

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.946 of 2019

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Prem Printing Pvt. Ltd. Through Its M. D. Prashant Bharava situated at 257,
Golahanj, P.S. - Wazirganj, district – Lucknow – 226018, Uttar Pradesh.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Chairman, Bihar School Examination Board, Government of Bihar,
Patna.
3. The Secretary, Bihar School Examination Board, Government of Bihar,
Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Ansul, Advocate
For the B.S.E.B.	:	Mr. Satyabir Bharti, Advocate
For the Respondent/s	:	Mr.Prabhakar Jha -GP27
		Mr. Mukund Mohan Jha, AC to G.P.27

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 13-02-2019 This writ application has been preferred for issuance of a writ of *certiorari* to quash and cancel the order dated 28.09.2018 as contained in Memo No. A.K.-17 dated 28.09.2018 by which the Chairman, Bihar School Examination Board (hereinafter referred to as the “Board”) (respondent No. 2) has rejected the claim of the petitioner for payment of a sum of Rs. 6,92,78,696/-. Admittedly, the agreement between the parties contains an arbitration clause. The parties have agreed to get their dispute decided through arbitration but the difficulty is that in the arbitration clause it



is the same respondent no. 2 who is Chairman of the Board has to act as an arbitrator.

Learned counsel for the petitioner, in course of argument, submitted that he is willing to go for arbitration but the respondent no. 2 should not act as an arbitrator because he is the author of the impugned order as contained in Annexure-2.

A counter affidavit has been filed on behalf of the Board in which a plea has been taken that the petitioner was fully aware of the fact that under the arbitration clause the Chairman is being named as an arbitrator, still he signed the agreement, therefore, it would constitute a waiver under Section 12(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996').

Learned counsel for the petitioner has strongly contested the submission of learned counsel representing the Board saying that where the arbitrator named in the arbitration clause is ineligible meaning thereby that he is not eligible to become an arbitration in terms of the statutory provisions, there is no question of waiver, because the parties cannot enter into an agreement contrary to the statute.

Attention of this court has been drawn towards



Section 12(5) read with Seventh Schedule of the Arbitration and Conciliation Act. Learned counsel submits that according to proviso to sub-section (5) of Section 12, the waiver of the ineligibility conditions mentioned in Seventh Schedule must be done by an express agreement in writing. In the present case, there is no waiver in terms of the proviso to sub-section (5) of Section 12 of the 'Act of 1996'.

At this stage, Mr. Satyabir Bharti, learned counsel representing the Board submits that the Board would agree for referring the dispute to a retired Hon'ble Judge of this court, if the petitioner agrees for the same.

In the given facts and circumstances, at this stage, this court finds that both the parties are willing to go for an arbitration as they have already agreed for the same under the agreement. The issue as to who will act as an arbitrator has also been resolved to the extent that now the Board is agreeing for appointment of a retired Hon'ble Judge of this court as an arbitrator.

Thus, this writ application is not required to be kept pending. It is being disposed of as it is for the petitioner and the respondent Board to agree on a name of Hon'ble retired Judge of the High Court to whom the dispute may be referred



to. They can do so by exchanging three names to each other and then agreeing to one common name of the retired Hon'ble Judge of this court, this is how the parties have also suggested at the Bar.

This writ application is disposed of.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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