

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.42 of 2016

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M/s Kumar Enterprises, a Partnership firm duly Registered under the Indian Partnership Act 1932 through its Partner Shri Ramdeo Pathak aged about 57 years, Son of Late Shubh Narain Pathak, Office situated in 302, Hem Plaza, Frazer Road, Patna, Police Station- Kotwali, Town and District Patna.

.... Petitioner

Versus

1. Union of India, Ministry of Railway, represented through the General Manager, East Central Railway, Hazipur, Bihar.
2. Senior Divisional Engineer (Co-ordination) East Central Railway at Mughal Sarai, Uttar Pradesh.
3. Shri Naimul Haque, Chief Administrative Officer, East Central Railway, GFLF-Project Planning, 6th Floor, BISCOMAUN Tower, Patna, Bihar.
4. Shri Amresh Kumar Sinha, Chief Engineer, CON-North-1, East Central Railway, Mahendrughat, Patna.
5. Shri K. Kataiah, F.A. & CAO/CON, East Central Railway, Mahendrughat, Patna.

.... Respondents

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Appearance :

For the Petitioner : M/S. Amitabh Ghosh and Subodh Kumar Sinha,
Advocates.

For the Respondents : Mr. Kumar Alok, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 22-03-2017

Invoking the jurisdiction of this Court in this application filed under Section 11 of the Arbitration and Conciliation Act read with Sections 12, 14 and 15, the petitioner wants appointment of an Arbitrator.

In pursuance to the Tender Notice issued and subsequent correspondence of counter offer and acceptance, an agreement was entered into between the petitioner and the authorities of East Central Railway for the purpose of providing Washable apron on Platform



Line 24 coaches train on Platform No. 2 at Mughalsarai Railway Station in the State of Uttar Pradesh. In the execution of agreement, various disputes arose. The petitioner invoked the Arbitration Clause 64(1)(i) of the agreement, which is Annexure-2. On 09.11.2012, an Arbitral Tribunal was constituted by the General Manager, Engg/Hazipur, East Central Railway and arbitration station at Patna to adjudicate the decision. It seems that since 09.11.2012 Arbitrators have not heard anything, no proceedings have been held and, therefore, the petitioner sought for a direction from the General Manager to complete the Arbitration proceeding within the fixed period of time. When the prayer was not granted, the present application was filed on 04.10.2016.

On notice being issued, the respondents have filed reply and they take a preliminary objection with regard to maintainability of this application. It is stated that as the work with regard to construction of Washable apron on Platform Line 24 coaches train on Platform No. 2 at Mughalsarai Railway Station is situated within the jurisdiction of the State of Uttar Pradesh, this Court does not have the territorial jurisdiction to deal with the matter. It is an admitted position and the documents pertaining to the agreement in question, which is Annexure-1, shows that the agreement was entered into between the East Central Railway, through the Divisional Railway



Manager, Mughalsarai and the Headquarters of East Central Railway, is situated in Patna and the General Manager, who is the competent authority, has his office at Hazipur in the State of Bihar and therefore, as the Railway Administration is represented by its General Manager who is competent and on whose behalf, the agreement, in question has been entered into and when the Arbitrators appointed were operating from Patna after they were appointed by the General Manager at Patna, the objection is not maintainable. That apart, on perusal of the documents filed with regard to negotiation, the acceptance and counter offer, it is seen that certain cause of action for executing agreement did take place within the territorial jurisdiction of this Court, therefore, the objection with regard to jurisdiction is not tenable, is accordingly rejected.

So far as the question of terminating the mandate of the Arbitrators appointed on 09.11.2012 is concerned, it is seen that the Arbitrators were appointed more than four years back and till date they have not even conducted any proceeding in pursuance to their appointment. That being the facts and position, the mandate of Arbitrators has to be terminated as provided under the provision of Sections 14 & 15 of the Arbitration and Conciliation Act are made out.

Accordingly, this application is allowed. The mandate of



Arbitrators appointed on 09.11.2012 is terminated and accordingly,
Hon’ble Mr. Justice Ramesh Kumar Datta (Retd.) is appointed as
Arbitrator to resolve the dispute in accordance to law.

(Rajendra Menon, CJ)

U.K./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29.03.2017.
Transmission Date	

