

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.27 of 2021

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M/S New Kohli Sports, Jagat Trade Centre, Fraser Road, Patna - 1, Through
its Proprietor Shri Birender Kohli, male, Aged about 49 years.

... .. Petitioner/s

Versus

1. The State of Bihar through Director, Student and Youth Welfare Art and Culture Department New Secretariat Patna.
2. The Director General Bihar State Sports Authority, Moin-ul-Haque Stadium, Rajendra Nagar, Patna- 16.
3. The Director cum Secretary Bihar State Sports Authority, Patna.
4. In charge Patliputra sports complex cum District Sports Officer, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

15 18-02-2026 This Civil Revision application has been filed

challenging the order dated 10.06.2020 passed by the learned

Bihar Public Works Contracts Disputes Arbitration Tribunal,

Patna (hereinafter referred to as “the Tribunal”) in Reference

Case No. 304 of 2018, whereby the claim of the petitioner was

disposed of as not maintainable.

2. The relevant operative portion of the impugned
order reads as follows:-

*“14. In view of our above discussion, we
came to the conclusion that the contract in
question is not works contract and therefore the
services provided by the petitioner can not be*



treated as a contract falling within the meaning of the term "works contract", therefore this Tribunal has no jurisdiction to decide the disputes between the parties because this Tribunal is constituted under the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. This Act has been enacted by the State legislature to resolve the dispute arising between the parties out of works contract and not the dispute arising out of any other contract. The Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 applies only to the works contract and since the contract which the present parties have entered into is not a works contract this Tribunal constituted under the Act of 2008 has no jurisdiction to decide the kind of disputes which has arisen between the parties in the present reference case.

15. In view of our above finding we hold that the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 is not applicable in the present case and accordingly this Tribunal has got no jurisdiction to decide the dispute raised in this reference case."

3. The case of the petitioner in Reference Case No. 304 of 2018, in brief, is that the petitioner supplied sports shoes, socks, caps, T-shirts, track suits and other allied items, valued at Rs. 11,25,060/- pursuant to an oral order by Opposite Party No.



1. It is pleaded that by an order dated 02.11.2015, Opposite Party No. 1 directed Opposite Party No. 2 to organize the Eklavya Mini Olympic in the first week of December, 2015. The said order specifically stipulated that the event would be conducted from funds reserved with the Bihar Sports Authority and reimbursement of expenses would be made upon submission of original bills. It is further contended that Opposite Party No. 1, the then Director, Student and Youth Welfare, Art and Culture Department, Bihar, namely Mr. Arvind Thakur, personally called upon the petitioner and verbally instructed him to supply the requisite sports goods and outfits to Opposite Party No. 4, the then In-charge, Patliputra Sports Complex-cum-District Sports Officer, Patna. Opposite Party No. 1 also stated that, owing to acute paucity of time, adherence to the Code of Conduct for inviting tenders was not feasible. In all fairness and relying on the *bona fide* assurance and authority of Opposite Party No. 1, the petitioner supplied a total of 23 bundles of sports goods and outfits through three challans, namely 17 bundles and 5 bundles vide challan dated 08.12.2015, and 1 bundle vide challan dated 09.12.2015, for the Eklavya Sports Meet, 2015. The aforesaid materials were duly received by Sri Binay Kumar, a clerk deputed by Opposite Party No. 1 at the



Patliputra Sports Authority. The receipt of the said materials stands admitted through information furnished under the Right to Information Act by Opposite Party No. 2 and was further confirmed by Opposite Party No. 3. Subsequently, the petitioner submitted bills amounting to Rs. 11,25,060/- (Rupees Eleven Lakhs Twenty-Five Thousand and Sixty only) along with retail invoices to Opposite Party No. 1 for payment. However, no response was received, nor was any payment released against the supplies made. It is further pleaded that on the direction of Opposite Party No. 1, Opposite Party No. 2 furnished information to the petitioner confirming that all sports goods, materials and outfits required for the Eklavya Sports Meet, 2015-16, meant for 488 participants, had been supplied by the petitioner, M/s New Kohli Sports, Fraser Road, Patna, through three challans, and that the same had been duly received by the Patliputra Sports Authority. Even a reminder letter dated 07.02.2018, along with the retail bills and RTI information, did not yield any action. Left with no alternative, the petitioner, through his counsel, issued a legal notice dated 26.06.2018 to Opposite Party No. 1, which did not invite any response. In view of the persistent inaction and apathetic conduct of the opposite parties, the petitioner was constrained to invoke the



jurisdiction of the Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna, by filing Reference Case No. 304 of 2018 for redressal of his legitimate grievance and payment of the dues arising out of the supplies made.

4. The learned Tribunal, upon hearing the parties, disposed of the reference case as not maintainable and recorded a categorical finding that it did not have jurisdiction to adjudicate the dispute between the parties. The Tribunal further held that the contract entered into between the parties did not fall within the ambit of “works contract”. It was further held that since the Tribunal is constituted under the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (for short, “*the Act of 2008*”), its jurisdiction is confined to disputes arising out of works contracts alone and does not extend to disputes arising from contracts of any other nature, including the contract involved in the present reference case.

5. Assailing the judgment and order passed by the learned Tribunal, the petitioner has invoked the revisional jurisdiction of this Court under Section 13 of the Act of 2008.

6. Learned counsel for the petitioner submitted that the learned Tribunal disposed of the reference case merely on the ground of maintainability, confining its decision to the issue



of jurisdiction, and did not adjudicate the matter on merits. It is contended that it is an admitted position on record that the sports goods were supplied pursuant to the oral directions of Opposite Party No. 1, and that the said goods were duly received by the staff of Opposite Party No. 1 at the Paliputra Sports Authority. It is further submitted that the opposite parties themselves have considered the petitioner's claim relating to the supply of sports goods and examined the challans and bills submitted by the petitioner. The Department of Sports, Government of Bihar, in fact, constituted a three-member committee to scrutinize and verify the copies of the bills furnished by the petitioner. It is an admitted position that the Eklavya Sports Meet, 2015, was successfully organized, during which the sports goods supplied by the petitioner were utilized. From the stand taken by the State authorities, it is apparent that no other supplier had supplied sports goods for the said Eklavya Sports Meet, 2015. It is further submitted that the opposite parties have categorically admitted that the sports goods were supplied by the petitioner, which is evident from the information furnished under the Right to Information Act, and which admission has never been denied by the State authorities. It is contended that the three-member committee, constituted by the



Department, after verification of the bills, recorded that on the basis of the photocopies of the vouchers furnished by the petitioner, the total amount came to Rs. 11,24,060/- (Rupees Eleven Lakhs Twenty-Four Thousand and Sixty only), whereas the demand letter submitted by the petitioner for payment of the supplied materials claimed a total amount of Rs. 11,25,060/- (Rupees Eleven Lakhs Twenty-Five Thousand and Sixty only). It is further recorded that in view of Rule 131 of the Bihar Financial Rules along with the relevant sub-provisions thereof (as amended), a tender process was required to be followed for procurement of materials of the said amount. The Three-Members Committee, vide Enquiry Report dated 07.03.2024 (annexed as Annexure-OP-1/6 to the second supplementary counter affidavit filed on behalf of O.P. No. 1), has further reported that no evidence of such procedure is available in the case records.

7. Learned counsel for the petitioner submitted that as the event was organized at the eleventh hour, Opposite Party No. 1, the Director, requested the petitioner to supply the requisite sports goods. The petitioner supplied the said goods on the legitimate expectation that after supply and subsequent verification, payment of the bills would be duly made. It is



further submitted that the details of the supplied items were verified by the Three-Members Committee with reference to the bills submitted by the petitioner. As the event was organized at the eleventh hour and owing to acute paucity of time, neither a formal work order nor a tender process could be issued prior to procurement of the sports goods.

8. It is an admitted fact that the event was organized and successfully conducted after the sports goods mentioned above were supplied by the petitioner. The concerned authorities have denied payment of the petitioner's legitimate and *bona fide* bills merely on the ground that the goods were supplied without following the tender process. As per the report of the Three-Members Committee, there is no denial whatsoever that the sports goods were not supplied by the petitioner for conducting the Eklavya Sports Meet, 2015. It is also not the case of the State authorities that the bills were submitted without actual supply of the goods. It is further an admitted fact that the sports goods were received by the staff of Opposite Party No. 1 at the Patliputra Sports Authority, which fact stands clearly established from the information furnished under the Right to Information Act. In view of these admitted facts, the petitioner is entitled to payment for the sports goods supplied, amounting to Rs.



11,24,060/-, as assessed and calculated by the Three-Members Committee.

9. On the other hand, learned counsel for the State has submitted that the present revision application has been filed against the order of the learned Tribunal and the impugned order does not suffer from any illegality and wants of jurisdiction. There was no contract executed between the petitioner and the opposite party no.1. The Director, Student and Youth Welfare, Bihar, vide his Letter no. 920 dated 02.11.2015 had informed the Director-cum-Secretary, Bihar State Sports Authority, Patna, to organize Ekalavya Mini Olympics, 2015-16, in the first week of December, 2015 with the reserved fund of Bihar State Sports Authority and with a further clarification that the budget amount shall be reimbursed after submission of original voucher/bills. The Opposite Party No. 1, in compliance of the letter dated 07.02.2018, vide Letter No. 276 dated 28.02.2018 has already communicated to the petitioner that on perusal of the concerned file, it is manifest that no order had been issued for the supply of the sports items, in-question, by the petitioner during the Ekalavya Mini Olympics, 2015-16. By the aforesaid letter, the petitioner was requested to make available a copy of the work order to the Department. However, till date, the petitioner has



not made available any work order issued by the Department in this regard. Learned counsel for the State further submitted that the Director-cum-Secretary, Bihar State Sports Authority, Patna, has also informed the petitioner that the Authority had not purchased the sports items in question, as is evident from Letter No. 668 dated 31.07.2017 issued by the Director-cum-Secretary, Bihar State Sports Authority, Patna.

10. Moreover, the claim of the petitioner will not come under Section 2(K) of the Act of 2008 and the Section 2(K) of the Act of 2008 will not apply in this case. Further no notification has been issued by the State Government including the supply of sports items within the meaning of “works contract”. The contract, in question, is not works contract and, therefore, the goods supplied by the petitioner cannot be treated as a contract falling within the meaning of the term "Works Contract" and learned Tribunal has rightly refused to entertain the merit of the claim of the petitioner and disposed of the matter as not maintainable.

11. Having considered the submissions advanced by the parties and from a bare perusal of the impugned order passed by the learned Tribunal, it would emerge that the contract as claimed by the petitioner was created through an oral order



and related merely to the supply of sports items. Such supply neither falls within the ambit of any “work” as defined under Section 2(k) of the Act of 2008 nor does it relate to the supply of goods incidental to such work so as to constitute a ‘works contract’.” In view of the above, the learned Tribunal has rightly held that the oral contract in question does not fall within the definition of “works contract” within the meaning of the Act of 2008. Consequently, the Tribunal constituted under the said Act has no jurisdiction to adjudicate the dispute arising between the parties in the reference case. Such a claim of the petitioner cannot be entertained before the forum invoked by the petitioner. The claim and dispute raised by the petitioner ought to have been raised before the Civil Court of competent jurisdiction.

12. The petitioner did not choose the proper forum to ventilate his grievance. Under wrong advice, the petitioner filed such a claim before the learned Tribunal, which had no jurisdiction to adjudicate the claim of the petitioner.

13. Accordingly, this Court is of the view that the present revision application has got no merit.

14. The petitioner is at liberty to avail an efficacious remedy by filing an appropriate suit before the Civil Court of



competent jurisdiction in accordance with law, and the time consumed in the present proceeding, having been initiated under wrong advice, may be treated as falling under Section 14 of the Limitation Act, 1963, for computing the period of limitation for exclusion of the time spent in prosecuting the proceedings *bona fide* before a court having no jurisdiction.

15. Accordingly, the present Civil Revision application is disposed of with the aforesaid observations.

16. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

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