

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.36 of 2019

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Shree Gopal Construction and Developers Pvt. Ltd. through, its Director
Rajeev Kumar, aged about 47 years, (Male) son of Late Gopalji Prasad,
resident of Banjari Road, Ward No.14 District -Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Rural Works Department, Patna.
2. The Engineer in Chief cum Additional Commissioner cum Special Secretary,
Rural Works Department, Patna.
3. The Chief Engineer-3, Rural Works Department, Bihar, Patna.
4. The Superintending Engineer, Rural Works Circle, Siwan.
5. The Executive Engineer, Rural Work Division No.1, Gopalganj.
6. The Assistant Engineer, Rural Works Division No.1, Gopalganj.

... .. Respondent/s

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with

CIVIL REVISION No. 37 of 2019

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Shree Gopal Construction and Developers Pvt. Ltd. through its Director
Rajeev Kumar, aged about 47 years (Male) son of Late Gopalji Prasad,
resident of Banjari Road, Ward No. 14, Distt.- Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Rural Works Department, Patna
2. The Engineer in Chief Cum Additional Commissioner cum Special
Secretary Rural Works Department, Patna
3. The Chief Engineer-3 Rural Works Department, Bihar, Patna
4. The Superintending Engineer Rural Circle, Siwan
5. The Executive Engineer Rural Work Division No. 1, Gopalganj
6. The Assistant Engineer Rural Works Division No. 1, Gopalganj

... .. Respondent/s

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with

CIVIL REVISION No. 151 of 2019

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DNA Infrastructure Pvt. Ltd. Having its registered office at G-55, 3rd Floor,
Royal Palace, Vikas Marg, Laxmi Nagar, New Delhi - 110092 and local office
at Yash Villa, Shanti Niketan Colony, Pharmacy Road, P.O.- Danapur Cantt.,
P.S.- Rupaspur, district- Patna through, its Project Manager and Authorized
Representative Sri Mohan Kumar, aged about 50 years (Male) son of Sri



Sukhdeo Rai, resident of Yash Villa, Shanti Niketan Colony, Pharmacy Road,
P.O.- Danapur Cantt. P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Rural Works Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer Hajipur Zone, rural Works Department, Bihar, Patna.
5. The Superintending Engineer Rural Works Department, Samastipur Circle, Govt. of Bihar, Patna.
6. The Executive Engineer Rural Works Department, Begusarai Division, Govt. of Bihar, Patna.
7. The District Magistrate Begusarai.
8. The Branch Manager HDFC Bank, Plot No. 51, Jamal Road, Patna, Pin-800002.

... .. Respondent/s

with

CIVIL REVISION No. 152 of 2019

DNA Infrastructure Pvt. Ltd. having its registered office at G-55, 3rd Floor, Royal Palace, Vikas Marg, Laxmi Nagar, New Delhi-110092 and local office at Yash Villa, Shanti Niketan Colony, Pharmacy Road, P.O.- Danapur Cantt., P.s.- Rupaspur, Distt.- Patna through its Project Manager and Authorized Representative Sri Mohan Kumar, aged about 50 years, Male, son of Sri Sukhdeo Rai, resident of Yash Villa, Shanti Niketan Colony, Pharmacy Road, P.O.- Danapur Cantt, P.s.- Rupaspur, Distt.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Rural Works Department, Govt. of Bihar, Patna
3. The Engineer-in-Chief Rural Works Department, Govt. of Bihar, Patna
4. The Chief Engineer Hajipur Zone, Rural Works Department, Bihar, Patna
5. The Superintending Engineer Rural Works Department, Samastipur Circle, Govt. of Bihar, Patna
6. The Executive Engineer Rural Works Department, Begusarai Division, Govt. of Bihar, Patna
7. The District Magistrate Begusarai
8. The Branch Manager HDFC Bank, Plot No. 51, Jamal Road, Patna, Pin-800002

... .. Respondent/s



with

CIVIL REVISION No. 153 of 2019

=====

DNA Infrastructure Pvt. Ltd. having its registered office at G-55, 3rd Floor, Royal Palace, Vikas Marg, Laxmi Nagar, New Delhi- 110092 and local office at Yash Villa, Shanti Niketan Colony, Pharmacy Road, P.O.- Danapur Cantt., P.S.- Rupaspur, District- Patna through its Project Manager and Authorized Representative Sri Mohan Kumar, Son of Sri Sukhdeo Rai, Resident of Yash Villa, Shanti Niketan Colony, Pharmacy Road, P.O.- Danapur Cantt., P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Hajipur Zone, Rural Works Department, Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Samastipur Circle, Govt. of Bihar, Patna.
6. The Executive Engineer, Rural Works Department, Begusarai Division, Govt. of Bihar, Patna.
7. The District Magistrate, Begusarai.
8. The Branch Manager, HDFC Bank, Plot No. 51, Jamal Road, Patna, Pin-800002.

... .. Respondent/s

with

CIVIL REVISION No. 154 of 2019

=====

DNA Infrastructure Pvt. Ltd. Having its registered office at G-55, 3rd Floor, Royal Palace, Vikas Marg, Laxmi Nagar, New Delhi- 110092 and local office at Yash Villa, Shanti Niketan Colony, Pharmacy Raod, P.O.- Danapur Cantt. P.S.- Rupaspur, District- Patna through, its Project Manager and Authorized Representative Sri Mohan Kumar, aged about 50 years, (Male) Son of Sri Sukhdeo Rai, resident of Yash Villa, Shanti Niketan Colony, Pharmacy Road, P.O.- Danapur Cantt., P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Rural Works Department, Govt. of Bihar, Patna.
3. The Engineer -in- Chief Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer Hajipur Zone, Rural Works Department, Bihar, Patna.
5. The Superintending Engineer Rural Works Department, Samastipur Circle, Govt. of Bihar, Patna.



6. The Executive Engineer Rural Works Department, Begusarai Division, Govt. of Bihar, Patna.
7. The District Magistrate Begusarai.
8. The Branch Manager HDFC Bank, Plot No. 51, Jamal Road, Patna, Pin-800002.

... .. Respondent/s

Appearance :

(In CIVIL REVISION No. 36 of 2019)(In CIVIL REVISION No. 37 of 2019), (In CIVIL REVISION No. 151 of 2019), (In CIVIL REVISION No. 152 of 2019), (In CIVIL REVISION No. 153 of 2019) & (In CIVIL REVISION No. 154 of 2019)

For the Petitioner/s : Mr.Ashish Giri, Adv, Mr. Rajat Kr Tiwary, Adv, Ms. Deepika Sharma, Adv and Mr. Sumit Kumar Jha, Adv

For the Respondent/s : Mr.Pushkar Narain Shahi (AAG6) & Mr. Patanjali Rishi, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 13-01-2020

Heard both the parties.

2. These Civil revision petitions have been filed under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (hereinafter referred to as the Act) for setting aside the awards passed by the Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna, (hereinafter referred to as the Tribunal) by which the Tribunal has dismissed the Reference Case No. 51 of 2014, Reference Case No. 50 of 2014, Reference Case No. 221 of 2016, Reference Case No. 94 of 2016, Reference Case No. 220 of 2016 and Reference Case No. 222 of 2016, on the ground that the Tribunal has no jurisdiction to decide the same.

3. Briefly stated the facts of the case is that



agreement was entered between petitioners and Government of Bihar in relation to execution of project for constructing roads under PMGSY. Mechanism for Dispute Redressal System is stipulated in the agreement itself that if there is any dispute between the parties same shall be resolved in terms of Clause-24 and 25 of the SBD Agreement. As dispute arose between the parties in relation to said contract petitioners filed reference cases before the learned Tribunal under Section 9 of the Bihar Public Works Contract Disputes Arbitration Act, 2008, which was dismissed and the operative part of the order reads as follows:-

“Para 30- In view of our above discussion we find that the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 is not applicable so this Tribunal has no jurisdiction to decide these reference cases. The parties may approach appropriate forum as agreed by them. Accordingly all these reference cases are hereby disposed off. The interim order if any either for stay or injunction are hereby vacated.”

4. Clause 24 and 25 of the SBD Agreement deals with dispute redressal system which reads as follows:-

“24. Dispute Redressal System

If any dispute or difference of any kind what-so-ever shall arises in connection with or arising out of this Contract or the execution of Works or maintenance of the works there under, whether before its commencement or during the progress of work or after the termination, abandonment or breach of the Contract, it shall be referred to Empowered Standing Committee which will consist of:

I. One official member, Chairman of the Standing



Empowered Committee, not below the rank of Additional Secretary to the State Government;

II. One official member not below the rank of Chief Engineer, and

III. One non-official member who will be technical expert of Chief Engineer's level selected by the Contractor from a panel of three persons given to him by the Employer.

Such decision in respect of every matter, so referred shall, subject to review as hereinafter provided, be final and binding upon the contractor. In case, the works is already in progress, the contractor shall proceed with the execution of the works, including maintenance thereof, pending receipts of the decision of the competent authority as aforesaid with all the diligence.

24.2. The Contractor and the Employer will be entitled to present their case in writing duly supported by documents. If so requested, the Standing Empowered Committee may allow one opportunity to the Contractor and the employer for oral arguments for a specified period. The empowered Committee shall give its decision within a period of 90 (ninety days) from the date of appeal, failing which the contractor can approach the appropriate court for the resolution of the dispute.

24.3 The decision of the Standing Empowered Committee will be binding on the Employer for payment of claims up to 5% (five percent) of the Initial Contract Price. The Contractor can accept and receive payment after signing as "in full and final settlement of all claims". If he does not accept the decision, he is not barred from approaching the courts. Similarly, if the Employer does not accept the decision of the Standing Empowered Committee above the limit of 5 % (five persons) of the Initial Contract Price, he will be free to approach the courts applicable under the law.

(emphasis is mine)

Clause-25-Arbitration

25.1 In view of the provision of the clause-24 on Dispute Redressal System, it is the condition of the Contract that there will be no arbitration for the



settlement of any dispute between the parties.”

5. From the reading of Clause-24 and Clause-25, it is apparent that either of the parties if aggrieved by the decision or non decision of the empowered committee had liberty to approach the appropriate court for resolution of dispute. Appropriate court has not been defined in said clause. It has not been stated to be Civil Court of competent jurisdiction. Arbitral Tribunal constituted under the State Act is also a court.

6. The Apex Court in the case of **State of Madhya Pradesh and Anr vs. Anshuman Shukla** since reported in **(2008) 7 SCC 487**, while considering similar provisions under the M. P. Madhyastham Adhikaran Adhiniyam, 1983, has held that Arbitral Tribunal constituted under the State Act is a court. The relevant paragraphs of said judgment reads as follows:-

“23. We are, therefore, of the opinion that the Tribunal for all intent and purport is a Court. The Tribunal has to determine a lis. There are two parties before it. Its proceedings are judicial proceedings subject to the revisional order which may be passed by the High Court.”

7. As such, Arbitral Tribunal constituted under the State Act comes within the meaning of court as stipulated in Clause-24 of the SBD Agreement and as such the Tribunal had jurisdiction to enter into the reference.

8. The Bihar Public Works Contracts Disputes



Arbitration Tribunal Act, 2008 was enacted by State Legislature to provide for establishment of a Tribunal to arbitrate on the disputes to which State Government is a party and resolving all disputes and differences pertaining to Works Contract or arising out of or connected with execution, discharge or satisfaction of any such Works Contract. It was enacted for adjudication of dispute in relation to work contract. Section 2(e) and 2(k) of the Act of 2008 defines dispute and works contract, which reads as follows:-

“2(e) "Dispute" means any difference relating to any claim arising out of the execution or non-execution of the whole or part of a contract for works or services or both including the rescinding thereof;

2(k) "Works contract" means a contract made by the State Government or a public undertaking with any other person for the execution of any of its works relating to construction, repairs or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, all types of bridge, culvert, factory or work shops or of such other work of the State Government or, as the case may be, of the public undertaking, as the State Government may, by notification in the Official Gazette, specify and includes-

(i) a contract made for the supply of goods relating to the execution of any of such works or for supply of any other goods irrespective of whether it is required for any specific project or work or any type of consultancy services/service providers.

(ii) Contracts made for the supply of services relating to the execution of any of such works; including consultancy services for preparation of DPR's; supervision; project advisory, quality assurance, Project Management or any other management services.

(iii) Words and expressions used and not defined in this Act, but defined in the Arbitration Act, shall have the meanings assigned to them in the Arbitration Act.”



9. The State Act is a Special Law which provides for statutory and compulsory arbitration in the State of Bihar. The provisions of Act clearly postulates that State of Bihar has created a separate forum for the purpose of determination of disputes arising out of work contract. Under the Central Act 1996 in absence of arbitration agreement, arbitration is not possible, however, the State Act provides for compulsory arbitration even in absence of arbitration agreement.

10. If there is an arbitration clause in the agreement that dispute between the parties shall be resolved under the provisions of Arbitration and Conciliation Act, 1996 then Central Act will apply but if in the agreement the disputes is to be resolved under the provisions of State Act then dispute has to be resolved by Arbitral Tribunal constituted under the State Act and even there is no arbitration clause dispute is to be referred to State Tribunal. In the present case as there is no arbitration clause, the dispute has to be referred to and adjudicated by Arbitral Tribunal constituted under State Act.

11. The Tribunal after hearing the parties dismissed the reference case on ground that the tribunal has no jurisdiction as under Clause-25 of SBD Agreement parties have



agreed that there will be no arbitration and for resolution of dispute aggrieved party has to approach appropriate court. The tribunal has held in terms of Clause 24 and 25 of the agreement that parties have agreed that there will be no arbitration and disputes shall be decided by appropriate court which means civil court, as such, there will be no arbitration and State Tribunal has no jurisdiction to enter into reference. Learned Tribunal has further held that as there is no clear provision that even if parties agree in the agreement that their case shall be decided by a civil court and not by Arbitration then also dispute shall be referred to the tribunal in terms of Section 14 of the said Act. If the tribunal had the jurisdiction then civil court jurisdiction will be barred but when the party agreed that the dispute shall be decided only by civil court then the Tribunal cannot assume jurisdiction.

12. The tribunal has relied upon the decision of Hon'ble Apex Court reported in 2018 Supreme Court 2640 with respect to applicability of 1996 Act or 2018 State Act and same is dependent upon the terms of agreement between the parties. In the case as referred above State of Bihar was the appellant who was aggrieved by the appointment of arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996 on



the ground that the State Act excluded the jurisdiction of Central Act in Arbitration Matter. However the Apex Court held that State Act cannot exclude the jurisdiction of Central Act in arbitration matter, if under the agreement entered between the parties the dispute is to be resolved under the Arbitration and Conciliation Act, 1996.

13. Relevant portion of clause 25 of the said agreement which was core issue before the Apex Court reads 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 on force shall apply to the arbitration proceeding under the clause.”

14. In the present case there is no such clause in the agreement that the dispute between the parties will be resolved in terms of provisions of Arbitration and Conciliation Act, 1996 as such said judgment has no application in present case. In present case as per Clause-25 of the SBD Agreement there will be no arbitration for the resolution of any dispute between the parties and aggrieved party had liberty to approach appropriate court for resolution of dispute as such said judgment has no application in present case.

15. If in the agreement there is arbitration clause that



dispute is to be resolved under the Arbitration and conciliation Act, 1996 then Central Act will apply and if in the agreement there is a clause that dispute is to be resolved under the State Act then State Act will apply, however, in view of Section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, even if there is no arbitration clause and dispute comes within the purview of Clause-2(e) and 2(k) of Bihar Public Works Contracts Disputes Arbitration Tribunal Act, same has to be mandatorily referred under Section 9 of the State Act to the Tribunal constituted under the State Act. Section 9 of the State Act reads as follows:-

“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 (1), 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 arguments, make an award or an interim award, giving its reasons therefor.

(4) The Tribunal shall use all reasonable despatch 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 and 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.”

16. The jurisdiction of Civil Court is expressly barred under Section 14 of the Act to entertain any dispute which comes within the purview of Clause-2(e) and 2(k), which is quoted hereinbelow:-

“14. Bar of jurisdiction of Courts.- (1) Save as otherwise provided by section-13, no Civil Court shall have jurisdiction to deal with or decide any question which the Tribunal is empowered to deal with and decide by or under this Act and no injunction shall be granted by any Civil Court in request of any action taken or to be taken in pursuance of any power by or under this Act.

(2) No award or interim award or order made or proceedings taken under this Act by the Tribunal shall be called in question in any Civil Court.”

17. The Arbitral Tribunal is statutory tribunal whose function is judicial. The proceedings before the Arbitral Tribunal are judicial proceedings and Award passed is final and binding between the parties. Award is a decree within the meaning of Section 2(2) of CPC of the principal Civil Court of



original jurisdiction. The Award of the Arbitral Tribunal is not subject to the provisions of Arbitration and Conciliation Act, 1996. The provisions of said Act has no application. There is no provision for setting aside the Award under Section 34 of Arbitration & Conciliation Act, 1996. The Award is final and can be executed as a decree of Civil Court and gives finality to the lis between the parties subject to power of revision of High Court. Section 11 and Section 15 of the Act reads as follows:-

“11. Tribunal to have powers of Court.- For the purpose of exercising its jurisdiction under this Act, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908 in respect of the following matters, namely:-

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of documents;
- (c) Issuing commissions for the examination of witnesses.
- (d) Any other matter which may be prescribed.

15. Proceedings before Tribunal to be judicial proceedings.- All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections-193 and 219 of the Indian Penal Code.”

18. The Act has overriding effect, which reads as follows:-

“22. Overriding effect of this Act.-

Notwithstanding, any thing 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 of excluding any dispute from the purview of this Act.”

19. For the reasons as stated above, it is held that Arbitral Tribunal constituted under the Bihar Public Works Contract Disputes Arbitration Tribunal Act, is a Court within the meaning of court as stipulated under Clause-24 of the SBD Agreement and as such Tribunal has jurisdiction to enter into the reference. It is further held that nature of dispute between the parties in instant case is covered by the definition under section 2(e) 2(k) as such under section 9 such dispute has to be statutorily referred to the Tribunal set up under the State Act and Tribunal has exclusive jurisdiction to deal with such disputes as jurisdiction of the Civil Court is expressly barred under Section 14 of the Act. The State Act is a Special Act enacted for the purpose to resolve the dispute between the State and other which envisages compulsory arbitration and has an overriding effect over any agreement entered between the parties.

20. Accordingly, the judgment and Award passed by the Tribunal is not sustainable and is accordingly, set aside and the matter is remitted back to the Tribunal which shall enter into reference and decide the case on merit in accordance with



law at the earliest.

The civil revision petitions are allowed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2020
Transmission Date	NA

