

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.32 of 2020

1. The Bihar State Electronics Development Corporation Limited through its Managing Director, registered office at Beltron Bhawan, Shastri Nagar, Patna.
2. The Managing Director, Bihar State Electronics Development Corporation Limited, Beltron Bhawan, Shastri Nagar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Information and Technology, Government of Bihar, Patna.
2. The Principal Secretary, Department of Information and Technology, Government of Bihar, Patna.
3. M/s SREI Infrastructure Finance Limited, a company registered under the Company Act, 1956, having its registered office at Viswakarma 86C, Topisa Road (South), Kolkata, through its constituted attorney, Mr. Pradeep Roy, S/o Sri Jagdish Roy, resident of Flat No. 106,A, Anandvatika Apartment, Nehru Nagar, Patna-800013, P.S.-Patliputra, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. P. K. Shahi, Senior Advocate
Mr. Girijish Kumar, Advocate

For the Respondent Nos.1 & 2 : Mr. Vikash Kumar (SC.11)

For the Respondent No.3 : Mr. Kunwar Shashank, Advocate
Mr. Kunwar Shashank, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
CAV JUDGMENT

Date : 08 -12-2021

The instant petition stands filed under the provision of Section 11(6) of the Arbitration and Conciliation Act, 1996 (referred to as the Act). The petitioners seek the name of the Arbitrator already appointed by this Court to be substituted by “an independent and impartial Arbitrator”.



In an earlier petition filed under Section 11(6) of the Act registered as 'Request Case No.4 of 2017 titled as M/s SREI Infrastructure Finance Limited v. The State of Bihar & Ors.', this Court vide judgment dated 28th June, 2017 (Annexure-1) appointed a former Judge of this Court as an Arbitrator. It is also not in dispute that the arbitral proceedings did commence and the present petitioners joined, whether voluntarily or under protest, being a different matter. However, record does reveal certain undesirable incidents, unsavory at that.

The dispute that the issue of payment of fee of the learned Arbitrator stood resolved with the decision dated 05.03.2020 rendered in CWJC No.23934 of 2018 titled as the Bihar State Electronics Development Corporation Limited & Anr.

Petitioners allege that (a) the Arbitrator was inclined, rather favourable towards the claimant/private respondent herein; (b) the Arbitrator had exhibited bias sufficient enough to raise doubt with regard to his impartiality; and (c) Arbitrator had lost his independence.

Such allegations stand seriously refuted by the Respondent No.3.

It is a matter of record that the instant petition was filed on 3rd of June, 2020. It is also a matter of record that the



petitioners' application under Section 14 of the Act is yet pending consideration before the learned Arbitrator. It is a matter of record that petitioners also filed an application under Sections 13(2)/14(2) and 15 of the Act before the Court having competent jurisdiction, i.e. Civil Court at Patna, seeking termination of the arbitration proceedings. Even this application is pending consideration.

Sri P. K. Shahi, learned Senior Counsel appearing for the petitioners emphatically impresses upon the substitution of the Arbitrator on several grounds referred to in the petition. In support, he seeks reliance on decisions of the Hon'ble Apex Court in **North Eastern Railway and others Versus Tripple Engineering Works, (2014) 9 SCC 288** and **Union of India & Others Versus Uttar Pradesh State Bridge Corporation Limited, (2015) 2 SCC 52.**

Opposing the petition, Sri. Kunwar Shashank, learned counsel appearing for the respondent no.3 refers and relies upon decisions of the Hon'ble Apex Court in **Antrix Corporation Limited Versus Devas Multimedia Private Limited, (2014) 11 SCC 560; Duro Felguera, S.A. Versus Gangavaram Port Limited, (2017) 9 SCC 729; Dharani Sugars and Chemicals Limited Versus Union of India & others, (2019) 5 SCC 480;**



Perkins Eastman Architects DPC Versus HSCC (India) Ltd.
2019 SCC Online SC 1517.

Having given thoughtful consideration to the submissions made across the bar, the Court is of the considered view that at the first instance it would be only prudent for the parties to pursue the remedy, first before the learned Arbitrator and thereafter before the Civil Court in relation to the appropriate actions already initiated in view of the stand taken by the parties, at this stage, this Court does not express any opinion on the ambit, scope and its power to substitute the Arbitrator. However, this Court trusts that such an endeavour shall be taken in its correct spirit, instilling confidence in the justice delivery system and with reasonable dispatch.

The petition stands disposed of in the aforesaid terms, reserving liberty to the parties to approach the Court on the same and subsequent action, should the need arise.

(Sanjay Karol, CJ)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	22.09.2021
Uploading Date	09.12.2021
Transmission Date	

