

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.30 of 2015

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Amit Kumar, son of Suraj Prasad Singh Resident of Village and P.O. Rampur
Dumra, P.S. Marachhi, District Patna

.... Petitioner

Versus

1. The General Manager, East Central Railways, At & P.O. Hajipur, District Vaishali
2. The Senior Divisional Engineer, East Central Railway, Danapur Division, Danapur

.... Respondents

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Appearance :

For the Petitioner : Mr. Nand Kishore Singh,
Mr. Rajesh Kumar Sharma, 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: 17-03-2016

Heard learned counsel for the petitioner and learned
counsel for the Respondent-Railway.

2. The present 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, 2008 (for short,
“the GCC”) for adjudication of the contractual disputes between the
parties.

3. According to the petitioner, Contract Agreement No.
W-7/64/Misc/MKA/0/09-10 dated 16.10.2009 was entered into
between the petitioner and the Senior Divisional Engineer, East



Central Railway, Danapur Division, Danapur for a total value of Rs. 1,22,91,244/- for construction of Over Tank of RCC Tank 50000 Gallon capacity with deep tube well at MKA (Mokama) BKP (Bakhtiarpur) and RH Station under ADEN/MKA. The earlier date of completion for the work which was to expire on 15.10.2010 was extended upto 15.04.2011 but despite such extension, the work was delayed on account of failure on the part of the Railway to provide work site and map/design of the over head tank. Rather than resolve the said problem, the respondent-Railway instead terminated the Agreement in terms of the order dated 08.04.2011 alleging non-fulfillment of the agreement by the petitioner.

4. A demand for arbitration was therefore made by the petitioner through his registered letter dated 12.08.2015 in terms of the liberty granted to the petitioner by order dated 31.01.2014 passed in CWJC No. 7779 of 2011. Despite such demand, the respondent-Railway did not take appropriate steps for constitution of the Arbitral Tribunal.

5. A counter affidavit has been filed on behalf of the respondent-Railway in which the fact of the petitioner having demanded arbitration has not been disputed. The respondent-Railway has contended that the contract has rightly been terminated by reason of default committed by the petitioner in execution of the work.

6. The fact that the petitioner has demanded arbitration in terms of the letter dated 12.08.2015 is not in dispute. The stand of the respondent-Railway in its counter affidavit itself makes it evident that an arbitrable dispute between the parties exists as also earlier observed by this Court in the aforesaid writ petition. Despite the demand for arbitration by the petitioner, the respondent-Railway has not appropriately responded by constituting an Arbitral Tribunal, leading the petitioner to file the present request case.

7. In view of the submissions made by learned counsel for the petitioner, this Court accordingly appoints Sri V.K. Sharma, a retired District Judge, residing at 202, Sanyal Enclave, Budh Marg, Patna 800 001 as the sole Arbitrator with respect to the dispute 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 to the Act, which shall be borne equally by the parties.

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

(Vikash Jain, J)

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