

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.85 of 2022

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Educomp Solutions Ltd. through its Authorized Representative, Mr. Santosh Tiwari, S/o Shri Ram Jawahar Tiwari, aged around 42 years, working as Senior Manager, having Registered Office at, 1211, Padma Tower-1, 5, Rajendra Place, New Delhi-110008 and Corporate Office at 514, Udyog Vihar Phase -III, Gurugram-122001, Haryana.

... .. Petitioner/s

Versus

1. The Bihar State Electronics Development Corporation Limited through its General Manager, BSEDC office at Beltron Bhawan, Shastri Nagar, Patna-800023.
2. Bihar e-Governance Services and Technologies Limited through its Chief Executive Officer, at BEST, 1st Floor, Beltron Bhawan, Shastri Nagar, Patna - 800023.
3. The Bihar Public Works Contract Disputes Arbitration Tribunal having its office at 7th Floor, Niyojan Bhawan, Near Income Tax Golamber, Bailey Road, Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anjani Kumar Jha, Advocate
For the Respondent/s : Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 19-07-2023

1. The petitioner is before this Court seeking an arbitration, based on the agreement entered into produced as Annexure-1. The agreement was one in pursuance of ICT School Project, between Bihar State Electronics Development Corporation Limited, the respondent, and the petitioner herein. The contract was for a period of three years on the basis of Build, Own, Operate and Transfer to establish Computer lab, Hardware Networking Equipment, System Application Software, uninterrupted power supply and training etc. of ICT



Education Project in schools across the rural and the urban areas within the State of Bihar.

2. The petitioner refers to Article 21 of the Arbitration Agreement and specifically points out that when the matter was referred to the Bihar Public Works Contract Disputes Arbitration Tribunal (for brevity, 'the Tribunal'), the respondents raised objection that the Tribunal does not have the power to carry out the arbitration, especially since the subject of the contract is not one notified by the State Government under Section 2(k) of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (for brevity, the Act of 2008). Since there is no notification of the subject of the contract, there could be no arbitration carried out by the Tribunal. The Tribunal hence rejected the claim. The petitioner is hence before this Court seeking appointment of an independent arbitrator.

3. The learned counsel appearing for the respondents, however, submits that in the absence of an arbitration clause, there could be no arbitration carried out at all and the petitioner will have to approach the Civil Court for appropriate remedies. A judgment of the Hon'ble Supreme Court in **Civil Appeal No.2030 of 2022 titled as Bihar Industrial Area Development Authority v. Rama Kant Singh** is also relied on.



4. Considering the judgment of the Hon'ble Supreme Court in **Bihar Industrial Area Development Authority** (supra), it is seen that that was a case in which there was total absence of an arbitration clause. In the teeth of absence of an arbitration clause, it was held that the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act of 1996') does not apply at all. However, going by the statutory provision in the Act of 2008, the matter was entitled to be referred for arbitration to the Tribunal.

5. In the present case, the situation is quite different. The arbitration clause speaks of a reference to the Arbitration Tribunal under the statute, but however, even the respondent, which is also an organ of the State, challenge the reference to the Arbitration Tribunal on the ground that the statutory provision does not enable the Tribunal to arbitrate upon the matter. Hence, when the statutory provision is otherwise, an agreement cannot confer such power on the Arbitration Tribunal.

6. This Court perfectly agrees with the submission of the learned counsel for the respondents that there can be no power conferred on the Tribunal by way of an agreement between the parties. However, it is to be noticed that this is not



a case where there was total absence of an arbitration clause. The parties had agreed to an arbitration but however, the same was to be referred to the Arbitration Tribunal; which has now been found to be not competent to arbitrate on the dispute, which finding is based on the subject matter of the contract. In such circumstances, it cannot be said that there is no arbitration clause at all. The arbitration clause has to be given full effect to and in that circumstance, the Act of 1996 applies squarely. The Request Case has to be allowed.

7. Accordingly, with the consent of the parties, Hon'ble Justice Smt. Mridula Mishra, 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 2010, 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 she 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)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.07.2023
Transmission Date	

