

Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008

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Act 21 of 2008

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Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008[Bihar Act 21 of 2008]Last Updated 31st January, 2020Preamble. - An Act to provide for the constitution of a Tribunal to arbitrate in disputes arising from works contracts to which the State Government or a public undertaking is a party and to provide for matters connected there with.Whereas, Government, Government companies and Local Authorities have to execute large number of development and other projects; andWhereas, execution of such projects is assigned to third parties under contract agreements; andWhereas, disputes arise between the parties at times; andWhereas, in the interest of speedy execution of such projects, it is imperative to provide for expeditious dispute resolution mechanism.Be it enacted by the legislature of the State of Bihar in the fifty ninth year of the Republic of India as follows:

Chapter I Preliminary

1. Short title, extent and commencement.

(1)This Act may be called the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008.(2)It shall extend to the whole of the State of Bihar.(3)This Act shall come into force with effect from the date it is published in the Gazette of the State of Bihar.

2. Definitions.

- In this Act unless the context otherwise requires -(a)"Arbitration Act" means the Arbitration and Conciliation Act, 1996;(b)"Arbitration Clause" means a clause in the works contract to submit

present or future differences to arbitration;(c)"Bench" means a bench of the Tribunal;(d)"Chairman" means the Chairman of the Tribunal;(e)"Dispute" means any difference relating to any claim arising out of the execution or non-execution of the whole or part of a contract for works or services or both including the rescinding thereof;(f)"Member" means a member of the Tribunal and includes the Chairman;(g)"Party" means a party to a works contract or a service contract and includes its successors, executors, administrators or assignees;(h)"prescribed" means prescribed by rules made under section-20;(i)"public undertaking" means(1)any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty one percent of the paid up share capital is held by the State Government or any company which is a subsidiary (within the meaning of the Act) of the first mentioned company.(2)Any corporation (not being a company as defined in Section 3 of the Companies Act, 1956) or a local authority established by or under a Central Act or a State Act and owned and/or controlled by the State Government.(3)Such class of local authorities as the State Government may, by notification in the Official Gazette, specify;(j)"Tribunal" means the Bihar Public Works Contract Disputes Arbitration Tribunal constituted under Section 3;(k)"Works contract" means a contract made by the State Government or a public undertaking with any other person for the execution of any of its works relating to construction, repairs or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, all types of bridge, culvert, factory or work shops or of such other work of the State Government or, as the case may be, of the public undertaking, as the State Government may, by notification in the Official Gazette, specify and includes -(i)a contract made for the supply of goods relating to the execution of any of such works or for supply of any other goods irrespective of whether it is required for any specific project or work or any type of consultancy services/service providers.(ii)Contracts made for the supply of services relating to the execution of any of such works; including consultancy services for preparation of DPR's; supervision; project advisory, quality assurance, Project Management or any other management services.(iii)Words and expressions used and not defined in this Act, but defined in the Arbitration Act, shall have the meanings assigned to them in the Arbitration Act.

Chapter II

Constitution of Tribunal

3. Establishment and constitution of Tribunal.

(1)The State Government shall, by notification in the Official Gazette, establish a Tribunal to be called the Bihar Public Works Contract Disputes Arbitration Tribunal, to exercise the jurisdiction, powers and authority concerned on it by or under this Act.(2)The Tribunal shall consist of Chairman and such number of other members as may be appointed by the State Government.(3)No person shall be qualified for appointment -(a)as the Chairman, unless he has been, a Judge of the High Court or a District Judge for at least five years,(b)as a member of the Tribunal, unless he -(i)is, or has been a Secretary to the Government of Bihar for at least three years, or(ii)is or has been an Engineer-in-Chief or is or has been a Chief Engineer for at least two years, or is or has been Superintending Engineer for three years.

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

(1)The Chairman and Members of the Tribunal shall hold office for a term of three years from the date on which he assumes the office or until he attains the age of seventy years, whichever is earlier." (Substituted by Bihar Public Works Contracts Disputes Arbitration Tribunal (Amendment) Act, 2020)(2)The salaries and allowances, payable to and other terms and conditions of service of the Chairman and other members shall be such as may be prescribed:Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman or other members shall be varied to his disadvantage after his appointment.(3)(a)The Chairman or other member may, by notice in writing under his hand addressed to the State Government, resign his office.(b)The state government may if it thinks so, remove the Chairman or any other Member of the Tribunal (after providing them appropriate opportunity of hearing) for reason of incompetence, laxity in performing the duties, misconduct, passing of order against the law, for engagement in any other paid employment while holding this office." (Substituted by Bihar Public Works Contracts Disputes Arbitration Tribunal (Amendment) Act, 2020)

5. Vacancy and temporary absence.

(1)If any vacancy occurs by reasons of the death; resignation or expiry of term of appointment, or removal of the Chairman or other member, or for any other cause whatsoever, such vacancy shall be filled in by appointment of a duly qualified person.(2)If any member becomes, by reason of illness or other infirmity, temporarily incapable of performing the duties of his office, the State Government may appoint some other duly qualified person to discharge his duties for any period not exceeding six months at a time and the person so appointed shall during that period have the same power as the person in whose place he is appointed.(3)The Tribunal shall not be deemed to be invalidity constituted merely by reason of any vacancy or temporary absence referred to in sub-section (1) or (2).

6. Staff of Tribunal.

(1)The Tribunal may, with the previous approval of the State Government, appoint such number of officers and servants of the Tribunal as it may think fit.(2)The salaries and the allowances payable to, and other conditions of, service of, the officers and servants of the Tribunal shall be such as may be prescribed.

7. Headquarters of Tribunal.

(1)The headquarters of the Tribunal shall be at Patna.(2)Notwithstanding anything contained in sub-section (1), the Tribunal may sit at such other place or places, other than the place at its headquarters, as the Tribunal may, with the approval of the State Government, appoint.CHAPTER-III Reference to and procedure of Tribunal

8. Act to be in addition to Arbitration & Conciliation Act, 1996.

- Notwithstanding anything contained in this Act, any 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.

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 arguments, make an award or an interim award, giving its reasons therefor.(4)The Tribunal shall use all reasonable despatch 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.

10. Practice and procedure of Tribunal.

(1)The Tribunal may, with the previous sanction of the State Government, make regulations consistent with the provisions of this Act and the rules made thereunder, for regulating its practice and procedure, including the constitution of Benches, the disposal by the Tribunal or a Bench thereof of any proceedings before it notwithstanding that in the course thereof there has been a change in the person sitting as members of the Tribunal or Bench, making of interim award, the right of audience before the Tribunal or a Bench thereof, the levy of any process fee, the award of costs and generally for the effective exercise of its powers and discharge of its functions under this Act.(2)The regulations made under sub-section (1) shall be published in the Official Gazette.(3)The functions of the Tribunal may be discharged by one or more Benches thereof constituted in accordance with the regulations made under sub-section (1).(4)If the members of the Tribunal or a Bench thereof are divided, the decision shall be the decision of the majority, if there be a majority, but if the members are equally divided they shall state the point or points on which they differ, and the case shall be referred by the Chairman of the Tribunal for hearing on such point or points to one

or more of the other members of the Tribunal, and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it.

11. Tribunal to have powers of Court.

- For the purpose of exercising its jurisdiction under this Act, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908 in respect of the following matters, namely: -(a)Summoning and enforcing the attendance of any person and examining him on oath;(b)Requiring the discovery and production of documents;(c)Issuing commissions for the examination of witnesses;(d)Any other matter which may be prescribed.

12. Review of award of Tribunal.

(1)The Tribunal may, either on its own motion or on the application of any party aggrieved by the award or the interim award, review the award or interim award made by it and pass in reference thereto such order as it thinks just and proper:Provided that no such application made by any party shall be entertained, unless the Tribunal is satisfied that there has been the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of such party or could not be produced by such party at the time when evidence on the basis of which award or interim award made was recorded by it or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reason:Provided further that, no such award or interim award shall be varied or revised, unless notice has been given to the parties interested to appear and be heard in support of such variation or revision.(2)An application for review under sub-section (1) by any party aggrieved by the award or interim award shall be made within ninety days from the date of the award or the interim award of the Tribunal.

13. Revision.

(1)The High Court may, suo moto at any time or on an application made to it within three months from the date on which the award or interim award is made or reviewed under this Act, by any party aggrieved by the award or interim award so made or reviewed, call for the record of any case in which an award or interim award has been made or as the case may be reviewed and if the Tribunal appears-(a)to have exercised a jurisdiction not vested in it by law, or(b)to have failed to exercise a jurisdiction so vested, or(c)to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.(2)For the purpose of exercising its powers of revision under this section, the High Court shall have the same powers as it has, and as far as may be, follow the same procedure as it follows, under the Code of Civil Procedure, 1908 while exercising its powers of revision under Section 115 of the Code and for that purpose the Tribunal shall be deemed to be a Court subordinate to it.

14. Bar of jurisdiction of Courts.

(1)Save as otherwise provided by section-13, no Civil Court shall have jurisdiction to deal with or

decide any question which the Tribunal is empowered to deal with and decide by or under this Act and no injunction shall be granted by any Civil Court in request of any action taken or to be taken in pursuance of any power by or under this Act.(2)No award or interim award or order made or proceedings taken under this Act by the Tribunal shall be called in question in any Civil Court.

Chapter IV

Miscellaneous

15. Proceedings before Tribunal to be judicial proceedings.

- All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 219 of the Indian Penal Code.

16. Members and staff of Tribunal to be public servants.

- The Chairman and other members and officers and servants of the Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

17. Application of Sections 4 and 12 of the Limitation Act 1963.

- In computing the period of limitation laid down in sub-section (1) of Section 8, and subsection (2) of Section 11 and sub-section (1) of Section 12, the provisions of Sections 4 and 12 of the Limitation Act, 1963, shall, so far as may be, apply.

18. Extension of period of limitation in certain cases.

- The Tribunal may admit a reference under sub-section (2) or entertain an application for review under sub-section (1) of Section 11 or for revision under sub-section (1) of Section 12 after the period of limitation laid down in sub-section (1) of Section 8, sub-section (2) of Section 11 or as the case may be, sub-section (1) of Section 12 if the party satisfies the Tribunal that the party had sufficient cause for not making the reference, or as the case may be, the application for review or revision within such period.

19. Protection of action taken in good faith.

- No suit, prosecution or other proceeding shall lie against the State Government or the Chairman or other member or officer or servant of the Tribunal for anything, which is in good faith done or intended to be done in pursuance of this Act or any rule or order or regulation made thereunder.

20. Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act the State Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty. (2) Every order made under this section shall, as soon as may be after it is made, be laid before the State Legislature.

21. Rules.

(1) The State Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) Without prejudice to the generality of the foregoing power, such rules may be made for all or any of the following matters, namely - (a) the salaries and allowances payable to and other terms and conditions of service of the Chairman and other members, under sub-section (2) of Section 4; (b) the salaries and the allowances payable to, and other conditions of service of, the officers and servants of the Tribunal under sub-section (2) of Section 6; (c) the forms in which reference shall be made and the documents and other evidence and the fees with which it shall be accompanied, under sub-section (1) of Section 9; (d) any other matter in respect of which the Tribunal may exercise powers of Civil Court under clause (d) of Section 11; (e) any other matter which is to be, or may be, prescribed. (3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after, they are made, and shall be subject to rescission or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following. (4) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

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 of excluding any dispute from the purview of this Act.