

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No 1711 of 2014

IN
REQ CASE 9 of 2013

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M/s Sunil Engicom Pvt. Ltd., having registered officer at 12, Pathar,
P.O. - P.S. - Samastipur, Distt. - Samastipur through Director Niraj
Kumar.

.... Petitioner/s

Versus

1. The Union of India through the General Manager E.C., Railway at
AND P.O. Hajipur, Distt. - Vaishali.

2. The Sr Divisonal Engineer (I), E.C. Railway, At AND P.O. -
Samastipur, Distt. - Samastipur.

.... Respondent/s

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For the Petitioner/s : M/s N K Singh & Jitendra Kr, Advocates

For the Respondent/s : M/s Anil Kr Sinha & Abhimanyu Das, Advs

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 11-03-2015

From the manner in which the contractor is conducting,
it is apparent that either he wants an arbitrator of his choice or he
wants no arbitration. Upon reference and upon his consent, an
arbitrator was appointed who was a retired Senior Railway Officer.
Having participated in the proceedings and after three or four
hearings, he turns around and files an application raising the plea of
disqualification of the arbitrator. He did not raise this objection
before this Court nor did he raise this objection when the proceedings



were taken up before the arbitrator nor soon thereafter. The ground for objecting was that the arbitrator was one of the officers who was involved in drafting the General Conditions of Contract, 2008 for the Railways. The objection was not that he was in any way involved with the present contract as between the Railways or the contractor. He was not even privy to this contract as between the parties. It may be noticed that the contract between the parties was signed much after the arbitrator, who was in service, had retired from railway service. This only shows not bona fide stand of the contractor. The contractor, who sought arbitration, does not appear to be bona fide interested in expeditious disposal of dispute. Therefore, this Court will show no further indulgence.

2 Mr N K Singh draws attention to Section 15 of the Arbitration and Conciliation Act, 1996 stating that it was not his client who was responsible for the arbitrator withdrawing from the proceedings. The arbitrator had, on his own, withdrawn from the proceedings. That is a belated misstatement. The order of the arbitrator itself as well as the learned counsel for the Railways points out that having participated in the arbitral proceedings, it is the contractor who petitioned the arbitrator and embarrassed him. It is he who caused the embarrassment to the arbitrator who then withdrew from the proceedings. It is well settled law that if there was any

concern, the contractor ought to have raised the same either before this Court or at the very beginning of the arbitral proceeding and not subsequently for any other reason.

3 The arbitral proceedings are, thus, wound up and the contractor may, if so advised, move in any other civil proceedings than arbitral proceedings.

4 This application is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-

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