

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.160 of 2018

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M/s Bagmati Construction Company, Subhash Chowk, Forbesganj, District-
Araria, PIN- 854318, a partnership firm through its authorised representative
Aftab Ahmed son of Late Mohd. Ajimullah, 24, Chamra Godam, Gayasi
Chowk, Ward No.-22, Near Training School, Forbesganj, District- Araria,
PIN-854318

... .. Petitioner/s

Versus

The General Manager, East Central Railways and Ors

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Navendu Kumar, Adv.

For the Respondent/s : Mr.Anil Kumar Sinha, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

2 26-04-2019 Heard learned counsel for the applicant and learned
counsel for the Railways who has vehemently opposed this
application.

The contention raised is that the applicant had
requested the respondent authorities to appoint an arbitrator
keeping in view the provisions of Clause 64.3, but the
respondents did not take any steps to redress the grievances of
the applicant nor did they proceed to appoint an arbitrator and,
therefore, after the expiry of the statutory period as
contemplated under Sub-section (5) of Section 11 of the
Arbitration and Conciliation Act, 1996, the present application
has been moved praying for appointing an arbitrator.

Learned counsel for the respondent has invited the



attention of the Court to the counter affidavit where in paragraph No.7 a stand has been taken that since the applicant has not exhausted the remedies under Clauses 64 and 65 of the agreement, therefore, the application is premature and it does not deserve to be entertained. Further, the averments contained in paragraph 8 of the counter affidavit have also been referred to to contend that there was no failure on the part of the Railways to proceed with the matter, but since the applicant had not raised any demand in writing, therefore, the application was not maintainable.

The judgement in Request Case No.28 of 2016 (Yogendra Rai Vs. The General Manager, East Central Railway, Hajipur & Ors.) decided on 19.4.2017 has been relied on to contend that the application deserves to be dismissed as being premature.

Having considered the submissions raised and keeping in view the fact of the applicant having approached the respondents, it was open to the respondents to have decided the claim of the applicant or they could have proceeded to appoint an arbitrator, but the respondents have taken a stand that this application is premature which I find to be not supportable in law for the reason that the inaction on the part of the



respondents cannot take away the right of the applicant of invoking the provisions of Section 11(6) of the 1996 Act.

Accordingly, the application is allowed and disposed of.

Justice Sadanand Mukherjee (a retired Judge of this Court) is appointed as the sole Arbitrator to enter upon the dispute and to render his award in terms of the 1996 Act for which requisite information shall be dispatched to the Arbitrator by the registry and the parties shall appear before the Arbitrator on 27th May, 2019 who shall thereafter proceed to deal with the matter in accordance with law.

(Amreshwar Pratap Sahi, CJ)

K.C.Jha/-

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