

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.16 of 2014

=====

Shri Ganesh Electrical Trading, Opposite CMRI Gate, Dhanbad, P.O., P.S. &
District Dhanbad

.... Petitioner

Versus

Dy. CEE/Con/South/MHX, East Central Railway, Patna

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Shashi Ranjan, Advocate

For the Respondents: Mr. Anil Kumar Sinha,

Mr. Abhimanyu Deo,

Mr. Ankit Katriar, Advocates

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-03-2016

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 in
view of Clause 64 of the General Conditions of Contract (for short,
“the GCC”) for adjudication of contractual disputes between the
parties in connection with Clause No. 5(b) of the Agreement No.
EL/CON/DHN/OPEN/01/2007-2008 dated 22.10.2008 for Rs.
24,74,657/- relating to the work of electrification of 6 Units, Type-1,
7 Units, Type-II, Station Building Relay Battery Room Power, D.G.
Room, P.F. etc. at Kodarma Town Station and Maheshpur Halt and 1
No. 33 KV Crossing at km 42.731 to be completed within 120 days

after the issue of the Letter of Acceptance upto 24.11.2008.

3. According to the petitioner, the work in question for the total value of Rs. 24,74,657/- was awarded to the petitioner who had to start the work immediately and complete the same within 120 days as evident from the Letter of Acceptance dated 24.11.2008 issued by Dy. CEE/Con/South/MHX. The petitioner accordingly commenced the work but disputes arose as the Railway failed to get the civil work completed through other contractors being a pre-condition for starting the electrification work by the petitioner and for which petitioner represented through various letters but to no avail. In view of the disputes remaining unresolved, therefore, the petitioner invoked the arbitration clause for appointment of Arbitral Tribunal. The said demand was, however, not acceded to for more than 30 days, leading to the present request application being filed by the petitioner for appointment of sole Arbitrator.

4. Learned counsel for the respondent-Railway, on the other hand, relies on the statements made in the counter affidavit to oppose the request petition, submitting that in terms of Clause 64 of the GCC, the petitioner was required to apply to the General Manager, E.C. Railway having exclusive power to appoint the committee for arbitration matters, which, however, has not been done. It is submitted that the petitioner had admittedly made the



demand for arbitration before the Dy. Chief Electrical Engineer/Con/S/East Central Railway Patna through letter dated 07.02.2014 and the same, therefore, cannot be treated as a valid demand for arbitration. It is also submitted that the petitioner has caused loss to the Railway by neither completing the work nor returning the materials amounting to Rs. 1,92,589/- lying with the petitioner and for reconciliation of which the Railway had issued several letters.

5. Having heard the parties and on careful consideration of the materials available on record, this Court finds that the fact of the petitioner having demanded arbitration by letter dated 07.02.2014 addressed to the Dy. Chief Electrical Engineer/Con/S/East Central Railway is not in dispute. The allegations of default alleged by the parties against each other itself demonstrate the existence of arbitrable disputes existing between them. The only question to be decided is whether the petitioner ought to have made a demand for arbitration before the General Manager.

6. Significantly, Clause 64 of the GCC is completely silent with regard to the specific authority before which a demand for arbitration must be raised. Where a sole Arbitrator has to be appointed under Clause 64(3)(a)(i) of the GCC involving a total value of the claims not exceeding Rs. 10,00,000/-, the General



Manager or a Gazetted Officer of Railway nominated by the General Manager is contemplated as the sole Arbitrator. Clause 64(3)(a)(ii) of the GCC applies to other cases, thus those cases involving claims exceeding Rs. 10,00,000/- as in the present case, and requires the Railway to send a panel of more than 3 names of Gazetted Railway Officers to the contractor in the first instance. Out of such panel, upto 2 names may be suggested by the contractor to the General Manager, who would appoint at least one of them as the contractor's nominee and also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel. The role of the General Manager, therefore, comes into play at a later stage after the contractor has exercised his choice of upto 2 names from the panel of more than 3 names provided by the Railway.

Clause 1(i)(a) of the GCC defines "Railway" to mean "the President of the Republic of India or the Administrative Officers of the Eastern Railway or of the Successor Railway authorized to deal with any matters which these presents are concerned on his behalf.

"General Manager" has also separately been defined in Clause 1(1)(b) of the GCC to mean "the Officer-in-Charge for the general Superintendence and control of the Railway and shall also include the General Manager (Construction) and shall mean and include their successors, of the Successor Railway".



7. If the definition of “Railway” includes Administrative Officers of the Railway and it is the Railway which is required to prepare a panel of more than 3 names of Gazetted Railway Officers to be sent to the contractor in the first instance, this Court sees no infirmity in the demand for arbitration being made by the petitioner before the Dy. Chief Electrical Engineer/Con/S/ East Central Railway as such officer is admittedly an Administrative Officer of the Railway. In absence of a specific requirement in Clause 64 of the GCC that a demand for arbitration must be made before the General Manager alone, the demand for arbitration raised by the petitioner by letter dated 07.02.2014 must be treated as valid. Admittedly, the petitioner’s demand was not acted upon as the Railway did not proceed for constituting the Arbitral Tribunal, by reason of which the petitioner has filed the present request petition.

8. In view of the submissions made by learned counsel for the petitioner, this Court accordingly appoints Hon’ble Mr. Justice Shyam Kishore Sharma, a retired Judge of this Court as the sole Arbitrator with respect to the dispute between the parties in accordance with the provisions of the Act.

9. 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 to the Act, which shall be borne equally by the parties.

10. With the aforesaid direction, this request case is disposed of.

(Vikash Jain, J)

B.T/-

U			
---	--	--	--