

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.40 of 2023

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M/S S.S. Construction, Balbhadrapur, Laheriasarai, Darbhanga through its Proprietor Shyam Kishore Rai, aged about 63 years, Gender-Male, son of Late Jagdev Rai, Resident of S.S. Villa, Balbhadrapur, Laheriasarai, P.S. Laheriasarai, District-Darbhangha.

... .. Petitioner/s

Versus

1. The State of Bihar, through its Principal Secretary, Department of Rural Works Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
3. The Superintending Engineer, Rural Works Circle, Darbhanga.
4. The Executive Engineer, Rural Works Department, Works Sub-Division, Jhanjharpur, District-Darbhangha.
5. The Assistant Engineer, Rural Works Department, Works Sub-Division, Jhanjharpur, District-Darbhangha.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dudh Nath Singh, Advocate
For the Respondent/s : Mr.Ajay (GA- 5)

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 13-10-2023

1. Heard learned counsel for the parties.
2. 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.
3. Petitioner and the respondent entered into an agreement dated 02.05.2007 (Annexure-1). The said agreement



contains an arbitration clause as Clause-25. The petitioner filed representation before the Executive Engineer, Jhanjharpur vide Annexure-3. Thereafter the petitioner also filed representation before the Executive Engineer, Rural Work Department, Work Division Darbhanga on 05.08.2008 (Annexure-4). However, the said representations of the petitioner did not yield any fruit.

4. It is pleaded that the respondents have not settled the dispute till date and the dispute is of civil in nature.

5. Learned counsel appearing for the respondents specifically points out to Clause 25 of the agreement which requires that the disputes or differences shall be referred for adjudication through arbitrator appointed by Engineer-in-Chief or the administrative head of the said P.W.D.

6. As of now, Section 12(5) of the Arbitration & Conciliation Act, 1996 prohibits the appointment of an officer of one of the parties. In such circumstances, the objection is not well founded.

7. Today, there is no dispute about-(a) the legality, validity and binding effect of the written agreement 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 dispute arising out of the



agreement being civil in nature; (e) no legal impediment in the adjudication of the dispute by the learned Arbitrator; (f) the respondents having failed to settle the dispute.

8. In such circumstances, as agreed by the parties, Hon'ble Mr. Justice Shyam Kishore Sharma, a former Judge of the Patna High Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of the agreement entered into between the parties to the *lis*.

9. All pleas and issues raised, on merits, are left open to be considered and decided by the learned Arbitrator.

10. The learned Arbitrator shall be entitled to fee as per the schedule of the Act.

11. Since the dispute arises out of an agreement of the year 2007, the hearing be expedited.

12. The issue of limitation, if any, is left open to be raised before the Arbitral Tribunal.

13. Joint Registrar (List) is directed to communicate the judgment to the learned Arbitrator.

14. Learned counsel for the parties also undertake to communicate the judgment to the learned Arbitrator.

15. The Arbitral Tribunal shall issue notice to the respondents.



16. The Request Petition stands disposed of in the
above terms.

(K. Vinod Chandran, CJ)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	16.10.2023
Transmission Date	

