

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.56 of 2020

Phular Construction Co. (Pvt.) Ltd. through its Managing Director namely Umesh Prasad Singh aged about 59 Years, (Male), Son of Nand Kishore Singh Resident of House No. 112, Khabra, (Near Railway Crossing No. 5, Manjhaulia, Adarsh Nagar-3, P.S.-Manjhaulia, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resources Department, Darbhanga, Bihar.
4. The Superintending Engineer, Western Koshi Canal Division, Madhubani, Bihar.
5. The Executive Engineer, Western Koshi Canal Division, Benipatti, Madhubani, Bihar.
6. The Executive Engineer, Flood Control Division, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vikas Kumar, Advocate
For the Respondent/s : Mr.Anjani Kumar (AAG-4)

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 : 11-08-2021

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.



Having heard learned counsel for the parties as also perused the record, this Court is satisfied of the petitioner having complied with Clause 25 of the agreement dated 9th of June, 2016, entered into between the Executive Engineer, Flood Control Division, Darbhanga and the petitioner.

Petitioner first wrote to the Executive Engineer, Western Koshi Canal Division, Madhubani, Bihar vide communication dated 12th of December, 2019 (Annexure-2). In the absence of any response, thereafter, the petitioner wrote to the Superintending Engineer, Western Koshi Canal Division, Madhubani, Bihar vide communication dated 17th of January, 2020 (Annexure-3) requesting him to take a decision in terms of Clause 25 of the agreement. Still further, petitioner wrote to the Chief Engineer, Irrigation Creation, Water Resources Department, Darbhanga, Bihar vide communication dated 20th of February, 2020 (Annexure-5) asking him to settle the dispute in terms of Clause 25 of GCC.

Petitioner's claims stand rejected. Hence, he invoked the arbitration clause vide communication dated 23rd of March, 2020 (Annexure-7). Respondent failed to respond to the same.

As such, the instant petition filed under Section



11(6) of the Arbitration and Conciliation Act, 1996.

This Court is of the considered view that the formalities and procedure stipulated under Clause 25 of the agreement stands complied with and completed, within time.

As such, there is no legal impediment for this Court entertaining the present petition and allowing the same.

There is no dispute about-(a) the legality, validity and binding effect of the agreement dated 9th of June, 2016 entered into between the parties to the lis; (b) the existence of arbitration clause contained therein; (c) the existence of dispute(s) arising there from; (d) the petitioner having put the party to notice of its intent seeking arbitration under the agreement.

Hence, this Court is inclined to allow the petition by appointing an arbitrator.

At this stage, Shri Anjani Kumar, learned Senior Counsel proposes the name of Hon'ble Mr. Justice Prabhat Kumar Jha (Former Judge of this Court) for appointment as an Arbitrator to adjudicate the dispute inter se the parties, which name is accepted by learned counsel for the petitioner.

As such, as jointly prayed for, Hon'ble Mr. Justice Prabhat Kumar Jha (Former Judge of this Court) is appointed as



learned Arbitrator to adjudicate all disputes arising out of agreement dated 9th of June, 2016 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 the Fourth Schedule of the Arbitration Act.

Since the dispute arises out of an agreement of the year 2016, 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 31st



of August, 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)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	17.08.2021
Transmission Date	

