

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.2 of 2014

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M/s Kishan Freight Forwarders through its Proprietor Kishan Kumar Kukereja, son
of Narayan Das Kukereja, 3A-57, W.E.A. Karol Bagh, Sat Nagar, State-New Delhi
110 005 Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioners : Mr. Sumeet Kumar Singh, Advocate
Mr. Abhiprav Singh, Advocate
For the Respondents : Mr. Anil Kumar Sinha, Advocate
Mr. Abhimanyu Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18.02.2016

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 14.09.2009 to adjudicate the
disputes that have been arisen *inter alia*, between the petitioner



and the Chief Commercial Manager's Office, ECR, Hajipur in relation to the agreement to resolve the dispute relating to different issues of accounting of freight charges for intervening period i.e. from 31.12.2009 till 18.01.2010 and also relating to overloading charges, excess charges etc., for a period of three years.

3. Pursuant to notice inviting tenders for leasing of parcel space in Parcel Van having carrying capacity of 23 tonnes for the Train namely, Darbhanga-New Delhi Swatandra Senani Express, 2561/2562 for the transportation of Parcel from Darbhanga to New Delhi for a period of three years, an agreement was entered into between the parties on 14.09.2009, which *inter alia*, provided for reference to arbitration for resolution of disputes by sole Arbitrator or any officer appointed by the General Manager, East Central Railways, Hajipur/Patna. In view of the difficulties being faced by the petitioner in discharge of the contract work, he requested the respondent authorities for resolving the problems in respect of loading and unloading the parcel van, but the same were not resolved. The petitioner's representation was finally rejected by letter dated 03.03.2010 and the petitioner was asked to pay freight charges, all of which resulted in arbitrable disputes between the parties. Finding no possibility of amicable settlement

of the disputes, the petitioner sent a notice on 16.05.2013 invoking Clause 26 of the agreement requesting the General Manager to appoint an Arbitrator for expeditious adjudication of the disputes. The said notice, however, was not responded to for more than three months by the respondents, leading to the present Request Case for appointment of a sole Arbitrator.

4. By order dated 16.01.2015 the parties were requested to furnish name of Arbitrator, in response to which supplementary affidavits have been filed by the petitioner proposing the names of Hon'ble Mr. Justice Shyam Kishore Sharma and Hon'ble Mr. Justice Rajendra Prasad, both retired Judges of this Court.

5. Learned counsel for the Respondent Railways states on oral instruction that Sri Indrajit Kumar, Dy. CE/TSP/ECR/HJP has been appointed as sole Arbitrator by the General Manager, ECR, in terms of his letter dated 03.02.2016 and hence, the present Request Case is infructuous.

6. 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 notice by the claimant, the respondent lose their right to make the appointment once a Request Case has been filed by the claimant. The appointment of Sri Indrajit Kumar as sole Arbitrator by the Respondents on 03.02.2016 well after filing of the instant Request Case on 25.02.2014 must therefore, be held to be as invalid.

7. 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, 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.

8. 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.

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

(Vikash Jain, J)

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