

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**REQUEST CASE No.43 of 2023**

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M/s Rai Construction through its Partner, Vikrant Rai, Son of Late Shankar Prasad, aged about 43 Years, Gender-Male, Resident of Rai Niwas, Near S.B.I., Rajbanshi Nagar Branch, New Punaichak, P.S.-Shashtrinagar, District and Town-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
2. The Additional Chief Secretary, Road Construction Department, Visheshwaraiya, Bhawan, Bailey Road, Patna.
3. The Engineer-In-Chief, Road Construction Department, Visheshwaraiya, Bhawan, Bailey Road, Patna.
4. The Chief Engineer, National Highway Wing, Road Construction Department, Patna.
5. The Superintending Engineer, National Highway Circle, Dehri-on-Sone.
6. The Executive Engineer, National Highway, Division, Gaya.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Lal Babu Singh, Advocate  
For the Respondent/s : Mr. Vikas Kumar, AC to AG

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**ORAL JUDGMENT**

**Date : 22-09-2023**

The petitioner is, before this Court, seeking appointment of an arbitrator. The only objection raised is with respect to the specific clause as found in the agreement. The arbitration clause is extracted hereunder:

“25.3 (a) In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act,



1996. The parties shall make efforts to agree on a sole arbitrator and only if such an attempt does not succeed and the Arbitral Tribunal consisting of 3 arbitrators one each to be appointed by the Employer and the Contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by the Parties to act as Presiding Arbitrator shall be considered. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Council, Indian Roads Congress.

(b) The Arbitral Tribunal shall consist of three Arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties, and shall act a presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding arbitrator shall be appointed by the Council, Indian Roads Congress.

(c) If one of the parties fails to appoint its arbitrator in pursuance of sub- clause (a) and (b) above within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the Council, Indian Roads Congress shall appoint the arbitrator. A certified copy of the order of the Council, Indian Roads Congress, making such an appointment shall be furnished to each of the parties.

2. Hence, when a dispute arises, the agreement provides that it shall be settled in accordance with the Arbitration and Conciliation Act, 1996 (for brevity the 'Act')



and that the arbitration shall be carried out by an Arbitral Tribunal, consisting of three arbitrators, one each appointed by the Employer and the Contractor. The provision is also that the two arbitrators appointed, shall appoint a Presiding Arbitrator and if there is no consensus then the Council, Indian Roads Congress shall appoint the Presiding Arbitrator.

3. In the present case, the petitioner had made an application for arbitration, as per Annexure-6. It is the submission of the learned counsel for the petitioner that he had approached the Arbitral Tribunal constituted under the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. However, the Hon'ble Supreme Court in **State of Bihar & Ors. v. Brahmaputra Infrastructure Limited; (2018) 17 SCC 444**, held that if the specific term of arbitration in the agreement is subject to the Act of 1996, then the Tribunal constituted under the State enactment would not have jurisdiction. It is in such circumstance that the petitioner has approached this Court.

4. It is to be specifically noticed that the Arbitral Tribunal is not the one referred to in the agreement and it specifically speaks of Arbitration and Conciliation Act, 1996. Hence, petitioner approaching before the Arbitral Tribunal and the petitioner's withdrawal of the same would not be of any



consequence.

5. Here, the petitioner had approached for an arbitration and the respondent has refused appointment of an arbitrator. In such circumstances, Clause-(c), as extracted above, provides the remedy for the petitioner. The petitioner has to approach the Council, Indian Roads Congress, who will appoint an arbitrator for the respondent and the petitioner would also be entitled to appoint an arbitrator. The two arbitrators shall appoint, on consensus, a Presiding Arbitrator and/or on failure, the Council, Indian Roads Congress shall appoint a Presiding Arbitrator.

6. In such circumstance, the request case is not maintainable. The same shall stand dismissed, leaving open the remedy of the petitioner to approach the Council, Indian Roads Congress.

**(K. Vinod Chandran, CJ)**

Sujit/-

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