

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5210 of 2017

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M/s Perfecto Electricals through Partner Sri Lalit Kumar Kothari son of late Mathura Das Kothari resident of 3, Alipur Road, Flat No. 9B/3, P.S. - Alipur, Kolkata - 700027 (West Bengal).

.... Petitioner/s

Versus

1. The East Central Railway through the General Manager East Central Railway, Hajipur.
2. The General Manager, East Central Railway, Hajipur.
3. The Chief Admin. Officer (Con.)/N/E/C/ Railway, Mahendrughat, Patna.
4. The Chief (S & T) Engineer / Construction (North), E.C. Railway Mahendrughat, Patna.
5. The Dy. Chief C.S.T.E./Con. - 1, East Central Railway, Samastipur.
6. The Financial Advisor & Chief Account Officer / Con. East Central Railway Mahendrughat, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Adv.
Mr. Bipin Kumar, Adv.
For the Respondent/s : Mr. Anand Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 19-08-2017

Heard learned counsel for the parties.

This Court vide order dated 11.7.2017 had already discussed the objections raised by the Railway Administration with respect to appointment of Arbitrator, arrived to a finding that this Court in exercise of jurisdiction under Article 226 of the Constitution of India can appoint an Arbitrator who can maintain neutrality and having faith on him for return of impartial finding, vide order dated 21.7.2017, this Court directed both sides to furnish the name of proposed Arbitrator having no connection with Easter Railway but,



the opinion of mine was misplaced when this Court examined the amended provision of Arbitration Act, 1996 as well as the judgment in the case of Voestalpine Schienen GMBH Vs. Delhi Metro Rail Corpn. Ltd. reported in (2017) 4 SCC 665.

The crux of the matter is that the Arbitrator should be such person upon whom both parties must have trust that he is a neutral person, neutrality can be maintained by a person having no relation present or the past. Admittedly, list of person whom the Railway recommended for Arbitrator is an ex-employee of the Railway, even after his retirement, gets some benefit by way of pension or other connected benefits from the railway administration. An individual may maintain neutrality but, the question is that both the parties must have faith that the person who is adjudicating is proper person, will maintain neutrality. If any party feels likelihood of partiality at the hand of the proposed Arbitrator, it will be very difficult to repose faith on such person, inasmuch as, the list of Arbitrator, which has been furnished in the present case by the Railway administration, was subject matter of consideration in Request Case No. 16 of 2017 and this Court, vide order dated 2.8.2017, has rejected the list.

Learned counsel for the Railway Administration has submitted that the persons mentioned in the list submitted by the



Railway Administration were never connected with the Eastern Railway.

In the considered opinion of this Court, they may not be connected with the Easter Railway for the present or past but, certainly they have served the Railway Administration and it would not be proper for this Court to appointment them as an Arbitrator in the matter.

This Court has no other way but, to appoint a person who can maintain neutrality. Accordingly, this Court appoint Hon’ble Mr. Justice V. Nath, Retired Judge of this Court, to adjudicate the dispute between the parties.

Let this order be communicated to Hon’ble Mr. Justice V. Nath and the parties are directed to appear before the Arbitrator on the date fixed by him.

With the aforementioned observation, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2017
Transmission Date	NA

