

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.63 of 2024

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M/s. A. K. Das Associates Ltd. In Joint Venture (JV) with M/s. REW Contracts Pvt. Ltd. @ JV of M/s. A. K. Das Associates Ltd. and M/s. REW Contracts Pvt. Ltd., a Joint Venture, having its office at Plot No- 594, Sector- 1, Vaishali 110042, through its authorized representative Kunal Jindal, Male, aged about 34 years, Son of Shri Sunil Kumar Jindal, resident of Plot no.- 594, sector- 1, vaishali, Police Station - Indrapuram, District Ghaziabad (U.P.).

... .. Petitioner/s

Versus

1. Bihar State Power Transmission Co. Ltd. 4th Floor, Vidyut Bhawan, Bailey Road, Patna- 800021, Bihar, through its Managing Director.
2. The Managing Director, Bihar State Power Transmission Co. Ltd. 4th Floor, Vidyut Bhawan, Bailey Road, Patna-800021, Bihar through its Managing Director.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar Jha, Advocate
For the Respondent/s	:	Mr. Anand Kumar Ojha, Advocate Mr. Akshansh Shanker, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 23-08-2024

Heard learned counsel for the parties.

2. 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.

3. Petitioner and the respondents entered into an agreement vide Agreement Nos. 61 and 62, both dated 30.05.2019, (Annexure-P-3A and P-4A). Clause 41 of the General Conditions of Contract ('GCC') contains an arbitration



clause. However, some dispute arose between the parties and the petitioner sent a letter dated 24.07.2023 for appointment of an Arbitrator, but to no avail.

4. It is pleaded that the respondents have not settled the dispute till date and the dispute is of civil in nature.

5. The objection raised by the learned Counsel for the respondent was that there is a system of arbitration provided under Clause 41 of the agreement.

6. On looking at Clause 41.2, it is seen that the arbitration as provided in the agreement speaks of an arbitral tribunal of three; two arbitrators have to be nominated by the contractor and the employer and the third to be appointed by both the arbitrators in accordance with the Arbitration and Conciliation Act, 1996 (for brevity 'Act of 1996'), as amended from time to time. As of now, Section 12(5) and the Seventh Schedule provide a prohibition insofar as appointment of arbitrators who come under any of the categories specified in the Seventh Schedule. It is trite that when certain persons are ineligible to be appointed as an arbitrator, such persons also cannot propose an arbitrator, which is the specific provision as contained in Clause 41.2. Though the contractor has been given the option to choose one arbitrator, he can do so only from



the panel of five arbitrators provided by the Managing Director of the employer. In such circumstance, since the clause is within the teeth of the prohibition under Section 12(5) of the Act of 1996, I am of the opinion that an independent arbitrator can be appointed.

7. As such, as agreed by the parties, Hon'ble Justice Smt. Mridula Mishra, a former Judge of the Patna High Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of the agreement(s) 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. The 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 2019, the hearing be expedited.

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

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

13. Learned Counsel for the parties also undertake to communicate the order to the learned Arbitrator.



14. The Arbitral Tribunal shall issue notice to the respondents.

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

(K. Vinod Chandran, CJ)

P.K.P./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.08.2024
Transmission Date	NA

