nirman Nigam Limited (a unit of Govt. of Bihar), 7, Sardar Patel Marg, Patna- 800015.
5. The Sr. Project Engineer, Bihar Rajya Pul Nirman Nigam Limited (a unit of Govt. of Bihar), Works Division, Nalanda at Biharsharif- 803101.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. P.K.Shahi, Sr. Adv.
Mr. Manish Sahay, Adv.

For the Respondent/s : Dr. Anand Kumar, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 05-06-2020

Petitioner has prayed for the following relief(s): -

“That, by this application, the petitioner/claimant make a request to this Hon’ble Court for appointment of sole arbitrator in terms of Section 11(6)of the Arbitration and Conciliation Act, 1996 under the circumstances that the respondents have failed to adhere to the terms and conditions of the agreement no.16 of 2010-11 (Plan) dated 27.01.2011 arising out of work namely “Construction of Vardhman Institute of



Medical Sciences (VIMS) at Pawapuri, District Nalanda (Bihar) for the year, 2010-11” and further failed to respond to the request for arbitration by an independent arbitrator, the notices whereof were given to them vide letter no. VIMS/2019-20/107 & NCC/ VIMS/2019-20/110 dated 30.07.2019 & 19.12.2019 respectively for considering such request.”

When this matter was taken up, Dr. Anand Kumar, learned counsel appearing on behalf of the respondents with emphasis, argued that the petitioner has failed to comply with the procedure laid down under Clause 25 of the agreement dated 27.01.2011 entered into between the parties.

On the other hand, Mr. P.K.Shahi, learned senior counsel on behalf of the petitioner has invited attention of this Court, to the petitioner having exhausted the said procedure, and such submission being not correct, more so, in view of the fact that when the petition was pending before the Bihar Public Works Contracts Dispute Arbitration Tribunal, respondents never ever took such an objection, which is now being taken only for the sake of opposition.

However, after the matter was heard for some time, Mr. Shahi, learned Senior Counsel, under instructions, states that without prejudice to his rights, petitioner is still ready and willing to approach the Managing Director of the Corporation,



subject to the said authority, taking a judicious view, considering the entire material which the parties may place, with such process being expedited.

At this stage, Dr. Anand Kumar, under instructions, states that the Managing Director of the Corporation shall positively decide all the issues raised, if any, by the petitioner within a period of four weeks. The period is by way of an undertaking which be accepted and taken on record.

Hence, as agreed, the undertaking is accepted and taken on record, with the parties further agreeing that the period of 120 days provided under the agreement, shall be deemed to have been curtailed by four weeks, more so in view of the long pendency of the alleged dispute raised by the petitioner.

In view of the same, petition is disposed of on the following mutually agreed terms: -

- (A) All issues on merit are left open.
- (B) Petitioner shall approach the Managing Director of the respondent-Corporation, setting out his claims/highlighting the issues arising out of the agreement dated 27.01.2011, entered between the parties.
- (C) The Managing Director shall consider and decide the same, within a period of four weeks, as mutually agreed upon by the parties and based on the undertaking furnished by the respondents.



- (D) For surviving grievances, if any, it is always open for the petitioner to take recourse to such remedies, as are otherwise available in accordance with law, including filing a fresh petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 on the same and subsequent cause of action.
- (E) As mutually agreed, the petitioner shall set out claims in writing and make itself available in the office of the Managing Director of the respondent-Corporation on 22nd June 2020 at 10.30 A.M. The period of four weeks shall commence therefrom.

Petition stands disposed of in the aforesaid term.

(Sanjay Karol, CJ)

sujit/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.06.2020
Transmission Date	N/A

