

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.4 of 2019

=====

Hindustan Construction Company Ltd. a Company incorporated under the Companies Act, 1956, having its registered office at Hicon House, L.B.S. Marg, Vikhroli (West), Mumbai- 400 083, through its authorized representative Mr. Nilesh Vasant Mekel, son of Vasant Dasharath Mekel, aged about 44 years, Gender- Male, resident of Flat No. G-2, Building No. C7, Mohan Puram CHS, Kansai Section, Jatale Hospital, Ambernath East, Thane- 421501, Maharashtra.

... .. Petitioner/s

Versus

Bihar Rajya Pul Nirman Nigam Limited a Company incorporated under the Indian Companies Act, 1956, having its registered office at 7, Sardar Patel Marg, Patna, Bihar- 800015.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Senior Advocate
Mr. Nikhil Kumar Agrawal, Advocate

For the Respondent/s : Dr. Anand Kumar, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

9 02-08-2019 Heard Shri Y. V. Giri, learned Senior Counsel for the applicant and Dr. Anand Kumar, learned counsel for the respondent- Bihar Rajya Pul Nirman Nigam Limited.

The application has been moved under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator invoking clause 25 of the terms of the agreement.

Affidavits have been filed on behalf of the respondent contending that the application cannot be entertained, inasmuch as, the applicant has not exhausted the remedies as provided in terms of the agreement itself before filing this application under Section 11(6) of the 1996 Act.



Through the supplementary affidavits, it is sought to be contended that the applicant himself was participating and negotiating the terms and conditions even thereafter and on 1st June, 2019, the Managing Director has passed an order. Learned counsel, therefore, submits that the applicant could have moved this application only after moving an application under Section 21 of the 1996 Act after the order of the Managing Director on 1st June, 2019 and without complying with the said provision, no such application can be entertained.

Shri Y. V. Giri, learned Senior Counsel for the applicant contends that the terms of the agreement provides for approaching the Deputy Chief Manager first. The applicant had approached the Deputy Chief Engineer, but having failed to get any response within 15 days, an appeal was filed before the Managing Director on 20th October, 2018. He has invited the attention of the Court to Annexure-11 of the application which contains all these details.

Since the appeal had not been decided within 30 days, a notice under Section 21 of the 1996 Act was tendered on 14th December, 2018. It is waiting after 30 days that this application has been tendered on 29th January, 2019.

Having heard learned counsel for the parties, the



statutory requirement, in my view, stands satisfied, inasmuch as, if the appeal had been filed on 20th October, 2018, then its decision on 1st of June, 2019 will not take away the right of the applicant to have moved before this Court for appointment of an Arbitrator, nor does it any way create any impediment in passing of the order in exercise of powers under Section 11(6) of the 1996 Act.

In view of this, the contentions raised on behalf of the opposite party are rejected.

Accordingly, Mr. Justice P. K. Sinha, a retired Judge of this Court, is appointed as the sole arbitrator to enter upon the dispute and render his award in terms of the provisions of the 1996 Act.

Let the information of this order along with papers be transmitted by the Registrar General to the sole Arbitrator for proceeding in the matter.

The application stands disposed of accordingly

(Amreshwar Pratap Sahi, CJ)

Sunil/-

U			
---	--	--	--

