

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19468 of 2014

M/s Maa Kali Civcon Corporation Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 103, Block-B, Jagmano Shree Garden, Vedh Nagar, Rukanpura, Bailey Road, Patna through its Managing Director, Dhananjay Kumar Yadav Son of Shri Ramchandra Prasad Yadav Resident of A 6/304 Jalalpur City Ramjaypal Nagar P.S. Rupaspur District Patna.

.... Petitioner

Versus

1. The Union of India, Ministry of Railways, having its Office at Rail Bhawan, New Delhi.
2. The General Manager, East Central Railways, having its Office at Hajipur, District Vaishali.
3. The Chief Administrative Officer (Con.)/North, East Central Railway, Mahendrughat, Patna.
4. The Chief Engineer, (Con.)/North, East Central Railway, Mahendrughat, Patna.
5. The Deputy Chief Engineer (Con.)/II, East Central Railway, Samastipur.

.... Respondents

With

Civil Writ Jurisdiction Case No. 19623 of 2014

M/s Maa Kali Civcon Corporation Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its Registered Office at 103, Block-B, Jagmano Shree Garden, Vedh Nagar, Rukanpura, Bailey Road, Patna through its Managing Director, Dharanjay Kumar Yadav. Son of Shri Ramchandra Prasad Yadav Resident of A6/304 Jalalpur City Ramjaypal Nagar P.S-Rupaspur District-Patna

.... Petitioner

Versus

1. The Union of India, Ministry of Railways, having its office at Rail Bhawan, New Delhi
2. The General Manager, East Central Railways, having its office at Hajipur, District-Vaishali
3. The Chief Administrative Officer, (Con.)/North, East Central Railway, Mahendrughat, Patna
4. The Chief Engineer, (Con.)/North, East Central Railway, Mahendrughat, Patna
5. The Deputy Chief Engineer, (Con.)/II , East Central Railway, Samastipur.

.... Respondents

Appearance :

(In CWJC No. 19468 of 2014)

For the Petitioner : Mr. Alok Kumar Agrawal
Mr. Hemant Kumar, Advocates
For the Respondents : Mr. Anil Kumar Sinha,
Mr. Abhimanyu Deo
Mr. Ankit Katriar, Advocates

(In CWJC No. 19623 of 2014)

For the Petitioner : Mr. Alok Kumar Agrawal
Mr. Hemant Kumar, Advocates

For the Respondents : Mr. Anil Kumar Sinha,
Mr. Abhimanyu Deo
Mr. Ankit Katriar, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 06-04-2016

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Heard learned counsel for the petitioners and learned
counsel for the respondent-Indian Oil Corporation Limited.

I. A. No. 9674 of 2015 in CWJC No. 19468 of 2014
And
I.A. No. 9673 of 2015 in CWJC No. 19623 of 2014

2. These interlocutory applications have been filed for
adding the prayer as para no. 1(v) of the writ petitions as follows:

“For issuance of appropriate writ/order/direction
appointing an independent Arbitrator preferably a
retired High Court Judge to adjudicate the issue and
pass the award in accordance with the provisions
Arbitration and Conciliation Act, 1996.”

3. Having regard to the nature of the prayer, the
interlocutory applications are allowed and the petitioners are
permitted to make amendments in the writ petitions accordingly.

CWJC Nos. 19468 and 19623 of 2014

4. These writ petitions have been filed for quashing the
letter dated 25.09.2014 issued by the Respondent Deputy Chief
Engineer (Con.)/II, East Central Railway, Samastipur whereby the
Contract Agreement bearing Agreement No. ECR/CAO/Con/WT/
AGT/10 dated 13.08.2012 in CWJC No. 19468 of 2014 and Contract

Agreement bearing Agreement No. ECR/CAO/Con/WT/AGT/08 dated 12.07.2012 in CWJC No. 19623 of 2014 have been rescinded and cancelled with penal consequences of forfeiture of earnest money deposit, security deposit and the performance bank guarantee; and for connected reliefs.

5. At the very outset, learned counsel for the petitioners fairly concedes that the remedy by way of arbitration is available for the reliefs sought herein and has accordingly, filed the interlocutory applications for appointment of independent Arbitrator by this Court for settlement of the claims.

6. Learned counsel for the respondent-Railway has no objection, in principle, to the prayer of the petitioners, though it is submitted that the petitioners ought to take appropriate steps for appointment of the Arbitrator in accordance with Clause 64(3)(a)(ii) of the General Conditions of Contract, and invoke the provisions of the Arbitration and Conciliation Act, 1996.

7. Having heard the parties and on consideration of the facts and circumstances of the case, this Court is of the view that no useful purpose would be served in directing the petitioners to take recourse to the provisions of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator, which would merely delay the matter and cause multiplicity of the proceedings.

8. In the interest of justice, therefore, and keeping in view the provisions of the Arbitration and Conciliation (Amendment) Ordinance, 2015, 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 file its statement of claims. 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 directions, these writ petitions stand disposed of.

(Vikash Jain, J)

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