

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.243 of 2017

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Multi Engineering And Scientific Corporation S/o Late Gopal Prasad.

... .. Petitioner/s

Versus

1. Hindustan Steelworks Construction Limited and Ors
2. The Head Projects Incharge Hindustan Steelworks Construction Limited,
Land Development Bank Buildi
3. General Manager, East Central Railway, G.M. Office Road, Hajipur, 844101,
District- Vaishali.
4. Chief Administrative Officer/Construction/South, East Central Railway,
Mahendru Ghat, Patna- 800006

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhruv Mukharji, Sr. Advocate
For the Respondent No1: Mr. Manish Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 25-01-2019

Heard Shri Dhruv Mukharji, learned Senior Counsel appearing for the applicant, and Shri Manish Kumar, learned counsel for the Respondent No. 1-Hindustan Steelworks Construction Ltd.

A dispute has been raised by the learned counsel for the opposite party No. 1 to the effect that in the absence of a



categorical Arbitration Clause, an Arbitration as prayed for in terms of the Arbitration and Conciliation Act, 1996 cannot be allowed.

Learned counsel, on the other hand, submits that the tender documents include the general conditions of contract as an integral part of the agreement which fact is clearly narrated in the agreement documents itself and under Chapter 3 the subject title of “Books of Reference” also categorically refers to the applicability of the general conditions of the contract 2001, insofar as, they are not in conformity with the various chapters of the agreement.

Learned counsel for the respondent, on the other hand, has invited the attention of the Court to paragraph 4 of the counter affidavit as well as to the circular dated 24.08.1989 that in the absence of any Arbitration Clause and, as a matter of fact the same having been directed to be struck down, the alleged dispute cannot be referred to the arbitrator.

Having considered the submissions raised and keeping in view the specific provisions as indicated in the agreement document, I find that the general conditions of contract 2001 appear to be part of the terms of the agreement which under clause 64 provides for an Arbitration.

“64 (1)(i) Demand for Arbitration-



In the event of any dispute or difference between the parties here to as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the 'expected matters' referred to in clause 63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters, shall demand in writing that the dispute or difference be referred to arbitration"

The conditions of the circular dated 24.08.1989 do not appear to have been introduced in the agreement in the present case when it was signed and the general conditions were allowed to be incorporated in the agreement. Consequently, there appears to be a clear stipulation of appointment of an arbitrator to resolve any dispute arising out of the contract. It may be further pointed out that the terms of the circular have to be spelt out in every agreement and there cannot be an automatic assumption of non-existence or exclusion of the Arbitration Clause.

Having perused the same and keeping in view the powers exercisable under the Arbitration and Conciliation Act, 1996 and keeping in view the quantum about which the dispute has arisen, I hereby appoint Hon'ble Mr. Justice Sadanand Mukherjee, a retired Judge of this Court, who has already earlier given consent for appointment as Arbitrator, as Arbitrator to enter



upon the dispute and return his award. The Registrar General to take steps accordingly for information as well as for sending the records to the Arbitrator.

(Amreshwar Pratap Sahi, CJ)

K.C.Jha/Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29.01.2019
Transmission Date	N/A

