

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.7 of 2019

In
Civil Writ Jurisdiction Case No.15034 of 2014

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M/s Suraksha Diagnostic Pvt. Ltd. a Company incorporated under the Companies Act having its registered Office at DD-18/1, Salt Lake City, Sector-1, Kolkata-700091 through its Manager Legal namely Sri Sumit Das, aged about 36 years (Male), son of Sri Bishwaranjan Das, resident of Vidyasagar, Sarani, Blue Board Apartement, Sardar Para, Khirishtala, Rajpur, Sonapur, South 24 Parganas, West Bengal-700150

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, Patna
2. The Secretary, Health cum Executive Director, State Health Society, Bihar through Secretary, Health cum Executive Director, State Health Society, Bihar
3. The Secretary, Health cum Executive Director, State Health Society, Bihar
4. The State Programme Officer, Secretary, Health cum Executive Director, State Health Society, Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Adv.
For the State	:	Mr. Braj Bhushan Mishra, AC to AAG9
For the Health Society	:	Mr. Kishore Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 01-12-2021

I.A. No. 202 of 2019

This interlocutory application has been filed for condonation of delay in filing the review petition against the judgment and order dated 19.04.2016 passed in CWJC No. 15034 of 2014.

2. For the reasons stated in this interlocutory application, the same is allowed and the delay in filing the review application is hereby condoned.



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3. Heard the parties.

4. The present review application has been filed against a part of the order dated 19.04.2016 passed in CWJC No. 15034 of 2014 wherein, *inter alia*, the petitioner has been granted liberty to take recourse to the provisions of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008 ("the Act" for short) for seeking appropriate remedy and redressal of its grievances relating to invocation of bank guarantee.

5. Learned counsel for the petitioner submits that it was inadvertently missed to be highlighted specifically that the dispute between the parties arose at the pre-agreement stage and prior to entering into the memorandum of agreement. As such, the matter did not fall within the definition of "works contract" under Section 2(k) of the Act, which reads as follows:-

"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.”

6. It is thus submitted that the pre-condition for a works contract, as defined above, is that there must be a contract between the parties which, in the present case, has not been entered into. As such, the petitioner has been relegated to a forum which has no jurisdiction to entertain the instant dispute.

7. A counter affidavit in original has been filed on behalf of the respondent State Health Society in Court which is placed on record. However, there is nothing contained therein to controvert the aforesaid submission made on behalf of the petitioner.

8. Having heard the parties, this Court finds merit in the submission of the petitioner. The respondent State Health Society does not dispute that there was no concluded contract between the parties and the bank guarantee was invoked at the pre-agreement stage itself. In this view of the matter, therefore, it cannot be said that there was any existing works contract within the meaning of Section



2(k) of the Act in respect of which the Tribunal can exercise jurisdiction. It further transpires that this Court took note of the decision of the Hon'ble Division Bench in the case of Hindustan Steel Works Construction Ltd. Vs. State of Bihar & Ors. [2009(2) PLJR 909] wherein the petitioner had been permitted to approach the Arbitrator under the Act but, however, that was a case in which a concluded contract existed between the parties.

9. In the above view of the matter, the relevant part of the judgment of this Court dated 19.04.2016 passed in CWJC No. 15034 of 2014 in which the petitioner has been granted liberty to take recourse to the provision of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008 for seeking appropriate remedy and redressal of its grievances, is hereby recalled.

10. The review application stands disposed of.

11. Let the writ petition be accordingly listed before the appropriate Bench according to roster.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.12.2021
Transmission Date	

