

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.41 of 2019

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M/s Tirupati Balaji Enterprises through its Proprietor Yogendra Sharma, aged about 57 years, Male, son of late Thakur Sharma, resident of village and P.O.- Newari, P.S. Makhdumpur, District- Jehanabad, Office at Anand Vihar Colony, East Bahadurpur, Telephone Exchange, Bhootnath Road, Patna-800026.

... .. Petitioner/s

Versus

1. The Union of India through G.M, E.C. Railway, Hajipur.
2. The Sr. Divisional Engineer (Co-ord). East Central Railway, Mugalsarai.
3. The Divisional Engineer (III) E.C. Railway, Mugalsarai.
4. The Assistant Divisional Engineer E.C. Railway, Japla.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Manish, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

3 26-07-2019 The objection taken by the respondents is that the applicant has approached for invoking of Clause 11(6) of the Arbitration and Conciliation Act, 1996 without exhausting the statutory period of notice which has to be tendered before applying for appointment of an Arbitrator.

Learned counsel for the applicant contends that he had filed CWJC No.16925 of 2018 that was permitted to be withdrawn with liberty to the applicant to invoke the arbitration clause as provided for in Clause 40 of the General Conditions of Contract. The order passed by the Court is extracted hereinunder:-



“After some argument, the learned counsel for the petitioner seeks permission to withdraw the present writ petition with liberty to invoke the Arbitration Clause, as provided for under Clause-40 of the General Conditions of Contract, which can be found at page no.35 of the supplementary affidavit.

Accordingly, the present writ petition is dismissed as withdrawn with the aforesaid liberty.”

I do not find any such information having been tendered by the applicant to the opposite party intending to invoke the arbitration clause for the settlement of dispute.

Learned counsel for the applicant has raised two submissions which in the opinion of this Court is preposterous. The first is that he had earlier filed the writ petition and the filing of the first writ petition should be treated as a notice under the 1996 Act. The second is that the filing of the very request case should be treated as a notice. Both these arguments have to be noted for being rejected as they are not in conformity with the 1996 Act.

The objection raised by the learned counsel for the opposite party is well founded. The application is consigned to records with a liberty to the applicant to move before the authority and in the event, the authority fails to respond to the



same as per the agreement and the statutory provisions of the 1996 Act, it will be open to the applicant to approach this forum for appointment of an arbitrator.

(Amreshwar Pratap Sahi, CJ)

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