

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.46 of 2023

=====

Chandra Mohan Ojha Son of Late Muktinath Ojha Resident of Vill. and P.O.-
Yadavchhapar (Lohiaria), P.S.- Kumarbagh (O.P.), Chanpatiya, District- West
Champaran.

... .. 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,
Motihari.
4. The Superintending Engineer, Tirhut Canal Circle, Bettiah,
5. The Executive Engineer, Tirhut Canal Division No.-1, Bettiah.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Manish Prakash, Advocate
For the Respondent/s : Mr. Vikas Kumar, AC to AG

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 26-07-2023

The petitioner is concerned with the work he carried out for the respondent and seeks arbitration of the disputes raised by him. The agreement is produced as Annexure-P-1 which is dated 29.01.2016, which contains the arbitration clause at Clause 25. The learned counsel appearing for the respondent raises two contentions. One regarding limitation period of three years as per the Limitation Act, having expired by the time the petitioner made the first claim produced at Annexure-P-8 on 31.08.2022 and also the procedure as required under Clause 25 having not been followed.



2. On the question of limitation, we have to notice the decision of the Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020**, In Re: Cognizance For Extension of Limitation. Therein, due to the pandemic situation limitation was saved between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within ninety days from 01.03.2022. Hence, an appeal could have been filed on or before 29.05.2022. The Hon'ble Supreme Court also declared that if a longer period than 90 days is provided in a statute, then that longer period will apply.

3. Under the Limitation Act for making any claim, the period provided is three years. Annexure-A dated 06.10.2018 is the rejection of the claim by the Executive Engineer, who is the Engineer-in-charge. The request for arbitration was filed only on 31.08.2022 is the contention raised by the learned counsel for the respondents. Going by the saving of limitation as granted by the Hon'ble Supreme Court referred to above, from 06.10.2018 till 15.03.2020, 1 year 4 months and 9 days expired after Annexure-A, dated 06.10.2018. The limitation period stood revived on 28.02.2022 and the petitioner made an application at Annexure-P-8 for appointment of an arbitrator on 31.08.2022. This is within the three year period,



reckoning the period from 06.10.2018 to 15.03.2020 and excluding that between 15.03.2020 to 28.02.2022. In such circumstances, the plea of limitation cannot be sustained.

4. The next plea raised is that the procedure as delineated in Clause 25 has not been followed. It is emphasized by the learned counsel appearing for the respondent that, but for making request for arbitration, the petitioner had not raised the claims before the Superintending Engineer and the Chief Engineer. In fact, after Annexure-P-8 dated 31.08.2022, the petitioner had made subsequent representations, as seen from Annexure-P-9 dated 09.11.2022 to the Superintending Engineer and Annexure-P-10 dated 29.11.2022 to the Chief Engineer. Annexures P-8 to P-10 seeks for an arbitration but, however, the claims have also been elaborately stated in the said communications. There was absolutely no response from the respondent. In such circumstances, it cannot be said that the procedure under Clause 25 was not followed.

5. On the above reasoning, this Court finds that there is an arbitrable dispute and the respondents have not settled the dispute till date and the dispute is of civil in nature.

6. Considering (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 arisen out of the agreement being civil in nature; (e) no legal impediment in the adjudication of the dispute by the learned Arbitrator; (f) Petitioner having exhausted the channel available for resolution of the dispute; (g) the respondent having failed to appoint an Arbitrator pursuant to the invocation of the arbitration clause by the petitioner, there has to be an arbitration initiated.

7. As such, on agreement between the parties, Hon'ble Mr. Justice B. N. Pandey, former Judge of the Patna High Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of agreement entered into between the parties to the *lis*.

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

9. Learned Arbitrator shall be entitled to fee as per the schedule of the Act.

10. Since the dispute arises out of an agreement of the year 2016, the hearing be expedited.

11. Parties undertake to fully cooperate and not take any unnecessary adjournment.

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

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

14. Learned counsel for the parties also undertake to



communicate the order to the learned Arbitrator.

15. Parties shall file their statement of claims before the learned Arbitrator on such date of hearing which he may fix, as per mutual convenience.

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

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

(K. Vinod Chandran, CJ)

sharun/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.07.2023
Transmission Date	

