

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.105 of 2022

=====

M/s Star Construction through the Principal Secretary, Department of Road Construction, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Road Construction, Government of Bihar, Patna.
2. The Engineer-in-Chief, Department of Road Construction, Government of Bihar, Patna.
3. The Chief Engineer N.H. Circle, Muzaffarpur.
4. The Executive Engineer, N.H. Division, Sitamarhi.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Uday Shankar Sharan Singh (Gp19)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 15-09-2023

The only objection raised in the present arbitration case is with respect to the petitioner having not complied with the requirements under Clause 25(1) of the agreement. Clause 25(1) specifically refers to the contractor raising a dispute before the Superintending Engineer regarding any work demanded of him to be outside the requirements of the contract or dispute, with respect to any drawings, record or decision given in writing by the Engineer-in-Chief. The Superintending Engineer was to give a response to the same by way of written instructions



or decisions, which was further appellable to the Chief Engineer. Only if the decision as per the above stated procedure is final, could there be an arbitration is the submission of the learned counsel for the respondent.

2. The learned counsel for the petitioner, however, points out the specific issue involved is with respect to the completion of the work beyond the time stipulated in the contract. In fact, the specific contention of the petitioner is that the delay was occasioned for reasons not attributable to the contractor, the respondent. The petitioner had also raised a dispute before the Engineer-in-Chief on 02.05.2023, which was not responded to.

3. This Court cannot countenance the contention raised by the respondent that in fact the dispute should have been raised before the Superintending Engineer not the Engineer-in-Chief who is the appellate authority. If the Engineer-in-Chief was of the opinion that the dispute has to be considered first by the Superintending Engineer, nothing prevented the Engineer-in-Chief from relegating the contractor to the Superintending Engineer or forwarding a copy of the representation to the Superintending Engineer,



for consideration at the first instance. Hence, it cannot be said that the procedure as detailed in the agreement, specifically the arbitration clause, was not complied with.

4. As such, Hon'ble Mr. Justice Hemant Gupta, a former Judge of the Hon'ble Supreme Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of agreement entered into between the parties to the *lis*.

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

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

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

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

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

10. Learned counsel for the parties also undertake to communicate the order to the learned Arbitrator.

11. The Arbitral Tribunal shall issue notice to



the respondents.

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

(K. Vinod Chandran, CJ)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.09.2023.
Transmission Date	

