

IN THE HIGH COURT OF JUDICATURE AT PATNA
The Managing Director, Bihar State Educational Infrastructure
Development Corporation Ltd. & Anr.

vs.

M/s Dayanand Prasad Sinha and Co. & Anr.

Civil Revision No. 69 Of 2015

[With Civil Revision No. 215 Of 2016 & Civil Revision No. 26 Of 2017]

08 September 2025

(Hon'ble Mr. Justice Khatim Reza)

Issue for Consideration

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| <ul style="list-style-type: none">• Whether the order dated 23.07.2024, which rejected the petitioners' preliminary objection to the jurisdiction of the Bihar Public Works Contract Dispute Arbitration Tribunal, should be reviewed/recalled?• Whether an arbitral award passed by a Tribunal lacking inherent jurisdiction is a nullity, and can this plea be raised for the first time at the revision stage?• Whether the petitioners have made out a valid case for review as per the limited and strict scope of review jurisdiction under Order XLVII, Rule 1 of the CPC? |
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Headnotes

The Court held that the applications were an attempt to re-agitate and re-argue the preliminary question of jurisdiction, which had already been conclusively addressed and decided in the order under review. The judgments relied upon by the petitioners (e.g., Brahmaputra Infrastructure) had already been considered by the Court in its order dated 23.07.2024.

The Court relied on the principle from J.M.C. Project (India) Ltd. and M.P. Rural Road Development Authority that if no objection to the jurisdiction of the arbitral tribunal is taken at the appropriate stage, an award cannot be annulled on that ground alone, especially when the award was passed prior to the clarifying judgment in Brahmaputra Infrastructure.

[[Paragraph 10, 11, 12, 13]] The Court emphasized the limited scope of review jurisdiction, noting that it cannot be used as "an appeal in disguise." It found no error apparent on the face of the record, as the issue required a process of reasoning and was not self-evident. The grounds for review were not covered by the limited circumstances outlined in Kamlesh Verma and Parsion Devi.

Case Law Cited

State of Bihar & Ors. Vs. Brahmaputra Infrastructure Limited, **(2018) 17 SCC 444**; Ajit Singh Januja Vs. State of Punjab, **(1996) 2 SCC 215**; Hindustan Zinc Limited (HZL) Vs. Ajmer Vidyut Vitran Nigam Limited, **(2019) 17 SCC 82**; Kamlesh Verma Vs. Mayawati & Ors., **(2013) 8 SCC 320**; J.M.C. Project (India) Ltd. Vs. Madhya Pradesh Road Development Corporation, **(2020) SCC Online SC 1452**; M.P. Rural Road Development Authority Vs. L.G. Chaudhary Engineers and Contractors, **(2018) 10 SCC 826**; Shanti Conductors Private Limited Vs. Assam State Electricity Board & Ors., **(2020) 2 SCC 677**; Parsion Devi Vs. Sumitri Devi, **(1997) 8 SCC 715**; Union of India Vs. Sandur Maganese and Iron Ores Limited, **(2013) 8 SCC 337**

List of Acts

Code of Civil Procedure, 1908; Bihar Public Works Contracts Disputes Arbitration Act, 2008; Arbitration and Conciliation Act, 1996 - Section 16(2)

List of Keywords

Review Jurisdiction; Error Apparent on the Face of Record; Arbitral Award; Jurisdiction of Tribunal; Nullity; Arbitration Agreement; Re-agitation; Preliminary Objection; Recall of Order

Case Arising From

Order dated 23.07.2024 passed by the Hon'ble Patna High Court in Civil Revision No. 69 of 2015 and analogous cases, which rejected the petitioners' preliminary objection to the jurisdiction of the Bihar Public Works Contract Dispute Arbitration Tribunal.

Appearances for Parties

(In CIVIL REVISION No. 69 of 2015)

For the Petitioner/s: Mr. P.K. Shahi, Sr. Adv.; Mr. Girijish Kumar, Adv.

For the Opposite Party No. 1 : Mr. Lal Babu Singh, Adv.

For the State: Mr. K.P. Gupta, GP-10; Ms. Deepanjali Gupta, AC to GP-10

(In CIVIL REVISION No. 215 of 2016)

For the Petitioner/s: Mr. P.K. Shahi, Sr. Adv.; Mr. Vikas Kumar, Adv.

For the Opposite Party/s: Mr. Manish Sahay, Adv.

(In CIVIL REVISION No. 26 of 2017)

For the Petitioner/s: Mr. P.K. Shahi, Sr. Adv.; Mr. Vikas Kumar, Adv.

For the Opposite Party/s: Mr. Manish Sahay, Adv.

Headnotes Prepared by Reporter: - Ms. Akanksha Malviya, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.69 of 2015

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1. The Managing Director, Bihar State Educational Infrastructure Development Corporation Ltd. and Anr Shiksha Bhawan, Bihar Rastrabhasa Parishad Campus, Acharya Shiv Pujan Sahay Path, Saidpur, Patna
 2. The Chief Consultant Technical, Bihar State Educational Infrastructure Development Corporation Ltd Shiksha Bhawan, Bihar Rastrabhasa Parishad Campus, Acharya Shiv Pujan Sahay Path, Saidpur, Patna

... .. Petitioner/s

Versus

1. M/s Dayanand Prasad Sinha and Co. S/o Sri H.B. Lal, R/o- Janta Path, Kankarbagh Road, P.S.- Kankarbagh, District- Patna
2. The Convener, State Level Schedule Rate Fixation Committee-cum-Engineer-in-Chief-cum-Additional Sec Road Construction Department, Vishweshwariya Bhawan, Bailey Road, Patna

... .. Opposite Party/s

with
CIVIL REVISION No. 215 of 2016

1. Bihar Rajya Pul Nirman Nigam Ltd (A Certified Company of State of Bihar) through its Chairman, 7, Sardar Patel Marg, Patna-800015
2. The Managing Director, Bihar Rajya Pul Nirman Nigam Ltd. (A Certified Company of State of Bihar) 7, Sardar Patel Marg, Patna-800015
3. The Sr. Project Engineer, Bihar Rajya Pul Nirman Nigam Ltd. (A Certified Company of State of Bihar), Road Division, Daroga Rai Path, Patna-800015
4. The Dy. Chief Engineer, South Bihar Circle, Bihar Rajya Pul Nirman Nigam Ltd. (A Certified Company of State of Bihar), 7, Sardar Patel Marg, Patna-800015

... .. Petitioner/s

Versus

M/s R. K. Construction Through Its Proprietor Mr. Surendra Kuamr Jha son of Sri Gangadhar Jha Resident of mohalla - Patel Nagar, 'Satya Niwas', P.S. - Shastri Nagar, P.S. - Shastri Nagar, District - Patna, Pin - 800023.

... .. Opposite Party/s

with
CIVIL REVISION No. 26 of 2017

1. The Managing Director, Bihar Rajya Pul Nirman Nigam Ltd.
2. The Senior Project Engineer, Bihar Rajya Pul Nirman Nigam Ltd., Road Division, Daroga Rai Path, Patna

... .. Petitioner/s

Versus



- 1. M/s Vijay Associates, Prop Vijay Kumar Son of Sri Ram Bahadur Mahto, R/o Basuhi, P.O. Churamanpur, District - Begusarai
- 2. The State of Bihar, through the Secretary, Road Construction Department, 'Vishweshwarraiya Bhawan,'
- 3. The Chief Engineer, Road Construction Department, North Bihar Zone, Darbhanga
- 4. The Superintending Engineer, Road Construction Department, Darbhanga Circle, Darbhanga
- 5. The Executive Engineer, Road Construction Department, Road Division, Samastipur

... .. Opposite Party/s

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Appearance :

(In CIVIL REVISION No. 69 of 2015)

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Adv. Mr. Girijish Kumar, Adv.
For the Opposite Party No. 1	:	Mr. Lal Babu Singh, Adv.
For the State	:	Mr. K.P. Gupta, GP-10 Ms. Deepanjali Gupta, AC to GP-10

(In CIVIL REVISION No. 215 of 2016)

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Adv. Mr. Vikas Kumar, Adv.
For the Opposite Party/s	:	Mr. Manish Sahay, Adv.

(In CIVIL REVISION No. 26 of 2017)

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Adv. Mr. Vikas Kumar, Adv.
For the Opposite Party/s	:	Mr. Manish Sahay, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

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I.A. No. 02 of 2024 in Civil Revision No. 69 of 2015
I.A. No. 04 of 2024 in Civil Revision No. 215 of 2016
I.A. No. 04 of 2024 in Civil Revision No. 26 of 2017

These interlocutory applications have been filed under Section 151 of the Civil Procedure Code for review/recall of the order dated 23.07.2024 passed by this Court in Civil Revision No. 69 of 2015 and its analogous cases bearing Civil Revision No. 215 of 2016 and Civil Revision No. 26 of 2017, whereby the preliminary objection raised by the petitioners regarding jurisdiction of Tribunal to pass the Award in its respective



reference case has been held not sustainable.

2. Heard Mr. P.K. Shahi, learned senior counsel for the petitioners, Mr. K.P. Gupta, GP-10 for the State as well as Mr. Lal Babu Singh, learned counsel for the private opposite party.

3. All these three interlocutory applications have been heard on the point of review/recall of the order dated 23.07.2024.

4. Learned senior counsel for the petitioners submits that Civil Revision Application No. 69 of 2015 has been filed against the Award dated 19.01.2015 passed in Reference Case No. 58 of 2013, C.R. application no. 215 of 2016 has been filed against the Award dated 05.11.2015 passed in Reference Case No. 95 of 2013 and C.R. application no. 26 of 2017 has been filed against Award dated 17.12.2015 passed in Reference Case No. 47 of 2011 by the Bihar Public Works Contract Dispute Arbitration Tribunal, Patna. A preliminary objection was raised on behalf of the petitioners on the basis of the judgment passed by the Apex Court in the case of ***State of Bihar & Ors. Vs. Brahmaputra Infrastructure Limited*** reported in ***(2018) 17 SCC 444*** passed on 22.03.2018. The Awards in the aforesaid cases were passed before passing of the Apex Court judgment.



It is submitted that when these Civil Revision applications were heard, a preliminary objection was raised by the petitioners with regard to lack of jurisdiction of the Tribunal in view of the decision of the Apex Court in the case of ***Brahmaputra Infrastructure Limited (Supra)***, which was not properly considered by this Court *vide* order dated 23.07.2024. The Apex Court has held that where an arbitration agreement exists and stipulates applicability of the Central Act, the State Act will not apply. In the aforesaid case Clause 25 of S.B.D., similar to the present cases, was the dispute resolution mechanism under the agreement which was for consideration before the Hon'ble Apex Court. Learned senior counsel further submits that in support of preliminary objection, several judgments reported in ***(1996) 2 SCC 215 (Ajit Singh Januja Vs. State of Punjab)*** and the other judgments of the Hon'ble Apex Court were cited contending therein that inherent lack of jurisdiction is pure question of law and same can be raised at any stage even in the appeal before the Apex Court, if the same has not been raised at the initial stage of the proceeding. It was also contended that the question of jurisdiction may be raised even in any collateral proceeding i.e. in course of execution itself as any order/judgment/Award passed by the forum, which lacks jurisdiction is nullity in the



eye of law. Reliance has also been placed in the case of *Hindustan Zinc Limited (HZL) Vs. Ajmer Vidyut Vitran Nigam Limited* reported in (2019) 17 SCC 82. The Apex Court has held that award passed where there is inherent lack of jurisdiction is a nullity, and such plea can be taken at any stage and also in collateral proceedings. Even acquiescence to or participation in the (*non est*) arbitration will not bar such a plea as such Award is a nullity. There is no bar against plea that Award/decreed is a nullity due to inherent lack of jurisdiction. The senior counsel further submits that the plea of jurisdiction was made available to the petitioners for the first time when the present case was heard on the point of preliminary objection. The petitioners have raised the issue for the first time as the order of Hon'ble Apex Court in Brahmaputra Case came during pendency of Civil Revision application. Therefore, this plea was not available at the time of pendency of the aforesaid reference cases.

5. Per contra, learned counsel for the opposite parties submits that the petitioners have not made out any case for review and the grounds for review given in the application of the petitioners are not the grounds for review as the reconsideration is not the ground for review. It has further



contended that summary of principles of review of the order has been elaborately discussed in the case of ***Kamlesh Verma Vs. Mayawati & Ors.*** Reported in ***(2013) 8 SCC 320*** and in paragraph 20.2, the Apex Court has decided the principle when the review will not be maintainable. In Clause (vi) of paragraph 20.2, it has been held that “*mere possibility of two views of the subject cannot be a ground for review*”.

6. Learned counsel for the opposite parties further submits that the point raised by the petitioners as well as in the judgment of ***Brahmaputra Infrastructure Limited (Supra)*** has already dealt with and answered by the impugned order dated 23.07.2024. The petitioners are not entitled to challenge the order passed on 23.07.2024 by this Court in the present application. In view of jurisdiction, the Court shall interfere only when there is a glaring omission or patent mistake or when a grave error is crept in the impugned order.

7. Learned counsel for the opposite parties has placed reliance upon a decision of the Apex Court in the case of ***J.M.C. Project (India) Ltd. Vs. Madhya Pradesh Road Development Corporation*** reported in ***(2020) SCC Online SC 1452***, which has already been discussed in the order passed on 23.07.2024 in the present case. The said judgment has been passed after



passing of the ***Brahmaputra Infrastructure Ltd. (Supra)*** case.

8. The Hon'ble Apex Court has referred the case of ***M.P. rural Road Development Authority Vs. L.G. Chaudhary Engineers and Contractors*** reported in ***(2018) 10 SCC 826*** and held that "*We do not express any opinion on the applicability of the State Act where an Award has already been made. In such cases, if no objection to the jurisdiction of the arbitration was taken at relevant stage, the Award may not be annulled only on that ground. There is also discussion about Section 16(2) of the Arbitration and Conciliation Act and further held that no objection having been raised by the respondent in terms of Section 16(2) of the Arbitration Act, 1996 at appropriate stage within time stipulated, the Award could not have been annulled*". The aforesaid settled principle has already been discussed in the order dated 23.07.2024. Therefore, the present application for review of the order dated 23.07.2024 is fit to be dismissed.

9. Having heard learned senior counsel for the petitioners and learned counsel for the opposites parties, this Court is of the view that these review/recall applications have been filed to re-agitate and re-argue the preliminary questions which have already been addressed and decided. The petitioners



has relied upon ***Brahmaputra Infrastructure Ltd. (Supra)*** case and other cases which have already been discussed and considered in order dated 23.07.2024 which is order under review. After the decision of *Brahmaputra case*, same author has reiterated the view taken in ***Madhya Pradesh Road Development Authority (Supra)***. The judgment in the case of ***J.M.C. Projects (India) Limited (Supra)*** decided on 10.01.2020 reported in ***(2020) SCC Online SC 1452*** has also been considered in the order dated 23.07.2024 (order under review).

10. “*Scope of review is limited and under the guise of review, the petitioner cannot be permitted to re-agitate and re-argue the questions, which have already been addressed and decided*”. This view has been taken in the case of ***Shanti Conductors Private Limited Vs. Assam State Electricity Board & Ors.*** and its analogous cases reported in ***(2020) 2 SCC 677***.

11. The scope of review has been reiterated by the Apex Court time to time. The Hon’ble Apex Court in ***Parsion Devi Vs. Sumitri Devi*** reported in ***(1997) 8 SCC 715***, has held that “*under Order 47 Rule 1 C.P.C., a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to*



be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 C.P.C.. In exercise of jurisdiction under Order 47 Rule 1 C.P.C. it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.”

12. The case of ***Union of India Vs. Sandur Maganese and Iron Ores Limited*** reported in ***(2013) 8 SCC 337*** has been adverted to and delineated on some of the grounds as to when the review will not be maintainable has been referred in ***Kamlesh Verma (Supra)*** at paragraph 20.2. (i) to (ix).

13. Having gone through the aforementioned judgment, it is evident that the question raised for review in the instant matter is not covered by the judgments, which permit review only under very limited circumstances, such as error apparent on the face of the record. It is amply clear that the case cannot be reopened and re-agitated. Moreover, the judgments cited by the petitioners have already been considered in the order under review, and the same cannot be allowed to be re-agitated. Thus, the order sought to be reviewed by the petitioners is impermissible in law.



14. Accordingly, I.A. No. 02 of 2024 in Civil Revision No. 69 of 2015, I.A. No. 04 of 2024 in Civil Revision No. 215 of 2016 and I.A. No. 04 of 2024 in Civil Revision No. 26 of 2017 are dismissed.

(Khatim Reza, J)

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