

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.59 of 2020

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M/s Star Construction Through its Proprietor Parwez Ahmad Khan, aged about 48 years Gender Male, Son of Haseen Ahmad Khan, Resident of Mohalla- Balua Tal, P.S.- Motihari Town, District- Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Road Construction, Government of Bihar, Patna.
2. The Engineer-in- Chief Department of Road Construction, Government of Bihar, Patna.
3. The Chief Engineer N.H. Circle, Muzaffarpur.
4. The Superintending Engineer N.H. Circle, Muzaffarpur.
5. The Executive Engineer N.H. Division, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate Mr. Kundan Kumar, Advocate Mr. Yogesh Kumar, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Ambastha, SC-26

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(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.)

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 11-08-2021

The petitioner has prayed for the following relief/s :-

“That by means of captioned application, the petitioner herein invokes the jurisdiction of this Hon'ble Court under section 11(6) of the Arbitration and Conciliation Act, 1996 praying inter alia, for directions and orders for the appointment of sole arbitrator on behalf of the petitioner for



adjudication of certain disputes, differences and claim that have arisen between the parties hereto out of or in relation to their legal relationship on the ground that the respondent has failed to act in accordance with the contractual stipulation in that regard.”

The parties to the *lis* entered into an agreement for construction of certain public works. To such effect, an agreement no. 06-SBD 2009/10 dated 20.07.2009 was entered into between the parties. The said agreement contains an Arbitration Clause (Clause 25). Certain disputes having arisen *inter se* the parties, the petitioner approached this Court for payment of dues under the agreement. Vide order dated 22nd of September, 2015 passed in CWJC No. 24507 of 2013, titled as *M/s Star Construction Through its Proprietor Parwez Ahmad Khan Vs. The State of Bihar and Ors.*, the petition was disposed of granting liberty to the petitioner to approach the Chief Engineer, NH, Circle. The petitioner invoked the arbitration clause and approached the special adjudicatory authority constituted to adjudicate dispute in relation to public works contracts. The said authority, namely, Bihar Public Works Contract Disputes Arbitration Tribunal (hereinafter referred to as the ‘Tribunal’) dismissed the petitioner’s application vide



order dated 29th of January, 2020 on the ground that the same was not maintainable in view of the law laid down by the Hon'ble Supreme Court in **State of Bihar v. Brahmaputra Infrastructure Limited, (2018) 17 SCC 444 :AIR 2018 (SC) 2640.**

Left with no option, the petitioner filed the instant petition under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of the Arbitrator.

The respondents-State is now opposing the application on the ground that the provisions of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (hereinafter referred to as the 'Act') stands amended and that all disputes arising out of the public works contracts, including the subject matter of the instant *lis*, is now to be adjudicated by the Tribunal.

The petitioner has no objection subjecting to the jurisdiction of the Tribunal constituted under the said Act. As such, the petitioner is permitted to file a fresh application/ file an application seeking revival of the earlier application for adjudication by the Tribunal, for now, in view of the amendment, there is no legal impediment as is so claimed by the State, in the Tribunal adjudicating the disputes.



This Court finds the parties to be subjecting themselves to the jurisdiction of the Tribunal and as such allow the petitioner’s prayer granting liberty to either file a fresh petition (reference case) seeking adjudication of the disputes arising out of agreement referred to (supra) or seek revival of old case being Reference Case No.168 of 2017.

Considering the fact that the dispute pertains to the agreement executed in the year 2009 and the petitioner has been pursuing the remedy before this Court, it is expected from the Tribunal to decide the matter as and when filed, expeditiously and preferably within a period of nine months thereafter.

Petition disposed of in the aforesaid terms.

Interlocutory application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

Ashwini/Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

