

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.68 of 2017

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M/s Land & Port Construction Private Limited a company registered under the Companies Act, 1956 having its registered office at Mohalla Bramhpura Mehad Hasan Road P.O. MIT & P.S. Bramhpura Distt. Muzaffarpur through its Managing Director Naiyar Azam son of Safi Ahmad, resident of Mehadi Hasan Road Mohalla Bramhpura P.O. MIT & P.S. Bramhapura, District-Muzaffarpur.

.... Petitioner/s

Versus

1. The Union of India through the General Manager E.C. Railway at & P.O. Hajipur District-Vaishali.
2. The Dy Chief Engineer/CON/SHC-II, At & P.O. Samastipur, District-Samastipur.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Bijoy Kr. Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 26-07-2017

In the matter of execution of the agreement in question as certain dispute has arisen, the petitioner invoked the arbitration clause 64 of the agreement, raised a demand on 28.12.2016 and when the claim was not considered and the arbitrator was also not appointed filed Request Case No.18 of 2017 before this Court. When the matter came up before this Court on 28.04.2017, an objection was raised by the respondents to say that after raising demand on 28.12.2016 as the petitioner has not waited for the prescribed period of 120 days as contemplated under 64(1) of the agreement, the application was premature and, therefore, indulgence could not be made. The said objection of the respondent was accepted and this Court disposed of Request Case No.18 of 2017 on 28.04.2017 holding it to be premature.



Now after the demand was made on 28.12.2016, this application was filed on 21.06.2017, a period of more than 120 days have lapsed and there is nothing available on record to indicate that the respondents have considered the case of the petitioner and appointed an arbitrator.

Keeping in view the aforesaid, now there is no reason as to why the claim of the petitioner could not be allowed. Even though under Clause 64 of the Agreement, a procedure for arbitration and named arbitrator is contemplated, but in view of the provision of Section 12(5) and 7th Schedule of the Arbitration and Conciliation Act, 1996, the prohibition in the matter of appointing arbitrator as contemplated in the agreement being made out no officer of the Railway can be permitted as Arbitrator and therefore, independent arbitrator is required to be appointed.

Accordingly, this application is allowed and Hon’ble Mr. Justice B. K. Roy, retired Chief Justice of Gauhati High Court, is appointed as an Arbitrator.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.07.2017
Transmission Date	

