

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.79 of 2024

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Espan Infrastructure (I) Limited Earlier known as Espan Infrastructure Ltd., a company registered under the Companies Act, having its Registered Office at B-405, Second Floor, Nirman Vihar, Delhi- 110092, at present registered at 533, Pocket E, Mayur Vihar, Phase II, Delhi-110091 through its Authorized Signatory Pawan Kumar (aged about 41 years) (Male) Son of Shri. Ram Prasad, Resident of Rasulgarh, Fazilpur, P.S- Pahasu, District- Bulandshahr, Uttar Pradesh-202396.

... .. Petitioner/s

Versus

1. The State of Bihar Department of Road Construction, Visheshwaria Bhavan, Bihar, Patna-800001 through its Principal Secretary.
2. The Principal Secretary , Department of Road Construction, Visheshwaria Bhavan, Bihar, Patna-800001 through its Principal Secretary.
3. The Engineer In Chief Cum Additional Commissioner-Cum Special Secretary, Department of Construction, Visheshwaria Road Bhavan, Bihar, Patna-800001 through its Principal Secretary.
4. The Chief Engineer , Department of Road Constructions, Government of Bihar, NH Division, Patna-800001
5. The Executive Engineer , Department of Road Constructions, Government of Bihar, NH Division, Chapra.
6. The Assistant Engineer , Department of Road Constructions, Government of Bihar, NH Division, Chapra.
7. The Junior Engineer , Department of Road Constructions, Government of Bihar, NH Division, Chapra
8. Indian Roads Congress, Kama Koti Marg, Sector- 6, R.K. Puram, New Delhi - 110022 (India)

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravikesh Sinha, Advocate Mr. Ratneshwar Prasad, Advocate Mr. Avinash, Advocate
For the Respondent/s	:	Mr. P. K. Shahi, Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 04-10-2024



The petitioner has sought for appointment of a sole arbitrator. Admittedly, the agreement has an arbitration clause and it requires the arbitrators to be appointed by the Indian Roads Congress. Learned Counsel for the petitioner submits that though, an arbitrator was nominated by the respondent, since respondent has objected to the arbitration proceedings, the Indian Roads Congress refused to appoint a Presiding Arbitrator. This has led to the Request Case being filed.

2. The learned Advocate General points out that the State never objected to the arbitration and merely pointed out that there was an F.I.R. registered insofar as the petitioner having produced forged challans of bitumen, as is seen from Annexure-23. It is stated that the respondents have no objection in the arbitration being carried out by the arbitrators, as specified under the agreement; before whom the State would also present the contentions with respect to the forged challans.

3. Annexure-23 is the communication of the State to the Indian Roads Congress. On the basis of the F.I.R. registered against the petitioner, it is also stated that the criminal offense is being prosecuted and hence, there is no question of arbitration. It is trite that even if criminal prosecution is initiated on the ground of forgery, there is nothing prohibiting an arbitration in the matter to settle the disputes that arose from the



agreement and the execution of the work.

4. Learned Counsel for the petitioner submits that now the respondent cannot turn around and seek an arbitration, as provided in the agreement since, there was a refusal at the first instance. Reliance is also placed on *Denel (Proprietary) Limited v. Ministry of Defence; (2012) 2 SCC 759*. Therein, the respondent had failed to appoint an arbitrator when a request was made, as per the agreement. The petitioner then approached the Court for appointment of an arbitrator after which the respondent appointed the arbitrator, as per the agreement. It was in such circumstance, that the respondent was said to have waived its right to appoint an arbitrator, as per the agreement. No such circumstance arises in the above case wherein the Indian Roads Congress had, on a misinterpretation of the request made by the State, refused to appoint a Presiding Arbitrator.

5. It is also the dictum of the said judgment that in normal circumstances, while exercising jurisdiction under Section 11(6), the Court would adhere to the terms of the agreement, as closely as possible and only if the circumstance warrant, the Chief Justice or the nominee of the Chief Justice would depart from the terms of the agreement and appoint an independent arbitrator other than the named arbitrator. In the instant case, hence the arbitration has to be carried out by the panel



as prescribed in the agreement; with the Presiding Arbitrator being nominated by the Indian Roads Congress.

6. The issue can be resolved, if the Presiding Arbitrator is appointed by the Indian Roads Congress, especially when the nominees of the petitioner and respondent have already been appointed. In the above circumstances, this Court would dispose of the matter directing the Indian Roads Congress to appoint an arbitrator within 30 days from the receipt of the copy of this judgment. To facilitate the compliance of the said direction, the Indian Roads Congress, Kama Koti Marg, Sector-6 R.K.Puram, New Delhi-110 022 (India) is impleaded as the additional respondent herein.

7. The Request Case stands disposed off with the above observations/directions.

(K. Vinod Chandran, CJ)

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AFR/NAFR	
CAV DATE	
Uploading Date	07.10.2024
Transmission Date	

