

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.142 of 2018

with

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1. M/s Dhananjay Construction Private, East Gandhi Maidan, Town P.S. & District Jehanabad, through its Managing Director.
 2. Vijay Narayan Singh, Son of Sri Nand Deo Singh, Managing Director, M/s Dhananjay Construction, East Gandhi Maidan, Town, P.S. and District-Jehanabad.

... .. Petitioner/s

Versus

1. The Union Of India through the General Manager, East Central Railway, G.M. Building, Hajipur, Bihar.
2. The Chief Administrative Officer Construction, Eastern Central Railway, Mahendrughat, Patna- 80004
3. The Chief Engineer Con N-1, East Central Railway, Mahendrughat, Patna 800004.
4. The Deputy Chief Engineer/CON/II, East Central Railway, Samastipur, Bihar.
5. The Dy. Chief Engineer Con-I, East Central Railway, Hajipur.
6. The Executive Engineer XEN/CON/Works/East Central Railway, Mahendrughat, Patna, Bihar.
7. The Financial Advisor and Chief Accounts Officer Construction, Eastern Central Railway, Mahendrughat

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhinay Singh, Advocate
Mr. Prakrita Sharma, Advocate
For the Respondent/s : Mr. Kumar Manish, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

3 22-02-2019 These two applications have been filed by the same firm in respect of two contracts, the settlement of the dispute whereof is sought to be arbitrated upon in terms of the contract agreement where Clause 64 thereof provides for an arbitration. The relevant portion of the said Clause in its entirety is



extracted hereinunder:

“64 (3) (a) (ii) – In cases not covered by the clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a Panel of three Gazetted Rly. Officers not below JA grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Rly. Officers of one or more departments of the Rly. which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM. Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the



arbitrators it will be necessary to ensure that one of them is from the Accounts department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the Officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.

64 (3) (a) (iii) – If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator(s).

64 (3) (a) (iv) – The arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The Arbitral Tribunal



should record day to day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements.

64 (3) (a) (v) – While appointing arbitrator(s) under sub-clause (i), (ii) & (iii) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. The proceedings of the Arbitral Tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

64 (3) (b) (i) – The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred therefrom.

64 (3) (b) (ii) – A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a tribunal and interpretation of a specific point of award to tribunal



within 60 days of receipt of the award.

64 (3) (b) (iii) – A party may apply to tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

64(4) – In case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of Members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.”

The dispute in both the cases had been raised claiming payments through two writ petitions both of which were disposed off with liberty to invoke the arbitration Clause. The applicant approached the East Central Railways in respect of Arbitration in the second writ petition where the Arbitrator came to be appointed on 8.2.2016, but it is informed that no steps were taken at all and the arbitration did not proceed.

In both the cases, therefore, the similar clauses being available, it is urged by the learned counsel for the applicant that this Court may exercise its power under Section 11 (6) of the Arbitration & Conciliation Act, 1996, and appoint an independent arbitrator.

Shri Kumar Manish, learned counsel for the respondent-Railways submits that, as a matter of fact, the pre-



condition as required under Clause 64 of the contract agreement extracted hereinabove of putting the Railways to notice has not been fulfilled and, consequently, the applications are premature. It is further submitted that the observations contained in the orders passed by the writ court have also not been complied with by the applicant within the time specified therein.

Having considered the same, if there is any breach of any Clause of the agreement, it will be open to the Railways to raise any such dispute in respect of the contract, but so far as the directions of this Court are concerned, this Court finds that the judgement was delivered on 23rd July, 2014 but the same came to be uploaded on 1st of December, 2015. The applicant cannot be said to be at fault for having approached this Court at a belated stage nor is there any laches on the part of the applicant so as to disentitle him to claim the appointment of an arbitrator as referred to hereinabove.

Consequently, both the applications are disposed off with a direction that Justice Dharnidhar Jha (retired) shall enter upon arbitration in both the cases and the Registrar General is directed to transmit the entire papers to the Arbitrator for proceeding in the matter.

The parties shall approach the Arbitrator for fixing an



early date in the matter by putting in appearance latest by 15th of
March, 2019.

(Amreshwar Pratap Sahi, CJ)

K.C.Jha/Uma/-

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