

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.11 of 2017

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Shashi Bhushan Jha, son of Late Ram Sharan Jha, Partnent of M.s Bhushan Construction, resident of Village Ojha Tola (Gunj), PS Teghra, District Begusarai
..... Petitioner/s

Versus

1. East Central Railway Through Its General Manager, Hajipur
 2. The General Manager, Eastern Central Railway, Hajipur
 3. Chief Administrative Officer, North, ECR, Mahendrughat, Patna
 4. Dy. Chief Engineer/Con. East Central Railway, Darbhanga
 5. Dy. Chief Engineer, Construction I, East Central Railway, Samastipur
- Respondent/s

with

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Request Case No. 14 of 2017

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1. Phular Construction Private Limited through Umesh Kumar Singh son of Sri Nand Kishore Singh At + P.O. - Khabra (Near Railway Crossing No. 5), Majhaulia, Adarsh Nagar - 3, Road No. 3, P.S. Sadar, District - Muzaffarpur.

..... Petitioner/s

Versus

1. The Union of India through Chairman, Railway Board, New Delhi.
2. The General Manager, East Central Railway, Hajipur, Vaishali (Bihar).
3. Financial Advisor & Chief Account Officer (Con), Mahendru Ghat, Patna.
4. The Chief Engineer (Con/East), Mahendru Ghat, Patna.
5. The Executive Engineer (Con.), East Central Railway, Hajipur, (Vaishali), Bihar.

..... Respondent/s

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Appearance :

(In REQ. CASE No.11 of 2017)

For the Petitioner/s : Mr. Vikas Kumar

For the Respondent/s : Mr. Anil Kumar Sinha

(In REQ. CASE No.14 of 2017)

For the Petitioner/s : Mr. Vikas Kumar

For the Respondent/s : Mr. Anil Kumar Sinha

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 18-08-2017

In both these cases, the prayer made is to constitute an

Arbitrary Tribunal for adjudicating the dispute in execution of the

agreement in question. It is an admitted position that there is an



arbitration agreement in terms of Clause 63 and 64 of the General Conditions of the Contract applicable in railway contract. However, the objection of the Railway Administration primarily is that after the demand was raised, and, before the period of 120 days was over, this application for appointment of Arbitrator was filed and, therefore, this application is not maintainable. However, as on date, the period of 120 days is already over and except for pointing out the delay, there is nothing available on record to indicate that an Arbitrary Tribunal was constituted within the period of 120 days. On the contrary, in Request Case No. 11 of 2017 nothing has been done and in Request Case No. 14 of 2017 only some correspondence has been made by the General Manager in furtherance of the constitution of the Arbitrary Tribunal.

However, learned counsel for the applicant submits that in view of the law laid down by the Supreme Court in various cases and followed by this Court in the case of **Ratna Infrastructure Projects Pvt. Ltd vs. Union of India [2017(2) PLJR 461]**, now an Arbitrary Tribunal has to be constituted by this Court and the right of the Railway Administration to appoint an Arbitrator is taken away. That apart, learned counsel for the respondents argues that in view of the provisions of Section 12(5) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the “Act”) brought into force with effect from 23.10.2015 and the prohibition contained in Seventh



Schedule, now the Railway Administration cannot appoint officers of the Railway as Arbitrator and, therefore, an independent Arbitrator should be appointed.

I find much force in both the objections raised by the learned counsel for the applicants. Even though originally when the Request Case was filed seeking constitution of an Arbitrary Tribunal under Section 11 of the Act the period of 120 days was not over but now the said period is over and even more than 180 days have passed and till date an Arbitrary Tribunal has not been constituted by the Railway Administration. Accordingly, on the ground canvassed was with regard to the application being premature, it is not appropriate to dismiss this application.

As far as the contention of the learned counsel for the Railway Administration that they will appoint an Arbitrator as per the agreement or Clause 64 is concerned, they having lost the right now in view of the consideration made by this Court and the law laid down by the Supreme Court as detailed in the case of Ratna Infrastructure Pvt. Ltd. (supra), this right is not available to the Railway Administration. That apart, the proposal to appoint an Arbitrator amongst the departmental officers is also not permissible in view of the provisions of Section 12(5) of the Act and the prohibition contained in Seventh Schedule to the said Section.



Keeping in view the aforesaid, both these applications are allowed and Hon’ble Mr. Justice V. Nath, a retired Judge of this Court is appointed as Arbitrator to adjudicate the disputes between the parties.

With the aforesaid, these two applications stand allowed and disposed of.

(Rajendra Menon, CJ)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	22..08.2017
Transmission Date	N.A.

