

# **Bihar Public Works Contracts Disputes Arbitration Tribunal Regulations, 2009**

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### **Rule**

### **BIHAR-PUBLIC-WORKS-CONTRACTS-DISPUTES-ARBITRATION-TRIBUNAL-REGULATIONS-2009**

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Bihar Public Works Contracts Disputes Arbitration Tribunal Regulations, 2009Published vide Notification No. Sec.-6/Niyam-03/2008-13577 (S), dated 24.11.2009Last Updated 11th February, 2020No. Sec.-6/Niyam-03/2008-13577 (S). - In exercise of the powers conferred by section 10 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008, the Bihar Public contracts Disputes Arbitration Tribunal with the sanction of the State Government hereby makes the following regulations, namely :-

### **1. Short title and Commencement.**

- (i) These regulations may be called the Bihar Public Works contracts Disputes Arbitration Tribunal Regulations, 2009.(ii)The regulations shall be published in the Government Gazette and upon Publication shall become operative with immediate effect.

### **2. Definitions.**

- In these Regulations, unless the context otherwise requires :-(a)"Act" means the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008;(b)"Reference" means reference under section 9 of the Bihar Public Works contracts Disputes Arbitration Tribunal Act.(c)"Registrar" means the Registrar of the Bihar Public works contracts Disputes Arbitration Tribunal and includes Joint Registrar or Deputy Registrar.(d)Words and Expressions used but not defined in these regulations but defined in Bihar Public Works contracts Disputes Arbitration Tribunal Act, 2008 (hereinafter called the 'Act') and the rules framed there under, shall have the meaning assigned to

them in the Act and the Rules.

### **3. Reference to Tribunal.**

- Reference (petition for Arbitration) in the prescribed form shall be presented to the Registrar or an officer authorized by the Registrar in this behalf by the petitioner in person or by his duly authorized agent or advocate, during the working hours of the tribunal.

### **4. Procedure on receipt of reference.**

- As soon as a reference is received in the office of the Tribunal, it along with the affidavit and documents shall be scrutinized by such responsible official or the staff of the Tribunal as the Chairman may, by general or special order, authorise in this behalf.

### **5.**

If any defect or deficiency is discovered in the reference, it shall be reported to the Registrar or an officer authorised by the Registrar in this behalf who shall direct the petitioner to remove it within a specified time to be fixed by him.

### **6.**

The reference, if found in order or after removal of the defect or deficiency, if any, shall be registered, numbered and placed before the Chairman.

### **7.**

(i)The Chairman shall, having regard to the nature of the dispute, the amount involved and other relevant factors, if any, assign it to a Bench for giving awards.(ii)Each bench will consist of Chairman and one member or any 2 (Two) members provided that in latter case one member will be from technical background and one member from administrative/judicial background.

### **8.**

The Bench to which the reference is so assigned shall cause notice thereof to be issued to the opposite party (respondent) to show cause, specifying the date for appearance.

### **9.**

Notice to the opposite party (respondent) with a copy of the petition (reference) shall be sent by Registered A.D. in the address of the opposite party (respondent) furnished by the petitioner in petition for Reference or in any other or further address to be furnished by the petitioner or in the address of the agent of the opposite party (respondent).

**10.**

The opposite party on or before the date specified in the notice for its appearance, may file a reply in writing signed by it or its authorized agent, along with an affidavit verifying the averment made in the reply.

**11.**

The rules 1 to 6 of the Order III of the Code of Civil Procedure shall be applicable to the proceedings before the Tribunal or its Benches.

**12.**

The reference shall be accompanied with all the documents on which the petitioner relies to establish his claim and the written reply of the opposite party shall likewise, be accompanied with all the documents which he intends to rely upon in deference or support of his case.

**13.**

If the postal article containing the notice or the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the addressee or his agent had refused to take delivery of the postal article containing the notice or summons as the case may be when tendered to him, the Tribunal or the Bench issuing it shall declare that the notice or the summons has been duly served; Provided that the declaration referred to above shall be made notwithstanding the fact that the postal acknowledgment has not been received back before the date fixed.

**14. Substituted service.**

- Where the Tribunal or the Bench is satisfied that there is reason to believe that the addressee is avoiding service or that for any other reason the notice or summons cannot be served by post, the Tribunal or the Bench shall order the notice or the summons to be served by an advertisement in a daily newspaper, circulating in the locality in which the addressee is known to have last resided or worked or carried on business or in such manner as may be thought fit.

**15. Discovery, inspection and admission of documents.**

- The rules under order XI and XII of the civil procedure code shall be applicable to the cases before the tribunal.

## **16. Issues.**

- It shall not be necessary to frame issues but the Tribunal or the Bench may do so far the sake of expediency in a particular case.

## **17. Summoning and Attendance of witnesses.**

- The rules 1 to 21 of order XVI and rules 1 to 7 of Order XVII of the Civil Procedure Code will be applicable in the proceedings before the Tribunal.

## **18. Summons how served.**

- Every summons not being a summons delivered to a party for service, shall be served, as nearly as may be in the same manner as a summons to a defendant and the same rules regarding proof of service shall apply.

## **19. Summons given to a party for service.**

- The Tribunal may, on the application of any party for issuing a summons for the attendance of any person, allow such party to effect service of such summons on such person and shall, in such case, deliver the summons to such party for service. The summons served under this regulation will be treated as served by a Serving officer. Where a summons is served by a party under this regulation, the party shall not be required to pay the fee otherwise chargeable for service of summons.

## **20. Production of witnesses without summons.**

- Any party to the Arbitration may, without applying for summons, bring any witness to give evidence or to produce documents with the permission of the Tribunal.

## **21. Appearance of parties and consequence of non-appearance.**

- Provisions of rules 1 to 14 of order IX of the civil Procedure Code, shall be applicable to the proceedings before the Tribunal .

## **22. Adjournments.**

- The Tribunal or the Bench hearing the case may, if sufficient cause is shown at any stage of the proceedings, grant time to the parties or to any of them and may, from time to time, adjourn the hearing of the case, subject to Section 9(4) of the Act. In every such case, the Tribunal shall fix a day for the further hearing of the case and may make such order as it thinks fit with respect to the costs occasioned by the adjournment.

### **23. Hearing of the Case.**

- After the written reply is filed by or on behalf of the defendant, a date will be fixed for settlement of points in dispute and the evidence which the parties will adduce in support of their respective cases.

### **24. Final hearing.**

- On settlement of points for determination and the evidence, the case shall be posted for final hearing.

### **25. Party to appear before other witness.**

- Where a party himself wishes to appear as a witness he shall so, appear before any other witness on his behalf has been examined unless he is allowed to appear as his own witness at a later stage.

### **26. Memorandum of evidence.**

- It shall not be necessary to take down or dictate or record the evidence of a witness at length, but one of the members or the sole member as the case may be, sitting to hear the case, while a witness is being examined, shall dictate to the deposition writer, a memorandum of the substance of what the witness deposed, and such memorandum shall be signed by the members of Bench or the sole member, hearing the case, and shall form part of the record. Provided that in lieu of recording evidence, Affidavit to prove the fact or facts may be taken by the Tribunal and counter affidavit may be allowed to be filed by the other party.

### **27. Sequence of evidence.**

- On the settling date, subject to regulation 25, the sequence in which the evidence may be taken shall be decided by the Bench hearing the Case; Provided that the Tribunal or the Bench hearing the case, may change the sequence of evidence as and when it becomes necessary to do so and may also allow the producing of additional evidence and examination of a new witness for reasons to be recorded in this behalf.

### **28. Power to order any point to be proved by affidavit.**

- The Tribunal or the Bench, hearing the case, may at any time, order that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be read as evidence at the hearing on such conditions as the Tribunal or the Bench thinks reasonable.

### **29. Power to order attendance of deponent for cross-examination.**

- Upon an application made by a party, evidence may be given by affidavit, but the Court may at the instance of the other party, order the attendance of deponent for cross-examination or counter

affidavit may be ordered to be filed in lieu of cross examination of the deponent.

### **30. Power to inspect.**

- The Tribunal or the Bench may, at any stage of the proceedings, inspect any property or thing concerning the dispute but it on inspection shall make a memorandum which shall form part of the record of the case.

### **31. Award.**

- The Tribunal or the Bench as the case may be, after the case has been heard shall pronounce its award, either at once or as soon thereafter as practicable on some future date, on which due notice shall be given to the parties or their pleaders. The award shall be signed by the member or members who hear the case.

### **31A. Costs.**

- The Tribunal or the Bench may award such costs as deemed fit and proper.

### **32. Commission, Issue of Commission.**

- The Tribunal or the Bench may, in any case, issue commission for examination of a witness or examination of accounts or local inspection or investigation or for any other purpose which may be considered necessary for the disposal of the case, on such terms and conditions as it thinks proper.

### **33. Proceedings and Report to be evidence.**

- The proceedings and report (if any) of the Commission shall be evidence in the case but where the Tribunal or the Bench has reason to be dissatisfied with them, it may pass such orders as it thinks fit.

### **34. Continuance of Proceeding in certain circumstances.**

- (i) In a case pending before the Tribunal, it may act notwithstanding the absence of the Chairman or any member or the existence of any vacancy in the office of the Chairman or any member;(ii)Where during the Course of the Proceeding, a change has taken place in the constitution of Tribunal by reason of any vacancy having been filled or by any reason, it shall not be necessary to commence the proceeding afresh and the proceedings may be continued from the stage, at which the change took place and it shall be lawful for the Tribunal to act on evidence, affidavits and other materials already placed before it, prior to change in constitution as aforesaid.

### **35. Striking out pleadings.**

- The tribunal may at any stage of the proceedings order to struck out or amend any matter in any pleadings.(a)Which may be unnecessary, scandalous, frivolous or vexatious, or(b)Which may tend to prejudice, embarrass or delay the fair trial of the reference, or(c)Which is otherwise an abuse of the process of the Tribunal.

### **36. Rejection of petition.**

- The petition shall be rejected in the following cases :-(a)Where it does not disclose a cause of action;(b)Where the relief claimed is undervalued, and the petitioner, on being required by the Tribunal to correct the valuation within a time to be fixed by the Tribunal fails, to do so:(c)Where the relief claimed is properly valued, but the reference is insufficiently stamped and the petitioner on being required to pay requisite court fee within a time to be fixed by the Tribunal, fails to do so.(d)Where the reference appears from the statement in the petition to be barred by any law.

### **37. Procedure on rejecting reference.**

- Where a petition is rejected the Tribunal shall record an order to that effect with the reasons for such order.

### **38. Withdrawal and adjustment of references.**

(1)At any time after the institution of a reference, the petitioner may as against all or any of the respondents abandon his reference or abandon a part of his claim.(2)Where the Tribunal is satisfied :- (a)That a reference must fail by reason of some formal defect, or(b)That if there are sufficient grounds for allowing the petitioner to institute a fresh reference for the subject matter of such reference or part of a claim, it may, on such terms as it, thinks fit, grant the petitioner permission to withdraw from such reference or such part of the claim with liberty to institute a fresh reference in respect of the subject matter of such reference or such part of the claim.(3)Where the petitioner :- (a)Abandons any reference or part of claim under sub-regulation (1);or(b)Withdraws from a reference or part of a claim without the permission referred to in sub regulation (2); he shall be liable for such costs as the Tribunal may award and shall be precluded from instituting any fresh reference in respect of such subject matter or such part of the claim.

### **39. Compromise of reference.**

- Where it is proved to the satisfaction of the Tribunal that a reference has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties) or where the respondent satisfies the petitioner in respect of the whole or any part of the subject matter of the reference, the Tribunal shall record such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance with law.

#### **40. Powers and functions of the Registrar.**

(1)The Registrar shall have the custody of the records of the Tribunal and shall perform such other functions as are assigned to him under these regulations or as may be assigned by the Chairman by separate order.(2)The Registrar may, with the approval of the Chairman designate to the Joint Registrar/ Deputy Registrar/Section Officer any function or power required to be performed or exercised by the Registrar.(3)In the absence of the Registrar, the Joint Registrar/ Deputy Registrar/Section Officer may exercise all the powers and perform all the functions of the Registrar.(4)The official seal shall be kept in the custody of the Registrar.(5)Subject to any general or special direction by the Chairman, the seal of the Tribunal shall not be affixed to any order, summons or other process save under the authority in writing of the Registrar or the Joint Registrar/ Deputy Registrar/Section Officer.

#### **40A. Additional powers and duties of Registrar.**

- In addition to powers conferred elsewhere in these regulations, the Registrar shall have the following powers and duties subject to any general or special order of the Chairman namely;(i)To decide all questions arising out of the scrutiny of the petitions/applications before they are registered;(ii)To require any petition/application presented to the Tribunal to be amended in accordance with the Act and the rules before the case is fixed for hearing;(iii)To grant leave to inspect the records of the disposed of cases of Tribunal;(iv)To requisition records from the custody of any court or other authority;(v)To receive and dispose of applications by parties for return of documents in disposed of cases.

#### **41. Constitution of Benches.**

- The Chairman shall regulate the constitution of Benches for the cases and the matters of the Tribunal by issuing such standing order from time to time in pursuance of section 10(1) of the Act for convenient transaction of the business of Tribunal.

#### **42. Seal.**

- The Tribunal shall use a seal of its own.

#### **43. Working hours.**

- The office and the court of the Tribunal shall remain open daily, except on authorised holidays, for the transaction of business before them. The office hour shall be as applicable to offices of the State Government.The hours of the sitting of the Tribunal or Benches shall be between 10.00 am to 5.00 pm. With a recess between 1.30 pm. and 2.15 pm. The timing may however be suitably be changed by the Chairman, as and when necessary.



#### **44. Procedure in some other matters of the Tribunal.**

- The Tribunal shall follow the Rules and practice of the Patna High Court in the matter of procedure to obtain information and copies, preservation, Destruction and custody of records, grant of certified copies, maintenance of and procedure relating to accounts, cancellation of court fee labels, registration of legal practitioners clerk and other such matters regarding practice and procedure of the Tribunal not referred to earlier, in the form and manner as applicable to the Tribunal consistent with the Act and the Rules of the Tribunal till separate regulations on such matters are made by the Tribunal.

#### **45. Cause List.**

- Cause list shall be published regularly showing the business of Tribunal indicating the stage of the cases, nature of the cases, the case nos, names of parties, Advocates representing the parties and the Benches before whom the cases have been listed for information to all concerned.