

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.94 of 2017

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M/s Prasad Construction & Co.

... .. Petitioner/s

Versus

The General Manager, E. C. Railway & Ors

... .. Respondent/s

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Request Case No. 95 of 2017

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M/s Prasad Construction & Co.

... .. Petitioner/s

Versus

The Union Of India & Anr

... .. Respondent/s

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Appearance :

(In Request Case No. 94 of 2017)

For the Petitioner/s : Mr. Jitendra Kumar, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

(In Request Case No. 95 of 2017)

For the Petitioner/s : Mr. Jitendra Kumar, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 20-09-2017

In the matter of execution of a contract granted to the petitioner for various constructions and works in the Railway Department, a dispute had arisen and, therefore, invoking the provision of Section 64 of the general conditions of contract Act, 2008, which contemplates an arbitration clause, the applicants sought constitution of an Arbitral Tribunal. When this was rejected, initially, the petitioner approached this Court by filing



an application under Section 11(6). At that point of time, the required waiting period of 120 days, as contemplated under the arbitration agreement was not over and, therefore, treating the application to be premature the matter was disposed of.

Now, after the entire period of waiting in accordance to the agreement was over and when no action was taken for constitution of the Tribunal, this application was filed on 29.6.2017 and respondents, in response to the same, submitted that on 11.9.2017 petitioner was given an opportunity to nominate the officers who were indicated in the said communication on 11.9.2017, but nothing has been done till date.

Admittedly, after the claim was raised by the applicant, it is stated that the application was filed for constitution of the Tribunal on 1.5.2017 and within a period of 30 days when nothing was done, this application has been filed and once the application under Section 11(6) is filed and jurisdiction of this Court invoked, it is stated that the right of the Department to nominate ceases. Reliance on the point is placed on the judgments of the Hon'ble Supreme Court in the cases of Datar Switchgear vs. Tata Finance Ltd., (2000) 8 SCC 151 and Punj Llyod Ltd. vs. Petronet MHB Ltd., (2006) 2 SCC 638. It



has been laid down by the Hon'ble Supreme Court in both these cases that once the jurisdiction under Section 11(6) is invoked, the right of nominating a Tribunal, Arbitrator in accordance to the arbitration agreement is taken away.

That being so, now the nomination made or the offer given by the respondents cannot be acceded to. That apart, there is another reason why the aforesaid cannot be considered. The Hon'ble Supreme Court in the case of Voestalpine Schienen GmbH Vs. Delhi Metro Rail Corporation Ltd., (2017) 4 SCC 665 has laid down a principle that under the provisions of Section 12(5) of the Arbitration and Conciliation Act read with Schedule 7 thereof, an employee or a person who had any business or contract relationship with one of the parties cannot be nominated as arbitrator. The arbitrators now nominated by the Railway Administration are all retired employees working with the East Central Railway and, therefore, the prohibition contained in Section 12(5) read with categories classified in Schedule 7 are applicable and, therefore, the aforesaid nomination cannot be accepted by this Court, in view of the fact that a dispute has arisen.



This applications are allowed. Hon’ble Justice B.K. Roy, a retired Chief Justice, is appointed as the Arbitrator to adjudicate the dispute in the present case.

(Rajendra Menon, CJ)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	5.10.2017
Transmission Date	

