

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.38 of 2021

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M/S Sharda Construction, a Partnership firm having its Office at New Area, Maharajganj Road, Aurangabad, Bihar through its Power of Attorney Holder Sri Shailendra Singh, aged about 54 Years (Male), S/o Late Mungeshwar Singh Resident of Village-Kunda, P.S. and District-Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Vishweshwaraiya Bhawn, Bailey Road, Patna-15.
2. The Principal Secretary, Road Construction Department, Vishweshwaraiya Bhawn, Bailey Road, Patna-15.
3. The Engineer-in-Chief-Cum-Additional Commissioner-Cum-Special Secretary, Road Construction Department, Vishweshwaraiya Bhawn, Bailey Road, Patna-15.
4. The Chief Engineer (South Bihar Wing), Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna-15.
5. The Executive Engineer, Road Construction Department, Road, Division, Aurangabad.
6. The Divisional Accounts Officer (D.A.O.), Road Division, Aurangabad.
7. The Assistant Engineer, Road Construction Department, Road, Sub-Division, Aurangabad.
8. The Junior Engineer, Road Construction Department, Road, Sub-Division, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate
For the Respondent/s : Mr. Uday Shankar Sharan Singh, GP-19

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 08-09-2021

This application has been moved seeking appointment of an Arbitrator invoking the powers of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.

The agreement dated 7th of September, 2015



(Annexure-1), entered into between the parties, contains the following arbitration clause:-

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CLAUSE C 25

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in-before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim right matter or thing whatsoever in any way arising out of or relating to contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter.

i) If the contractor considered any work demanded of him to be outside the requirements of the contract, or dispute any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 7 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of fifteen days from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with this decision, the contractor shall within a period of 30 days from receipt of the decision, give notice to the Chief Engineer for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above disputes or difference shall be referred for adjudication through arbitrator appointed by Engineer-in-Chief or the administrative head of the said P.W.D. If the arbitrator so appointed is unable or unwilling to act or resign his appointment or vacates his office due to any reason whatsoever another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice



for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person other than a person appointed by such Engineer-in-Chief or the administrative head of the department as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitrator at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 45 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of the contract that if any fees are payable to the arbitrator these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

All arbitration shall be held at PATNA and at no other place.

It is quite apparent that the mechanism provided therein has not been complied with.

Learned counsel for the petitioner states that the petitioner be permitted to comply with the same.



Permission granted.

Let the petitioner exhaust the mechanism provided in Clause C 25 of the Agreement dated 7th of September, 2015 (Annexure-1).

Shri Anjani Kumar, learned Additional Advocate General No. 4 states that the authority shall expeditiously take all steps for compliance of Clause C 25 of the Agreement dated 7th of September, 2015 (Annexure-1). Statement accepted and taken on record.

Petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

