

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.18 of 2015

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M/s Eleco Construction Private Limited having registered office at Sri Krishna Nagar P.O. P.S. & District Begusarai through its Director, Rabindra Kumar Chaudhary residing at Sri Krishna Nagar P.O. District Begusarai 851101

.... Petitioner

Versus

1. The Union of India through the General Manager E.C. Railway AT & P.O. Hajipur District Vaishali.
2. The Divisional Engineer, III, E.C. Railway, Sonpur, P.O. Sonpur, District Saran.
3. Sri Vinod Gupta Divisional Engineer III At & P.O. Sonpur District Saran

.... Respondents

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Appearance :

For the Petitioner : Mr. Nand Kishore Singh, Advocate

For the Respondents: Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-03-2016

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

2. The present request application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) for appointment of sole independent Arbitrator on failure of the Arbitral Tribunal to enter upon the reference within reasonable time to decide the disputes between the parties in terms of Clause 64 of the General Conditions of Contract, 2008 (for short, “the GCC”).

3. An agreement bearing No. DRM/T C/1232 dated 07.03.2014 was entered into between the parties for a total value of Rs. 3,42,37,356/- for the work at MFP Extension of sick line covered shed with EOT crane facilities (left over).



4. According to the petitioner, commencement of the work was delayed by reason of the failure on the part of the Railway to provide clear work site, approved map and working design. Despite delay on its own part, the Railway terminated the agreement without complying with the mandatory requirement of serving a 7 days' notice and a 48 hours' notice in terms of Clause 62 of the GCC. The legality and validity of such termination became the subject matter of CWJC No. 15236 of 2014 which was disposed of on 08.09.2014 by this Court with an observation that the dispute raised by the petitioner would be referred to an Arbitrator within a period of one month on receipt of an application for arbitration from the petitioner. Pursuant to the aforesaid judgment of this Court, the petitioner filed its claim and reference application on 11.10.2014, and finally a Three-Member Arbitral Tribunal was constituted by order dated 17.03.2015, which however, did little to enter upon the reference despite the petitioner's request to do so. In view of the passive attitude of the Arbitral Tribunal, the petitioner finally served a notice dated 16.05.2015 for termination of the mandate of the Arbitral Tribunal in terms of Section 14 of the Act if the Arbitral Tribunal failed to enter upon the reference within 15 days thereof. No action, however, was taken pursuant to the above notice by the petitioner for termination of the mandate. It is, therefore, submitted that a substituted Arbitral Tribunal

requires to be appointed under Section 15(2) of the Act.

5. Learned counsel for the respondent-Railway appears and opposes the request petition submitting that no fault can be found with the action of the respondents in terminating the contract which was not completed owing to the petitioner's own lapses.

6. It is a matter of record that on the request of the petitioner, an Arbitral Tribunal was duly constituted by the Railway and, therefore, there can be no gainsaying that an arbitrable dispute had admittedly arisen between the parties. The various averments with regard to the failure on the part of the Arbitral Tribunal to enter upon the reference have been controverted in the counter affidavit stating that on several dates, it was the petitioner who had failed to attend the meetings. It is alternatively submitted on behalf of the respondent-Railway, that if an arbitrator has to be appointed, it has no objection to the appointment of a retired person as a sole Arbitrator.

7. Having heard the parties and on careful consideration of the materials available on record, this Court is satisfied that the Railway failed to respond to the petitioner's notice dated 16.05.2015 appropriately and thus the mandate of the arbitral Tribunal stood terminated. The numerous dates fixed for the meetings thereafter were therefore of no consequence. This Court accordingly appoints Sri G. S. Tiwary, Ex. CAO/Con/ECR, B 156, P.C. Colony, Kankarbagh,

Patna-800020 as the sole Arbitrator with respect to the disputes between the parties in accordance with the provisions of the Act.

8. The petitioner must approach the said Arbitrator within one month along with a certified copy of this judgment and the said Arbitrator will proceed with the adjudication accordingly. The fees of the Arbitrator shall abide by the Fourth Schedule of the Act, and shall be borne equally by the parties.

9. With the aforesaid directions, this Request Case is disposed of.

(Vikash Jain, J)

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