

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.120 of 2022

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Laxmi Civil Engineering Services Pvt. Ltd., 1148/E, Sykes Extension, Kolhapur-416001 through its authorized signatory Mr. Bharteshwar Chandrakumar Tiwary alias Bharteshwar Tiwary, aged about 55 Years (Male), Son of Sri Chandra Kumar Tiwary, Resident of Mohalla- Bharat Nagar Amrawati Road, Yogi Raj Society, Maharashtra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna- 15.
2. The Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna- 15.
3. The Engineer-in-Chief Flood Control and Water Drainage, Water Resources Department, Sinchai Bhawan, Patna- 15.
4. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Gopalganj.
5. The Superintending Engineer, Water Resources Department, Flood Control Circle, Padrauna.
6. The Executive Engineer, Water Resources Department, Flood Control Division No.- 2, Padrauna.
7. The Executive Engineer, Water Resources Department, Flood Control Division No. 1, Madhubani Camp- Padrauna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate
		Mr.Manish Sahay, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG 4

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 01-02-2023

The petitioner had approached this Court seeking appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘Act’), which petition was disposed of vide judgment dated 01.09.2021 passed by this Court in Request Case No. 17



of 2021, titled as M/s Laxmi Civil Engineering Services Pvt. Ltd. vs. The State of Bihar & Ors. Operative portion of the judgment reads as under:-

“ In the instant case, as Shri Anjani Kumar, learned Senior Advocate, rightly invites attention of this Court to the fact that the petitioner only approached the Engineer-in-Charge. No doubt, the Engineer-in-Charge rejected the claims and failed to forward the same to the Superintending Engineer, which was not so done, but then petitioner was also under an obligation to approach the Chief Engineer for a decision on the claims arising out of the agreement which was never done.

Shri Anjani Kumar states that the claims rejected by the Engineer-in-Charge shall be forwarded to the Superintending Engineer within next seven working days, and the latter shall take a decision as per law. It stands clarified that if the Superintending Engineer also fails to take a decision thereupon, it shall be open for the petitioner to file an appeal with the Chief Engineer who shall positively decide the same within the stipulated period in the contract i.e. 30 days. If required, petitioner can seek adjudication of dispute through arbitration under the agreement. If, however, petitioner is still aggrieved, it shall be open for him to approach the Court afresh, seeking appointment of an arbitrator in terms of the clause contained in the contract.

It stands clarified that this Court has not dealt with the issue touching the merits of the claim.



Needless to add, the authorities, be it the Engineer-in-Chief or Chief Engineer, shall decide the claim expeditiously and not later than the period stipulated under the contract.”

In terms thereof, petitioner preferred an appeal, which also stands rejected by the competent authority vide order dated 22.10.2021 (Annexure-10, Page 128), which gave rise to filing of instant petition.

Petitioner, in terms of agreement dated 04.06.2015 (Annexure-2 Page 35) containing an arbitration Clause- 25 (Page 85), invoked the said clause vide communication dated 15.11.2021 (Annexure-1 Page 23) for appointment of an Arbitrator to adjudicate the disputes between the parties.

Today, there is no dispute about-(a) the legality, validity and binding effect of the agreement dated 04.06.2015; (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 S.N.Jha, Former Chief Justice, Rajasthan High Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of the agreement dated 04.06.2015 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 2015, 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.

(Sanjay Karol, CJ)

Sujit/Ranjan

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

