

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.19 of 2014

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Arvind Techno Engineers (p) Ltd. having its registered and head office at J-2, Green Park New Delhi-110016 through its Deputy General Manager, Manoj Kumar.

.... Petitioner/s

Versus

1. East Central Railway through the General Manager, Hajipur, Bihar.
2. The General Manager, East Central Railway, Hajipur, Bihar.
3. The Deputy General Manager (G), East Central Railway, Hajipur, Bihar.
4. The Deputy Chief Engineer/CON/ General East Central Railway, office at Mahendru Ghat, Patna.
5. The Deputy Chief Engineer, (CON)/GB/Ganga Rail-cum-Road Bridge, East Central Railway (CON/GB), Gaya, Rail-cum-Road Bridge, East Central Railway, Munger, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vikas Kumar, Advocate
		Mr. Shivendra Narayan Singh, Advocate
For the Respondent/s	:	Mr. Anil Kumar Sinha, Advocate
		Mr. Ankit Katriar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

2 02-07-2015

The petitioner herein was awarded a contract by the 1st respondent for construction of well foundation and sub-structure of four additional pier P-27 to 30 on north end both abutment in connection with construction of Rail-cum-Road Bridge at Munger in the year 2009. The work is said to have been completed. The petitioner submitted certain claims of price variation. Since it was not accepted by the respondents, he made a request to refer the matter for arbitration in terms of clause 63 of the General Conditions of Contract. Acceding to the request of the petitioner, the General Manager constituted an arbitral

tribunal comprising of three arbitrators.

The grievance of the petitioner is that though the arbitration commenced in the year 2013, there was no progress worth its name ever since then and except that some dates were fixed for appearance and adjournments were granted, not even preliminary steps were completed. It is also stated that one of the members of the arbitral tribunal has resigned and there is no scope of resumption of the proceedings. With these contentions, the petitioner filed this petition under Section 11(6) read with Section 11(8) of the Arbitration and Conciliation Act, 1996 with a request to appoint an arbitrator.

Though the matter is pending for the past more than one year, no counter affidavit is filed by the respondents.

Heard Sri Vikas Kumar, learned counsel for the petitioner and Sri Ankit Katriar, learned counsel for the respondents.

It is no doubt true that the arbitrator contemplated under clauses 63 and 64 of the General Conditions of Contract is substantially different from the one contemplated under the Act. It is mostly a guided arbitration, in the sense, that the railways themselves will furnish a panel of four officers and the petitioner has to choose two of them and with addition of another, an arbitral tribunal is constituted of three members.

On the request of the petitioner such a step has already been taken. However, there was no progress whatsoever so much so, one of the members resigned. Though the agreement provides for steps to be taken to restore the tribunal in such event, nothing of that sort was done by the Railway administration.

The law in this regard is fairly settled. Recently, the Hon'ble Supreme Court in *Union of India & Ors. Vs. Uttar Pradesh State Bridge Corporation Limited*¹ held that if an arbitration, that was set in motion in accordance with the terms of the agreement does not materialise or does not record any progress, it is competent for the Court to appoint an arbitrator in place of the tribunal or panel.

Following the same, the application is allowed and the matter is referred to Hon'ble Justice Smt. Mridula Mishra (Former Judge of this Court) to resolve the dispute. The Arbitrator shall decide the remuneration after taking both the parties into confidence and ensure that the proceeding is concluded within six months from the date of entering appearance.

(L. Narasimha Reddy, CJ)

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¹ (2015) 2 SCC 52