

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.4 of 2015

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M/s Bajrang Construction through Partner Harkesh Singh having office at Village
Chand Parna P.O. & P.S. Sidhwalia, District Gopalganj

.... Petitioner

Versus

1. The Union of India through the General Manager, N.E. Railway, At & P.O. Gorakhpur, District Gorakhpur.
2. The Dy. Chief Engineer, N.E., Railway, At & P.O. Gorakhpur, District Gorakhpur (Uttar Pradesh)
3. The Executive Engineer/CON/ N.E. Railway At & P.O. Hathwa, District Gopalganj

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Nand Kishore Singh, Advocate

For the Respondents: Mr. Amaresh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-01-2016

The present petition has been filed for appointment of sole independent arbitrator on failure of the opposite party no. 1 to constitute alternative arbitral tribunal on termination of mandated of appointed arbitrators, under clause 64 of the GCC.

2. Learned counsel for the petitioner submits that a notice under Section 14 of the Arbitration & Conciliation Act, 1996 (for short, 'the Act') dated 20.11.2014 was served for terminating the mandate of the arbitrators for alleged inaction on their part to enter upon the reference. He has therefore, prayed for appointment of an independent sole substituted arbitrator.

3. Learned counsel for the Railway-opposite parties appears and submits that in view of the subsequent appearance of the

petitioner before the arbitral Tribunal, the petitioner itself has clearly not acted upon the notice under Section 14 of the Act and has participated in the arbitration proceeding thereafter.

4. The above fact of the petitioner's subsequent participation is not in dispute nor controverted by the petitioner. It is, however, submitted that the petition under Section 26 of the Act dated 16.01.2015 filed by the petitioner for fixing dates of hearing at Hathwa Office of the Railways after filing of the documents, has not been responded to nor acted upon. It is, therefore, submitted that there is complete inaction on the part of the arbitral Tribunal at least for the past about one year since filing of the aforesaid petition under Section 26 of the Act.

5. Be that as it may, after some arguments, learned counsel for the petitioner seeks permission to withdraw the present petition with liberty to the petitioner to take recourse to the provisions of Section 14 of the Act afresh as proposed to be done in case the arbitral Tribunal continues its state of inaction.

6. The petition is accordingly permitted to be withdrawn and stands disposed with the aforesaid liberty.

(Vikash Jain, J)

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