

OD-6

AP/810/2019
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SRI BENOYENDRA ROY

Versus

UNION OF INDIA

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

Date : 15th February, 2021

Appearance:

*Mr.Arik Banerjee, Adv.
Ms.Ruchika Mall, Adv.
..for the petitioner*

*Mrs.Aparna Banerjee, Adv.
..for the UOI*

The Court : Affidavit of service filed in Court today be kept with the records.

It is not in dispute that the petitioner and the respondent entered into a contract. It is also not in dispute that the contract contains an arbitration clause for resolution of the disputes between the parties. That disputes have arisen between the parties in relation to such contract, is also not in dispute. The petitioner is before this Court with an application under

Section 11(6) of the Arbitration and Conciliation Act, 1996, by reason of alleged inaction on the part of the appointing authority to appoint an arbitrator or arbitral tribunal for resolution of the disputes between the parties.

I find from records that the senior Law Officer /H.O. acting for the General Manager, appointed a panel of three arbitrators to act as the Tribunal by issuance of a Memo dated April 25, 2019. This was after the petitioner had suggested two out of four names that had been forwarded by the Railways to the petitioner. However, the Tribunal that was constituted, included only one of the persons chosen by the petitioner. The petitioner's other nominee was excluded. The other two arbitrators including the presiding arbitrator fell foul of the provisions of Section 12(5) of the Act of 1996 read with the 7th schedule thereof and were disqualified to act as arbitrators according to the petitioner. This the petitioner recorded in his letter dated May 4, 2019 addressed to the General Manager, Eastern Railways. The petitioner did not agree to the aforesaid constitution of the arbitral tribunal.

Be that as it may, as recently as on January 27, 2021, the petitioner has written a letter to the General Manager, Eastern Railways, recording his consent to the appointment of Sri Nurul Kabir Akataruzzaman as the sole arbitrator. The said gentleman finds place in the panel of arbitrators prepared by the Eastern Railways. The petitioner also refers to the relevant

circular to show that where the claim is below Rs.1crore, a sole arbitrator may be appointed for adjudication of such claim.

In view of the aforesaid and in view of the fact that the petitioner's request for arbitration is pending for almost two years now, I appoint Sri Nurul Kabir Akataruzzaman as the sole arbitrator to adjudicate upon the disputes between the parties in relation to the subject contract. The arbitrator will be at liberty to fix his own fees as per the Railway Board guidelines. He will be entitled to engage secretarial staff for holding arbitration proceedings and also to fix their remuneration. Fees of the arbitrator and the remuneration of the secretarial staff will be borne by the parties in equal shares.

AP No. 810 of 2019 is, accordingly, disposed of.

(ARIJIT BANERJEE, J.)

D.Ghosh