

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.117 of 2022

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Krishna Kumar Thakur, son of Bindeshwari Prasad Thakur, resident of Khabra Road, Naya Tola, P.O., P.S. and District- Muzaffarpur, Pin Code- 842 001

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Bihar, Vishweshwaraiya Bhawan, Bailey Road, Patna.
2. Principal Secretary, Public Health Engineering Department, Bihar, Vishweshwaraiya Bhawan, Bailey Road, Patna.
3. Director, Public Health Engineering Department, Bihar, Vishweshwaraiya Bhawan, Bailey Road, Patna.
4. Executive Engineer-cum- Project Manager, DPMU, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raushan, Advocate
For the Respondent/s : Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 01-02-2023

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 (hereinafter referred to as the ‘Act’).

On 5th July, 2016, parties to the *lis* entered into an agreement (Page 16) containing mechanism for adjudication of the disputes. The said clause 1.6.2 reads as under:

“1.6.2. Arbitration

(1) If either the Owner or the Operator is dissatisfied with the Adjudicator's decision, or if the



Adjudicator fails to give a decision within 30 days after a dispute being referred to it, then either the Owner or the Operator may, within 60 days after such reference, give notice to the other Party, with a copy for information to the Adjudicator, of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

(2) Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GC Section 1.6.2(1), shall be finally settled by arbitration.

(3) Arbitration proceedings shall be conducted in accordance with the rules of procedure designated in the SCC.

1.6.3 Obligations during Arbitration

Notwithstanding any reference to the Adjudicator or arbitration herein,

a. the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

b. the Owner shall pay the Operator any monies due to the Operator.”

Petitioner, vide communication dated 05.09.2018 (Annexure-6, Page 91), invoked the said clause seeking disputes to be adjudicated by an adjudicator. Dissatisfied of the non-action and the action taken by the adjudicator, petitioner filed an



application under Section 9 of the Arbitration and Conciliation Act, 1996. The same was dismissed against which miscellaneous petition is now pending before this Court.

Be that as it may, pendency of such petition has got nothing to do with the adjudication of the instant petition filed in the year 2006.

Subsequently, petitioner invoked arbitration clause vide communication dated 27.02.2022 (Annexure-9, Page-106) to which also, there is no response.

Today, there is no dispute about-(a) the legality, validity and binding effect of the agreement dated 05.07.2016; (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/ Letter of Acceptance 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 dispute; (g) the respondents having failed to appoint an Arbitrator pursuant to the invocation of the arbitration clause by the petitioner.

As such, Hon'ble Mr. Justice Rajan Gupta, Former Judge, Punjab and Haryana High Court and Patna High Court , Mobile No. 9780008140 is appointed as learned Arbitrator to



adjudicate all disputes arising out of the agreement entered into between the parties to the *lis*.

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

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

Since the dispute arises out of an agreement of the year 2016, it is expected of the learned Arbitrator to decide the issues expeditiously.

Parties are directed to fully cooperate and not take any unnecessary adjournment.

The proceedings shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

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

Learned counsel for the parties to communicate the order to the learned Arbitrator. Also, parties are directed to appear before him, through physical/digital mode on 20.02.2023 and apprise him of passing of this order.

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



per mutual convenience.

The Request Petition stands disposed of in the above terms.

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

Sujit/Ranjan

(Sanjay Karol, CJ)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

