IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Application No. 38 of 2026

M/s. Rajendra Electric Works, through its Proprietor Rajendra Prasad Mahto, aged about 71 years, Son of Dev Narayan Mahto Resident of Village- Kouri Khutahari, P.O. Bhagaiya, P.S. Meherma, Dist. Godda (Jharkhand) ... Petitioner

Versus

1. ~~The State of Jharkhand.~~ (deleted vide today's order)
2. Jharkhand Urja Vikash Nigam Limited, having office at Engineering Bhawan, H.E.C. Township, P.O. Dhurwa, P.S. Jagannathpur, District-Ranchi, through its Chairman.
3. General Manager-cum-Chief Engineer, Jharkhand Bijli Vitran Nigam Limited, Electric Supply Division, Dumka, P.O., P.S. Dumka, District-Dumka.
4. Electrical Executive Engineer, Electric Supply Division J.B.V.N.L. Dumka, Dumka, P.O., P.S. Dumka, District-Dumka.
5. Electrical Superintending Engineer, Electric Supply Circle, J.B.V.N.L., Dumka, P.O., P.S. Dumka, District-Dumka.
6. Assistant Engineer, Electric Supply Circle, JBVNL Dumka, P.O., P.S. Dumka, District-Dumka.

... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the Petitioner: Mr Sudip Ranjan , Advocate
Ms Vidhika Saboo, Advocate

For the Respondents: Mr Manoj Kumar, Advocate
Mr Abhijeet Suman, Advocate

02/Dated: 18.09.2026

1. Heard Mr Sudip Ranjan, who appears with Ms Vidhika Saboo for the applicant, and Mr Manoj Kumar, who appears with Mr Abhijeet Suman for Respondents 2 to 6.

2. Learned counsel for the applicant states that the State of Jharkhand is not a necessary party to this application and therefore, he craves leave to delete the State of Jharkhand as a respondent.

3. Deletion is allowed. Necessary amendment to be carried out forthwith.

4. This application seeks appointment of Arbitrator by invoking Section 11 of the Arbitration and Conciliation Act, 1996 (said Act).

5. Disputes have arisen between the parties in relation to the agreement dated 11.06.2015 (Annexure 2), and the learned counsel for the applicant contends that Clause 23 of this Agreement contains an arbitration clause; therefore, an Arbitrator should be appointed, and the parties must be referred to arbitration.

6. Mr Manoj Kumar, the learned counsel for the respondents, contends that Clause 23 on which the applicant relies cannot be called as an arbitration clause and therefore, this application deserves to be dismissed. He further contends that the parties have entered into a fresh agreement in 2023 and therefore, no cognisance should be taken of the agreement dated 11.06.2015. He submits that this is yet another reason why the present application should be dismissed.

7. Clause 23 of the agreement dated 11.06.2015 reads as follows:-

> *"Clause 23: In case any dispute or difference shall arise between the parties or either of them upon any question*

relating to the meaning of the specification, designs, drawings and instructions here in before mentioned or as to the quality of work man ship or materials used in the work, or as to the construction of any of the conditions or any clause or thing there in contained, or as to any question, claim, rights or liabilities of the parties, or any matter, or thing what so ever, in any way arising out of, or relating to the contract, designs, drawings, specifications estimated, instruction, order or these condition or otherwise concerning the work, or the execution, or alter the completion or abandonment thereof, or as to the breach of this contract, then party shall forth with give to the other notice of such dispute or difference and such dispute or difference shall be referred to the superintending Engineer or the circle and his decision there on shall be final conclusive and binding of all the parties."

8. In the case of **Kamac Engineers Private Limited v. The State of Jharkhand and Ors,** Arbitration Application No. 32 of 2024 decided on 11.07.2025, my predecessor, Hon'ble Chief Justice M.S. Ramachandra Rao, had the occasion to deal with identically worded Clause 23 in the Agreement. In that matter as well, the respondents-State raised an objection that Clause 23 does not amount to an arbitration clause.

9. By referring to the decisions of the Hon'ble Supreme Court in the case of **Mallikarjun versus Gulbarga University,** (2004) 1 SCC 372, and **Bihar State Mineral Development Corporation and another Vs. Encon Builder (I) (P) Ltd.,** (2003) 7 SCC 418, it was

held that Clause 23 which is identically worded as the Clause 23 in the present agreement, was an arbitration agreement between the parties.

10. The relevant paragraphs from the order dated 11.07.2025 in **Kamac Engineers Private Limited** (supra) are transcribed below for the convenience of reference: -

> *"11. Counsel for the respondents, however, contended that Clause 23 is not in the nature of an arbitration agreement at all and no relief can be granted for this application even otherwise on account of bar of limitation.*
>
> *12. Clause 23 of the Agreement between the parties states as under:*
>
> > *"Clause 23:- In case any dispute or difference shall arise between the parties or either of there upon any question relating to the meaning of the specifications, designs, drawings and instructions here before mentioned or as to the quality of workmanship or materials used on the work or as to the construction of any of the conditions or any clause or thing there in contained or as to any question, claim, rights of the parties, or any matter, or things whatsoever in any way arising out of or relating to the contract designs, drawings specifications, estimates, instruction order of these conditions or otherwise concerning the work or the execution, or failure to execute the same whether arising during the progress of the work of alter the completion or abondment thereof or as the breach of*

those contract then either party shall forthwith give to the order notice of such dispute or difference and such dispute or difference shall be referred to the Superintending Engineer of the circle and his decision there on shall be final, conclusive and binding on all the parties."

13. I shall first consider whether this clause is an arbitration clause or not.

14. Similar clause fell for consideration before the Supreme Court in **Mallikarjun Versus Gulbarga University**. *The said clause is as under:*

"Clause 30 "The decision of the Superintending Engineer of the Gulbarga Circle for the time being shall be final, conclusive, and binding on all parties to the contract upon all question relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or material used on the work, or as to any other question, claim, right, matter, or thing whatsoever, in any way arising out of, or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or those conditions, or otherwise concerning the works or the execution, or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof in case of dispute arising between the contractor and Gulbarga University."

(emphasis supplied)

The Supreme Court held that the decision of the Superintending Engineer of the Circle in the case of a dispute between the contractor and the respondents was made final and binding on the parties to the contract in regard to all questions relating to the matters specified therein as also any other questions, claims, rights of the parties or any matter or things whatsoever in any way concerning the work or the execution, or failure to execute the same.

It relied on the judgment of the Supreme Court in **Bihar State Mineral Development Corporation and another Vs. Encon Builder (I) (P) Ltd**. *where the following essential elements of an arbitration agreement were laid down:*

(i) There must be a present or a future difference in connection with some contemplated affair.

(ii) There must be the intention of the parties to settle such difference by a private tribunal.

(iii) The parties must agree in writing to be bound by the decision of such tribunal.

(iv) The parties must be ad idem.

Since all the said conditions are fulfilled, and since the clause requires the Superintending Engineer to give a decision on the above referred disputes which may be present or future and they had agreed to settle them through the private tribunal i.e. the Superintending Engineer, Clause 30 was held to be an arbitration clause.

15. The said judgment applies on all fours to the instant case as the clause 23 applicable here is identical in terms to clause 30 in that case. All the essentials of the arbitration

> *agreement are fulfilled and so it has to be held to be an arbitration agreement.*
>
> *16. In addition, I may point out that in W.P.(C) No. 7644 of 2011 decided on 11.01.2023, the respondents specifically admitted in para 6 that Clause 23 is an Arbitration clause. So they are estopped from now contending otherwise as is sought to be done."*

11. Therefore, by adopting the reasoning in the order dated 11.07.2025 in **Kamac Engineers Private Limited** (supra), the objections that Clause 23 is not an arbitration clause are hereby rejected.

10. Mr Manoj Kumar's second contention about the fresh agreement is not quite relevant at this stage of considering an application for appointment of an Arbitrator, given the law laid down by the Hon'ble Supreme Court in the case of **Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re**, (2024) 6 SCC 1. Since the prima facie existence of an arbitration agreement is established, this application needs to be allowed.

11. In any event, such contention, along with all other contentions that the respondents might have, can always be kept open to be raised before the Arbitrator.

12. Accordingly, this application is allowed and Ms Swati Shalini, an Advocate of this Court, having email address swatishalini2810@gmail.com, is appointed as Arbitrator to adjudicate upon the disputes that have arisen between the parties.

All contentions of all parties, including those of the respondents herein on the merits of the disputes, are kept open. The objection regarding the fresh agreement is also kept open.

13. Ms Swati Shalini, who is present in the Court, has agreed to be the Arbitrator in this matter and stated that she will issue the necessary declarations under Section 12(2), read with the 5th and 6th Schedules of the said Act, before entering upon the arbitration proceedings.

14. The learned Arbitrator's fees shall be in accordance with the 4th Schedule of the said Act and the same, along with the arbitration expenses, shall be equally borne by both the parties in the first instance.

15. The learned Arbitrator is requested to endeavour to conclude the arbitration proceedings as expeditiously as possible, having regard to the Mandate under Section 29-A of the said Act. The learned Arbitrator should inform the learned counsel for the parties of the date on which they should appear.

16. This application is disposed of in the above terms, without any order for costs.

(M. S. Sonak, C.J.)

September 18, 2026

N.A.F.R.

Manoj/Sharda/Cp.2

Uploaded on 24.09.2026