

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3344 OF 2018

(Arising out of SLP (C) No(s). 18212 OF 2017

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THE STATE OF BIHAR & ORS.

Appellant(s)

VERSUS

M/S. BRAHMAPUTRA INFRASTRUCTURE LIMITED

Respondent(s)

WITH

CIVIL APPEAL NO. 3345 OF 2018

(Arising out of SLP (C) No(s). 21434 OF 2017)

THE STATE OF BIHAR & ORS.

Appellant(s)

VERSUS

M/S. SUPREME BRAHMAPUTRA (JV)

Respondent(s)

O R D E R

(1) Leave granted. We have heard learned counsel for the parties.

(2) The State is aggrieved by the appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the Central Act) on the ground that the said Act is excluded by the Bihar Public Works Contracts Arbitration Tribunal Act, 2008 (Bihar Act 21 of 2008) (the State Act).

(3) To appreciate the plea raised, it is necessary to refer to the scheme of the State Act as reflected in some of the key provisions. Sections 8, 9 and 22 of the State Act are as follows:

"8. Act to be in addition to Arbitration & Conciliation Act, 1996. - Notwithstanding anything contained in this Act, and of the

provisions shall be in addition to and supplemental to Arbitration & Conciliation Act, 1996 and in case any of the provision contained herein is construed to be in conflict with Arbitration Act, then the latter Act shall prevail to the extent of conflict.

(a)

9. Reference to Tribunal and making of award.--

(1) Where any dispute arises between the parties to the contract, either party shall, irrespective of whether such contract contains an arbitration clause or not refer, within one year from the date on which the dispute has arisen, such dispute in writing to the Tribunal for arbitration in such form and accompanied by such documents or other evidence and by such fees, as may be prescribed.

(2) On receipt of a reference under sub-section (1), the Tribunal may, if satisfied after such inquiry as it may deem fit to make, that the requirements under this Act in relation to the reference are complied with, admit such reference and where the Tribunal is not so satisfied, it may reject the reference summarily.

(3) Where the Tribunal admits the reference under sub-section (2), it shall, after recording evidence if necessary, and after perusal of the material on record and on affording an opportunity to the parties to submit their argument, make an award or an interim award, giving its reasons therefor.

(4) The Tribunal shall use all reasonable dispatch in entering on and proceeding with the reference admitted by it and making the award, and an endeavour shall be made to make an award within four months from the date on which the Tribunal had admitted the reference.

(5) The award including the interim award made by the Tribunal shall, subject to an order, if any made under Section - 12 or 13, be final and binding on the parties to the dispute.

(6) An award including an interim award as confirmed or varied by an order, if any, made under Section- 12 or 13 shall be deemed to be a decree within the meaning of section-2 of the

Code of Civil Procedure, 1908 of the principal Court of original jurisdiction within the local limits whereof the award or the interim award has been made and shall be executed accordingly.

(2)

22. Overriding effect of this Act.- Notwithstanding any thing contained in any other Law, Rule, Order, Scheme, or Contract Agreement entered into before or after commencement of this Act, any dispute as defined in Section 2(e) of this Act shall be regulated under the provisions of this Act, Rules and Regulations framed thereunder, and absence of arbitration clause in any contract agreement shall not have effect excluding any dispute from the purview of this Act."

(4) It is not in dispute that the parties have executed agreement dated 22nd June, 2012, providing for appointment of an arbitrator as per provisions of the Central Act. Relevant portion of Clause 25 of the said Agreement is as follows:

"The arbitration shall be conducted in accordance with provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under the clause."

(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 cases, 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.

(6) The appeals are dismissed. It will, however, be open to the appellant-State to move the High Court for change of Arbitrator, if a case to this effect is made out on an objection of neutrality, as submitted by learned counsel for the State.

(7) Before parting with this order, we consider it appropriate to deal with the submission raised by learned counsel for the respondent(s) that Section 4(3)(b) of the State Act is patently unconstitutional. The said section is as follows:

"Section 4. Terms and conditions of service of the Chairman and other members of Tribunal.-

(3) (b) The Chairman and any other member shall hold the office at the pleasure of the Government, provided that; in case of premature termination; they shall be entitled to three months pay & allowances in lieu of compensation."

(8) We are of the view that a provision that the tenure of the Chairman and other members of the Arbitration Tribunal at the pleasure of the Government is inconsistent with the constitutional scheme, particularly Article 14 of the Constitution of India. Section 4(1) of the State Act provides for a three year tenure or till the age of 70 years whichever is earlier. Termination of the said tenure cannot be at pleasure within the term stipulated as the arbitration tribunal has quasi judicial functions to perform. Any termination of the service of such member by a party to the dispute would interfere directly with the impartiality and independence expected from such member. The said provision is,

thus, manifestly arbitrary and contrary to the Rule of Law.

Accordingly, we declare the said provision to be unconstitutional.

(27)

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(ADARSH KUMAR GOEL) J.

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(ROHINTON FALI NARIMAN) J.

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(UDAY UMESH LALIT) J.

New Delhi,
March 22, 2018.

