

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.29 of 2015

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Rajeev Ranjan, son of Sri Kailash Singh, at L-1/47, S.K. Puri, P.S. S.K. Puri,
District Patna

.... Petitioner

Versus

1. The Union of India through the General Manager E.C. Railway at & P.O.
Hajipur District Vaishali.

2. The Senior DEN/C. E.C. Railway, Sonpur, PO Sonpur, District Saran

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajesh Kumar Sharma, 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) read with Section 15(2) of the Arbitration and
Conciliation Act, 1996 (for short, “the Act”) for appointment of sole
independent substituted Arbitrator on termination of mandate of
Arbitral Tribunal in view of Clause 64 of the General Conditions of
Contract, 2008 (for short, “the GCC”) for adjudication of contractual
disputes between the parties in connection with Agreement No.
DRM/TC/1152 dated 11.05.2012 executed for a total value of Rs.
1,59,21,394/- for the work of construction of building for traffic
account office and cash office.

3. According to the petitioner, a Three-Member Arbitral



Tribunal was constituted by respondent no. 1 for settling the dispute between the parties, and the petitioner filed his statement of claims before it. Even as steps for commencing the arbitration proceedings were being taken, Sri Devashis Mukherjee, one of the members of the Arbitral Tribunal, was transferred and thereafter the matter remained stagnant despite several requests by the petitioner for commencing the arbitration proceedings. The petitioner finally served a notice dated 03.08.2015 for termination of the mandate of the Arbitral Tribunal in terms of Section 14 of the Act if the Arbitral Tribunal failed to commence the hearing within 15 days thereof. Despite such notice by the petitioner, the requisite appointment was not made and hence it is submitted that the petitioner has become entitled for appointment of a sole Arbitrator by this Court.

4. Learned counsel for the respondent-Railway relies on the statements made in the counter affidavit to oppose the request petition, stating that the Presiding Arbitrator was requested by letter dated 16.10.2015 to expedite the proceeding and finalize the same. Thereafter on 30.11.2015, Sri Abhishek Kumar, Dy. FA & CAO/WP-1 has been appointed as Co-Arbitrator in place of Sri D. Mukherjee who had been transferred and in view of the arbitral Tribunal having now been made functional, the request of the petitioner is not fit to be allowed.



5. The stand of the Railways must be noticed only to be rejected. It is well settled by the Apex Court in the case of *Datar Switchgears Ltd., vs. Tata Finance Ltd. and another* [(2000) 8 SCC 151] as well as in *Deep Trading Company vs. Indian Oil Corporation and others* [(2013) 4 SCC 35] that on failure to make appointment of Arbitrator pursuant to the notice by the claimant, the respondents lose their right to make the appointment once a Request Case has been filed by the claimant. The appointment of Sri Abhishek Kumar as Co-Arbitrator in place of Sri D. Mukherje on 30.11.2015 is thus of little moment as such action has been taken well after the filing of the instant Request Case on 15.09. 2015 and must therefore, be held as invalid.

6. In view of the submissions made by learned counsel for the petitioner, 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.

7. 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.

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

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(Vikash Jain, J)

