

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.17 of 2021

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M/s Laxmi Civil Engineering Services Pvt. Ltd. 1148/E, Sykes Extension, Kolhapur- 416001 through its Authorized signatory namely Mr. Bharteshwar Chandrakumar Tiwary @ Bharteshwar Tiwary, aged about 52 Years (Male), Son of Sri Chandra Kumar Tiwary, Resident of Mohalla- Bharat Nagar Amrawati Road, Yogo Raj Society, Maharastra.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna-15.
2. The Principal Secretary Water Resources Department, Sinchai Bhawan, Patna-15.
3. The Engineer-in- Chief Flood Control and Water Drainage, Water Resources Department, Sinchai Bhawan, Patna-15.
4. The Chief Engineer Flood Control and Drainage, Water Resources Department, Gopalganj.
5. The Superintending Engineer Water Resources Department, Flood Control Circle, Padrauna.
6. The Executive Engineer Water Resources Department, Flood Control Division No. -2, Padrauna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Manish Sahay, Advocate Mr. Anil Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, A.A.G. 4

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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 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. S.B.D. 01 of 2015-16 dated 04.06.2015 arising out of work namely “Construction of Bituminous Road under NABARD Loan Assistance from 13.08.2015 KM to 28.00 KM of Pipra-Piprasi Embankment and from 6.00 KM to 7.026 KM to TRL-4 situated on the right bank of river Gandak for the Year 2015-16.” and further failed to respond to the request for arbitration by an independent arbitrator, the notices whereof were given to them vide letter No. LCES/Padrauna/131/20-21 dated 04.11.2020.”

Vide agreement dated 4th of June, 2015, the respondent allotted certain work, civil in nature, to be carried out by the petitioner. Certain disputes having arisen inter se the parties, the petitioner filed C.W.J.C. No. 11044 of 2019, titled as M/s. Laxmi Civil Engineering Services Pvt. Ltd Vs. The State of Bihar & Ors., which was seriously opposed by the State and, as such, was disposed of with the direction to the petitioner to submit the bills, to be processed by the State within sixty days and in the event of any dispute, liberty to the petitioner to invoke the arbitration clause under the contract and pursue the remedies in accordance with law. The order dated 19th of



November, 2019, passed in C.W.J.C. No. 11044 of 2019, is annexed as Annexure-4.

Pursuant thereto, petitioner, vide communication dated 04.11.2020, (Annexure-1 Page- 16) wrote to the Engineer-in-Chief for clearance of the bills which request, vide communication dated 3rd of December, 2020 (Annexure-6. Page-102), stands rejected.

Hence, the instant petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996.

The execution of the agreement in writing is not in dispute. It provides for procedure for resolution and settlement of disputes and adjudication thereof through the process of arbitration. Clause 25 is evidently clear. This Court finds the petitioner not to have exhausted the mechanism provided thereunder. The petitioner was to first approach the Engineer-in-Charge who, in turn, if the claims are not acceptable, is to forward the same to the Superintending Engineer and if the latter fails to give instructions or take a decision, then the contractor, within 15 days, is to appeal to the Chief Engineer who is to decide the same within 30 days. It is only thereafter, right accrues in favour of the petitioner to seek adjudication through the process of arbitration.



In the instant case, as Shri Anjani Kumar, learned Senior Advocate, rightly invites attention of this Court to the fact that the petitioner only approached the Engineer-in-Charge. No doubt, the Engineer-in-Charge rejected the claims and failed to forward the same to the Superintending Engineer, which was not so done, but then petitioner was also under an obligation to approach the Chief Engineer for a decision on the claims arising out of the agreement which was never done.

Shri Anjani Kumar states that the claims rejected by the Engineer-in-Charge shall be forwarded to the Superintending Engineer within next seven working days, and the latter shall take a decision as per law. It stands clarified that if the Superintending Engineer also fails to take a decision thereupon, it shall be open for the petitioner to file an appeal with the Chief Engineer who shall positively decide the same within the stipulated period in the contract i.e. 30 days. If required, petitioner can seek adjudication of dispute through arbitration under the agreement. If, however, petitioner is still aggrieved, it shall be open for him to approach the Court afresh, seeking appointment of an arbitrator in terms of the clause contained in the contract.

It stands clarified that this Court has not dealt with



the issue touching the merits of the claim. Needless to add, the authorities, be it the Engineer-in-Chief or Chief Engineer, shall decide the claim expeditiously and not later than the period stipulated under the contract.

Petition stands disposed of in the aforesaid terms.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.09.2021
Transmission Date	

