

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.12 of 2021

Rang Vikalp registered office at Studio Variation Artists Studio Sardar Patel Colony, Patliputra Colony Telephone Exchange Road behind SIS Security Office, Kurji, Patna - 10, (Bihar.) through its Secretary, Sanyasi Red, (Aged about 46 years) Male, Son of Chandreshwar Prasad Singh Resident of Mahadevpur, P.S. Massrhi, District- Patna.

Claimant/ Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Tourism Government of Bihar, Patna.
2. The Managing Director, Bihar State Tourism development Department, Veer Chand Patel Path, Patna.
3. The Chief Engineer, Bihar State Tourism Development Corporation, Veer Chand Patel Path, Patna.
4. The Executive Engineer, Bihar State Tourism Development Corporation, Veer Chand Patel Path, Patna.

Respondents/Opposite parties

Appearance :

For the Petitioner/s	:	Mr. S.D.Sanjay, Sr. Advocate Mr. Mohit Agarwal Mr. Rahul Kumar Mr. Vishal Kumar Ms. Priya Gupta
For the State		Mr. Nalin Vilochan Tiwary, AC to GA 9
For BSTDCL		Mr. Kumar Abhimanyu Pratap

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

11 12-01-2024 I have already heard the parties.

2. Being aggrieved by the order dated 17.06.2020, passed by the learned Tribunal, Bihar Public Works Contract Disputes Arbitration Tribunal (hereinafter to be referred to as 'the Arbitration Tribunal'), in Reference Case No. 70/2016, by which the Arbitration Tribunal dismissed the reference made under Sections 9 and 11 of the Bihar Public Works Contracts



Disputes Arbitration Tribunal Act, 2008 (hereinafter to be referred to as 'the Act 2008'), whereby the Arbitration Tribunal held that it had no jurisdiction as the contract between the parties does not encompass the definition of 'work contract' defined under Section 2(k) of the Act 2008 and hence the Act 2008, as per the order of the learned Arbitration Tribunal, is not applicable in the instant case.

3. The brief facts of the case is that the Bihar State Tourism Development Corporation Ltd. invited tender with an Expression of Interest for installation of a statue of Lord Budha having 70 ft height with a pedestal of 30 ft at Ghora Katora Lake, Rajgir. The petitioner along with other bidders, participated in that bid and he was found qualified in technical bid along with other bidders. As per request, the petitioner submitted clay model of statue of Lord Budha in *Bhumi Sparsh* posture which was approved by the respondents, amongst other bidders. The petitioner also became successful in a financial bid and thereafter work order was issued to him, vide letter no. 487 dated 14.08.2013, issued by the Bihar State Tourism Development Corporation (Annexure-5). Thereafter, an agreement was entered into between the parties on 29th August, 2013. The consideration money was fixed as Rs.17.37 crores,



as per Clause 5 of the agreement. The petitioner furnished bank guarantee in pursuance of the Agreement. Thereafter, the petitioner was asked to furnish clay model for approval of the competent authority. The clay model was completed by the petitioner and he requested the respondents to inspect that model. The petitioner was directed to make some changes in the clay model suggested by the respondents. Accordingly, he made certain changes. On 28.09.2013, the petitioner sent photographs of clay model to the respondents, but they did not respond. All of a sudden, on 08.10.2013, the petitioner received a letter from the respondents, whereby he was informed that the agreement dated 29.08.2013 stood cancelled. The petitioner being aggrieved by the cancellation of Agreement, filed CWJC No. 25463 of 2013 for quashing the letter dated 08.10.2013 as well as for payment of 5% of total amount, which was to be paid at the juncture of approval of clay model submitted by the petitioner, as per clause 5(ii) of the Agreement. The said writ application was dismissed and the petitioner then filed LPA No. 494 of 2014, which was disposed of as withdrawn with a liberty to the appellant to approach the High Court with appropriate application. The petitioner again filed CWJC No. 10874 of 2014, which was withdrawn with liberty to the petitioner to



approach the forum of arbitration for settlement of dispute and after withdrawal of the said writ application, the petitioner took recourse to Arbitration Tribunal, but vide the impugned order the learned Arbitration Tribunal held that it has no jurisdiction as the Agreement in question is not a 'work contract', as per definition given in Section 2(k) of the Act 2008.

4. Mr. S. D. Sanjay, the learned Sr. Counsel for the petitioner, submitted that after considering the definition of 'work contract' defined under Section 2(k) of the Act 2008, the learned Tribunal held that the subject matter of the contract was not 'superstructure' as per the provision of Section 2(k) of the Act 2008. He submitted further that the view taken by the learned Arbitration Tribunal is erroneous in the eye of law. As per the contract between the parties, the petitioner had to install a sand stone statue of Lord Budha having 70 ft height in *Bhumi Sparsh* posture, on the platform of a height of 30 ft. The learned counsel submitted that as per the Agreement, 30 ft high platform was to be constructed first and thereon the statue of Lord Budha was to be installed. As such, the statue is nothing but a 'superstructure' erected/installed on the platform of 30 ft height and the statue encompasses the word 'superstructure' mentioned in Section 2(k) of the Act 2008. The learned counsel next



submitted that, as per Clause 5(ii) of the Agreement, 5% of the entire consideration money was to be paid to the petitioner by the respondents, subject to approval of the competent authority. The petitioner submitted the clay model, but it was neither approved nor disapproved by the competent authority and the entire Agreement was cancelled. The reason for cancellation of the Agreement was informed to the petitioner that the Department was intending to install black stone statue, instead of sand stone statue.

5. The learned counsel for the petitioner also submitted that, though there was arbitral Clause in paragraph-22 of the Agreement, but the Authority mentioned in arbitral Clause did not respond, when the petitioner approached for redressal of his grievance and his grievance is still pending. At the time of argument, the learned counsel apprised that the letter sent by him is still with the Managing Director, Bihar State Tourism Development Corporation, who is Arbitrator, as per paragraph-22 of the Agreement, which is extracted hereinbelow:-

“22. In case of any difference of opinion in any item of work the issue will be resolved by the Managing Director, Bihar State Tourism Development Corporation, Ltd. amicably. However, in case of any deadlock, Secretary Tourism Govt. of Bihar will be the sole



arbitrator.”

6. The learned counsel for the respondents submitted that there is arbitral clause in paragraph-22 of the Agreement, as such, in the light of a decision of Hon’ble the Apex Court, reported in (2018) AIR (SCW) 2640, *The State of Bihar Vs. M/s Brahmaputra Infrastructure Limited*, the Arbitration Tribunal has no jurisdiction to decide the matter and the Arbitration Tribunal has rightly held that it has no jurisdiction over the subject matter of the dispute.

7. It is not in dispute that the Arbitration Tribunal has jurisdiction only in cases, which cover the definition of ‘work contract’ defined under Section 2(k) of the Act 2008, which is extracted hereinbelow:-

*(k). ‘Works contract’ means a contract made by the State Government or a public undertaking with any other person for the execution of any of its works relating to construction, repairs or maintenance of any building or **superstructure**, dam, weir, canal, reservoir, tank, lake, road all types of bridge, culvert, factory or work shops or of such other work of the State Government or, as the case may be, of the public undertaking, as the State Government may, by notification in the Official Gazette, specify and includes-*



(i) a contract made for the supply of goods relating to the execution of any of such works or for supply of any other goods irrespective of whether it is required for any specific project or work or any type of consultancy services/service providers.

(ii) Contracts made for the supply of services relating to the execution of any of such works; including consultancy services for preparation of DPR's, supervision; project advisory, quality assurance, Project Management or any other management services.

(iii) Words and expressions used and not defined in this Act, but defined in the Arbitration Act, shall have the meanings assigned to them in the Arbitration Act.”

8. The learned Sr. Counsel for the petitioner submits that the word ‘superstructure’ encompasses the statue which was to be based on a platform of 30 ft height. As such, the work performed by the petitioner in pursuance of the contract comes under the definition of ‘work contract’ defined in Section 2(k) of the Act 2008. Therefore, the Arbitration Tribunal has jurisdiction over the dispute.

9. So far as the submission of the learned Senior Counsel is concerned, the word ‘superstructure’ has no where



been defined in the Act 2008. As per the Concise Oxford Dictionary, the meaning of the word ‘superstructure’ is as under:-

*“**Superstructure** n. 1. the part of a building above its foundations. 2. a structure built on top of something else. 3. a concept or idea based on others.”*

10. As per the Concise Oxford Dictionary, the meaning of the word ‘structure’ is as under:-

*“**Structure** n. & v. n. 1. a a whole constructed unit, esp. a building. b. the way in which a building etc. is constructed (has a flimsy structure). 2. a set of interconnecting parts of any complex thing; a framework (the structure of a sentence; a new wages structure). v.tr. give structure to; organize; frame.”*

11 From bare perusal of the dictionary meaning, the work done/to be done by the petitioner does not come under the purview of superstructure, as mentioned in Section 2(k) of the Act, 2008.

12. The Hon’ble Apex Court in the case of *M/s Brahmaputra Infrastructure Ltd.* (supra), after referring Sections 8, 9 and 22 of the Act 2008 has held in paragraph-5 of the said



decision that in the absence of an agreement clause only these Sections may be applicable. Paragraph-5 of the above-noted decision is being extracted hereinbelow:-

“5. The scheme of Sections 8,9 and 22 of the State Act shows that in the absence of an agreement stipulating the applicability of the Central Act, the State Act applies to Works contracts. Since in the present case, an arbitration agreement exists and stipulates applicability of the Central Act, the State Act will not apply. We, thus, do not find any ground to interfere with the impugned order.”

13. On the above-mentioned observation, in my view, the contract between the parties does not come under ‘work contract’, as defined in Section 2(k) of the Act 2008. As such, the Arbitration Tribunal did not commit any illegality, irregularity or impropriety in holding that it has no jurisdiction to decide the matter. Undisputedly, the authority mentioned in paragraph-22 of the Agreement has only jurisdiction over the subject matter of the contract.

14. The revision application is accordingly dismissed.

15. As it has already been submitted that the matter is still pending before the Managing Director, Bihar State Tourism Development Corporation Ltd. for adjudication of the dispute,



as per Clause 22 of the Agreement, he is directed to dispose of the matter within a period of four months from the date of receipt/communication of this order.

16. The office is directed to send a copy of this order forthwith to the Managing Director, Bihar State Tourism Development Corporation Ltd.

(Nawneet Kumar Pandey, J)

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