

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.4 of 2014

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M/SZ, Rail Transport, through its Proprietor Shri Choudhary Aurangzeb Rehan son of Salahuddin Choudhary, 1589, Rodgran Chowk, Lalkuan, Delhi - 110006

.... Petitioner/s

Versus

1. The Union of India through Divisional Railway Commercial Manager, District Samastipur, Bihar
2. The Chief Commercial Manager, Hajipur, East Central Railways, Hajipur, State Bihar.
3. The Divisional Railway Manager (Commercial) East Central Railways, Hajipur, State Bihar.
4. The Senior Divisional Commercial Manager, Hajipur Division, East Central Railway, Hajipur, State Bihar.
5. The Deputy Chief Commercial Manager, Hajipur Division, East Central Railway, Hajipur, State Bihar.
6. The General Manager, East Central Railway, Hajipur, Dist. Vaishali, State Bihar.
7. The Chief Commercial manager, East Central Railways, Hajipur, District Vaishali,
8. The Assistant Commercial Manager, East Central Railways, Hajipur.
9. The Senior Deputy Commercial Manager, Freight, Danapur Division, East Central Railway.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SUMEET KUMAR SINGH

For the Railways :- Mr. Anil Kumar Sinha,
Mr. Abhimanyu Das

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-03-2016

Heard learned counsel for the petitioner and learned
counsel for the Respondent Railways.

2. The present application has been filed under section
11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”)
seeking appointment of independent Arbitrator in view of clause 26 of
the agreement dated 31.01.2013 to adjudicate the dispute that have

arisen between the petitioner and the Chief Commercial Manager's Office, East Central Railway, Hajipur relating to different issues of adjustment of freight charges.

3. Pursuant to an order awarded to the petitioner in relation to leasing of capacity of Parcel Van on round trip basis by Train No. 12387/12388 between Rajendra Nagar (T) and Anand Vihar and back, the petitioner commenced work but in due course difficulties arose for which the petitioner approached the concerned authorities. The problems were not resolved by the Railway who failed to consider the petitioner's request for adjustment of freight charges paid to the railway authorities in view of cancellation of Train no. 12387/12388 on numerous occasions. In view of the respondents' failure to resolve the issue, the petitioner ultimately made a demand for arbitration in terms of clause 26 of the agreement entered into between the parties but the same was also not responded to by the Railway, which led the petitioner to file the present request petition.

4. A counter affidavit has been filed on behalf of the respondents railways. In paragraph 20 of the counter affidavit, a stand has been taken that it was the lease holder's responsibility for discontinuing the lease.

5. Having heard learned counsel for the parties, this

Court is satisfied that an arbitrable dispute has arisen between the parties which is evident from the aforesaid stand of the railways. The arbitration clause exists in paragraph 26 of the agreement between the parties in view of which the petitioner has raised a demand for referring the matter for arbitration but the respondents have failed to consider the demand without any reason.

6. In the above view of the matter, this Court appoints Hon'ble Mr. Justice Shyam Kishore Sharma, a retired Judge of this Court, residing at 304, Arjuna Tower, Chajjubagh, Patna 800 001, 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 order 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.

(Vikash Jain, J)

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