

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Request Case No.43 of 2016**

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1. 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/s

Versus

1. Union of India represented through the General Manager, East Central Railway, Hazipur, Bihar.
2. Divisional Railway Manager, East Central Railway at Mughalsarai, Uttar Pradesh.
3. Senior Divisional Engineer (Co-ordination) East Central Railway, Mughal Sarai.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Subodh Kumar Sinha, Advocate

For the Respondent/s : Mr. Abhinay Raj, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**ORAL JUDGMENT**

**Date: 10-05-2017**

Heard learned counsel for the parties.

Invoking the jurisdiction of this Court under Section 11(5) of the Arbitration and Conciliation Act, 1996, prayer made is for constitution of an Arbitral Tribunal for resolution of the dispute between the parties.

An agreement was entered into between the applicant and the respondent Railway for execution of various works in the Railway establishment, primarily with regard to extension, modification and repairing of various platforms in Mughalsarai Railway Station. In the execution of the agreement as certain



disputes had arisen, the appellant invoked the arbitration clause namely 64 of the agreement, raised the claim and sought for resolution of the disputes by the competent arbitrator. However, when nothing was done within the period stipulated under Clause 64, this application was filed. A counter affidavit has been filed by the respondent and it is seen that in para 14 they make an averment to say that as per the request made by the petitioner, the General Manager, East Central Railway, has been appointed as an arbitrator, but no such appointment seems to have been made.

Respondents even though have filed a counter affidavit and say that the dispute can be referred for arbitration under Clause-64, but now the period for invoking the power available to the respondent under Clause 64 of the agreement is already over. It is a well settled principle of law that once the period for taking action by the respondents are over, and the jurisdiction of this Court under Section 11(6) is invoked, the right of the respondent to appoint arbitrator ceases to have effect. That apart, this Court has to take note of the amended provisions of Section 12(5) of the Arbitration and Conciliation Act, 1996, the amendment dated 23.10.2015 and the effect of the law laid down in the case of Union of India & Ors. vs. Uttar Pradesh State Bridge Corporation Limited, (2015) 2 SCC 52. The appointment of the arbitrator in accordance with Clause 64



would be contrary to the mandate of Sub-section(5) of Section 12 and the law laid down in the case of Bridge Corporation (supra) and the arbitrators named by the Railways cannot function in view of the prohibition granted under Sub-section (5) of Section 12.

That being so, finding a dispute to be existing in the matter, this application is allowed.

It is informed that in a dispute between the parties, a retired Judge of this Court, Shri R.K. Datta, has been appointed as the arbitrator. In view of the aforesaid, Shri R.K. Datta, (retired Judge of Patna High Court), is appointed as the Arbitrator to adjudicate and resolve the dispute between the parties.

**(Rajendra Menon, CJ)**

K.C.jha/-

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