

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.115 of 2018

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Fulena Construction Private Ltd., Sriram Construction (JV) at PO-Bihat, Pakka Tola, P.S. Barauni, District-Begusarai, Bihar through its authorised signatory Dinesh Prasad Singh, son of late Bharat Singh, resident of Village + P.O.- Bihat Gurudaspur, Pakka Tola, P.S. Barauni, District-Begusarai.

... .. Petitioner/s

Versus

1. The General Manager, East Central Railways, Hazipur-848101.
2. The Chief Administrative Officer/Con./North, ECR, Mahendrughat, Patna.
3. The Chief Engineer/Con./North East, ECR, Mahendrughat, Patna.
4. The Deputy Chief Engineer/Con./IV, ECR, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Senior Advocate
		Mr. Vikas Kumar, Advocate
For the Respondent/s	:	Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 01-08-2018

Seeking constitution of an arbitral tribunal for adjudication of the dispute that has arisen between the parties, this application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996.

An agreement was entered into between the parties for the purpose of various work, as is contemplated in the agreement dated 29.09.2015, i.e. balance work of Earthwork in formation, brick soling, laying of Geo Textiles, Slope Pitching, construction of Minor Bridges etc. in various Railway projects, as is indicated in the contract agreement. Admittedly, sub-clause (6) of Clause 64 of the agreement in question contemplates an arbitration clause



and in execution of the agreement as certain dispute has arisen, the matter has come to this Court after request for consideration of the arbitral tribunal was not considered.

On notice being issued, the respondent-Railway Administration has filed an objection and their only objection is that as contemplated under the provision of Clause 63 of the agreement along with general terms and conditions of the agreement as the application has been filed before the expiry of 120 days after raising of the claim, the application is not maintainable.

Such objection by the Railway administration has already been considered consistently by this Court in various cases, as is evident from order Annexure-7 filed with the rejoinder, on 18.08.2017 in Request Case No.11 of 2017 (Shashi Bhushan Jha vs. East Central Railway & Ors.) and Request Case No.14 of 2017 (Phular Construction Private Limited Vs. The Union of India & Ors.) and similar objections have been rejected.

That apart, 120 days from raising of the claim has already elapsed and even during pendency of the case, arbitral tribunal has not been constituted by the Railway Administration.

Keeping in view the aforesaid, the application is allowed. Mr. Justice Jayanandan Singh, a retired Judge of this



Court is appointed as an arbitrator to resolve the dispute between the parties.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.08.2018
Transmission Date	

