

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.10 of 2021

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Titu Badwal Son of Late Sohan Singh Resident of Mohallah - Professor's Colony, Milan Patty, Kishanganj, P.S. - Kishanganj (Muffassil), District - Kishanganj (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Government of Bihar, Nirman Bhawan, Bailey Road, Patna.
2. The Executive Engineer, Building Construction Department, Gardanibagh Building Division, Behind Officer's Flats, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Tiwary, Advocate
For the Respondent/s : Mr. S.D. Yadav, A.A.G. 9

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 01-09-2021

Petitioner has prayed for the following relief(s):

“For the appointment of an independent/ impartial Arbitrator for the amicable settlement of dispute/ disputes between both the parties.”

Parties entered into an agreement for construction of outer periphery boundary wall, containing an arbitration Clause 25, in terms whereof. Disputes arising between the parties, if not settled, under the mechanism provided therein are required to be adjudicated through the process of arbitration. The terms of the agreement dated 8th of August, 2019 stand



breached by the petitioner is what the State has alleged in the counter affidavit.

Before this Court, it is not disputed that mechanism provided under Clause 25 stands complied with. It is also not disputed that (a) the written agreement contained an arbitration clause; (b) dispute inter se the parties under the said agreement has arisen which stands notified by the petitioner to the respondent and vice versa; (c) the petitioner, by invoking Clause 25, has called upon the respondent to appoint an arbitrator which was not done prior to the filing of the instant petition on 8th of December, 2020. Hence, the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 needs to be allowed.

In view of the above, petition needs to be allowed for there is no other legal impediment in doing so. It would be worth mentioning that the petitioner had, in fact, filed a writ petition being C.W.J.C. No. 8275 of 2020, titled as Titu Badwal Vs. The State of Bihar & Ors., which was disposed of on 13.10.2020. The order in its entirety reads as under:

“This case has been taken up for consideration through Video Conferencing.

Heard learned counsel for the petitioner and the respondent-State.

Petitioner's counsel submits that he will avail of



his remedy under the Arbitration and Conciliation Act (for brevity, the Act) in view of the provisions contained in Clause 25 of the Agreement which has been executed in relation to the works in question.

Since the Agreement contains an arbitration clause, the learned State Counsel does not object to availing of such remedy under the Act, and in terms of the Agreement inter parties.

With liberty, as aforesaid, the writ petition is disposed of.”

Whether breach of the terms of the agreement stands committed by the petitioner or for that matter the Respondent are all matters left to be adjudicated by the learned Arbitrator in accordance with law. Hence, this Court is inclined to allow the petition by appointing an arbitrator.

As such, Hon’ble Mr. Justice Dinesh Kumar Singh, Retired Judge of the Patna High Court, Patna is appointed as learned Arbitrator to adjudicate all disputes arising out of the agreement dated 8th of August, 2019 entered into between the parties to the lis.

All pleas and issues raised, on merits, are left open to be considered and decided by the learned Arbitrator.

Learned Arbitrator shall be entitled to fees as per Schedule IV of the Arbitration Act.

Since the dispute arises out of an agreement of the year 2019, the hearing be expedited.

Parties undertake to fully cooperate and not take any



unnecessary adjournment.

The proceedings, during the time of current Pandemic-Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

It is expected of the learned Arbitrator to adjudicate the disputes expeditiously.

Joint Registrar (List) is directed to communicate the order to the learned Arbitrator.

Learned counsel for the parties also undertake to communicate the order to the learned Arbitrator. In fact, they volunteered to appear before him, through digital mode on 13th of September, 2021 and apprise him of the passing of the order.

Parties shall file their statement of claims before the learned Arbitrator on such date of hearing which he may fix, as per mutual convenience.

The Request Petition stands disposed of in the above terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.09.2021
Transmission Date	

