

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.13 of 2016

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Prabhat Kumar son of Ramayan Singh resident of Block Road At & P.O.
Narkatiaganj, P.S. Shikarpur, Distt. West Champaran.

.... Petitioner/s

Versus

1. The Union of India through the General Manager East Central Railway at and PO Hajipur District Vaishali.
2. Senior Divisional Engineer, II EC Railway at and PO Samastipur, District Samastipur.

.... Respondent/s

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Appearance :

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

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 07-04-2017

A dispute arose between the parties in the execution of the agreement in question and as per Clause 64 of the agreement in question, Annexure-2, petitioner sought resolution of the dispute by appointment of an arbitrator. Vide Annexure-1 dated 17th of May, 2016, the Railway Administration forwarded the request to the competent authority for constituting an Arbitral Tribunal in accordance with the provisions of Clause 64 of the agreement, but nothing was done and, therefore, invoking the jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996, this application was filed on 22nd of June, 2016 and till filing of the application, as requested by the petitioner, under Clause 64 the arbitrator was not appointed.



Now, from the counter affidavit filed on behalf of respondent No.2 it is clear that the appointment of the Arbitrator has not been done. It is stated that the matter was forwarded to the Head quarter along with the request of the petitioner on 26.10.2016, but the Head quarter has not taken any action and the matter is still pending.

When the agreement in question contemplates a dispute resolution system and if the Railway Administration has not appointed Arbitral Tribunal in accordance with the said Clause of dispute resolution system as per the agreement, the only remedy available to the petitioner was to invoke jurisdiction of this Court under Section 11(6) and once the jurisdiction under Section 11(6) is invoked, the right of the Railway Administration to take recourse to the provisions of Clause 64 for appointing an Arbitrator stands frustrated and the right forfeited. This is the law laid down by the Supreme Court in the following cases:

1. Bharat Sanchar Nigam Limited & another Vs. Motorola India Private Limited- AIR 2009 (2) SC 337; and
2. BSNL Vs. Dhanurdhar Champatiry (2010) 1 SCC 673

The respondents cannot now take any steps for appointment of an Arbitrator. The only option now under law is to



appoint an independent Arbitrator in exercise of powers available to this Court under Section 11(6).

Accordingly, this application is allowed.

Shri R.K. Datta, a retired Judge of this Court, is appointed as the Arbitrator.

(Rajendra Menon, CJ)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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