

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.138 of 2018

Kuldip Singh Security Agency

... .. Petitioner/s

Versus

Central Warehousing Corporation Through Its Managing Director

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sushil Kumar Tekriwal, Advocate Mr. Anil Kumar Singh, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, Senior Advocate Mr. Deepak Sahay Jamuar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

7 19-04-2019 Heard learned counsel for the applicant and Shri Anjani Kumar, learned Senior Counsel for the Central Warehousing Corporation.

Under an agreement dated 21st October, 2016, performance of certain contract was agreed between the parties and according to Clause 16 of the terms of the agreement all disputes and differences arising out of or in any way touching upon or connecting the contract was to be referred to the sole arbitration of the person to be appointed by the Managing Director of the Central Warehousing Corporation. Clause 16 is extracted hereinunder:-

“All dispute & difference arising out of or in any way touching or concerning this contract whatsoever shall be referred to the sole arbitration of the person appointed by the Managing Director,



CWC. There will be no objection to such appointment. The award of such arbitrator shall be final & binding on the parties to this contract.”

Thus, there is no dispute between the parties that there is an arbitration clause and to that effect it is also not disputed that the applicant invoked the aforesaid clause by dispatching a notice on 11th of June, 2018, copy whereof has been filed as Annexure-P/11 at page 452 of the second volume of the request case.

Learned counsel contends that after having waited for the statutory period of 30 days as provided under sub-section (5) of Section 11 of the Arbitration and Conciliation Act, 1996 since no Arbitrator had been appointed, the present request case was instituted on 24th July, 2018.

The respondent-Corporation vide order dated 20th September, 2018 through its Managing Director appointed an Arbitrator which was obviously during the pendency of the present request case and beyond the aforesaid period of thirty days as referred to above. Learned counsel for the applicant has invited the attention of the Court to the three Judges decision of the Apex Court in the case of **M/s. Deep Trading Company Versus M/s. Indian Oil Corporation and others**, reported in 2013 AIR SC 1479, to contend that in the given circumstances



and in view of the law as settled in the said decision, the respondent-Corporation could not have proceeded to appoint an Arbitrator of their own choice in a unilateral fashion in which it has been done in the present case.

A supplementary counter affidavit has been filed by the Warehousing Corporation and Shri Anjani Kumar, learned Senior Counsel contends that according to the agreement, the dispute had to be referred to the sole Arbitrator and therefore the applicant cannot in any way dispute the aforesaid clause according to which the appointment of the Arbitrator is in tune with the agreement entered into between the parties.

Having considered the submissions raised and in view of the clear existence of the arbitration clause referred to above and in view of the clear mandate of the provisions of Section 11(5) read with Section 11(6) of the 1996 Act, the Corporation has overreached its authority in proceeding to appoint the sole Arbitrator.

Consequently, in supersession of the same and in exercise of the powers under Section 11(6) of the 1996 Act, Justice Sri Jitendra Mohan Sharma (Retired) is appointed as the sole Arbitrator to enter upon the dispute. Let the parties appear before the sole Arbitrator on 25th of May, 2019 whereafter the



sole Arbitrator shall fix the proceedings in order to conclude the same expeditiously.

The Request Case stands disposed of.

Registry to transmit the necessary documents to the sole Arbitrator immediately.

(Amreshwar Pratap Sahi, CJ)

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