

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.3 of 2015

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Naween Kumar, son of Late Rajendra Prasad Singh, resident of Baijnath Singh Path, Thana More Warisaliganj, Post Office & Police Station Warisaliganj, District Nawada

.... Petitioner

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, District Vaishali.
2. The Divisional Railway Manager, East Central Railway, Dhanbad, District Dhanbad.
3. The Senior Divisional Engineer (4), East Central Railway, Dhanbad

.... Respondents

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Appearance:

For the Petitioner: Mr. Mritunjay Kumar, Advocate

For the Respondents: Mr. Anil Kumar Sinha, Advocate

Mr. Abhimanyu Deo, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-08-2016

Heard learned counsel for the petitioner and learned counsel for the respondent Railway.

2. The present application has been filed for appointment of a sole Arbitrator on failure of the opposite parties to constitute an arbitral tribunal under Clause 64 of the General Conditions of Contract (hereinafter referred to as "the GCC") in pursuance of the petitioner's demand for arbitration as raised in his notice dated 25.09.2014 sent through registered post.

3. At the very outset learned counsel for the respondent Railway submits that the present Request Case is not maintainable considering that the petitioner has requested for arbitration by its



letter dated 25.09.2014, but the same could not be acted upon by the Railway in absence of quantification of the value of claims by the petitioner as required in terms of Clause 64(3)(a)(i)/(ii) of the GCC to enable the Railway to decide whether the arbitral panel required to consist of a sole Arbitrator or of a panel of three Arbitrators. It is submitted that a valid demand by way of statement of claims was required to be filed by the petitioner before the Railway indicating the aggregate of the amount of claims prior to filing the Request Case, which was not done.

4. Learned counsel for the petitioner is unable to controvert the above stand of the Railway and has not shown that the aggregate of the claims was ever made before the Railway.

5. This Court finds substance in the submissions of learned counsel for the railway. It is a matter of record that the petitioner quantified his claims in all aggregating to Rs. 45,06,827/- for the first time in his supplementary affidavit filed on 08.09.2015 filed in course of hearing of the present Request Case. Such monetary claim was not, however, raised before the respondent Railway. In that view of the matter, this Court is of the view that the Request Case is premature as prior to filing thereof, the petitioner did not raise a valid demand for arbitration indicating the aggregate value of his claims.

6. The Request Case is accordingly dismissed with liberty to the petitioner to approach the respondent Railway with an appropriate

demand for arbitration as indicated above, if so advised. In such event the respondent Railway shall proceed in accordance with law, having regard time petition the recent amendments inserting Section 12(5) and The Fourth Schedule to The Seventh Schedule in The Arbitration and Conciliation Act, 1996.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
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