

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.16 of 2022

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Bhagwan Singh S/o of Late Jani Singh, R/o - Bharkuria, P.O. and P.S.-
Darihat, District - Rohtas, Bihar - 821308.

... .. Petitioner/s

Versus

1. Managing Director, Central Warehousing Corporation Siri Institutional Area,
Khelgoan Marg, Hauz Khas, P.S. - Hauz Khas, New Delhi.
2. Regional Manager, Central Warehousing Corporation, Dak Bunglow Road,
P.S. - Kotwali, Patna - 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Puneet Siddhartha, Advocate Mr. Aryan Sinha, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, Sr. Advocate Mr.Alok Kumar Rahi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 24-08-2022

Petitioner has prayed for the following relief(s):-

“(A) For appointment of a Sole Arbitrator for reference of the disputes and differences between the Petitioner and Respondent and to set the arbitral process in motion with a direction to make and publish the award taking all the contentious issue into consideration before Arbitral Tribunal itself.

(B) To any other relief/s to which the petitioner is found entitled to.”

Parties to the lis have been litigating before different fora since 1998. The genesis leading to filing of the instant petition filed under Section 11(6) of Arbitration and



Conciliation Act, 1996 is the alleged breach of the written agreement dated 15.05.1993 inter alia containing the following clause enabling the parties to have their disputes resolved through the process of arbitration (page-107):

“XIX. ARBITRATION.

All disputes and differences arising out of or in any way touching or concerning the agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sole arbitration of any person appointed by the Managing Director, Central Warehousing Corporation, New Delhi. It will be of no objection to any such appointment that the person appointed is an employee of the Corporation that he had to deal with the matters to which the contract relates and that in the course of his duties as such employee of the Corporation he had expressed views on all or any of the matter in dispute or difference. The award of such Arbitration shall be final and binding on the parties to this contract. It is a term of this contract that in the event of such Arbitrator to whom the matter is originally referred being transferred vacating his office or being unable to act for any reason, the Central Warehousing Corporation at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as Arbitrator in accordance with the terms of this contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of his contract that no person other than a person appointed by the, Managing Director, Central Warehousing Corporation, New Delhi as aforesaid should act as Arbitrator and if for any reason that is not possible the matter is not to be referred to Arbitrator at all.



Provided further that any demand for arbitration in respect of any claim(s) of the contractors under the contract, shall be in writing and made within one year of the date of termination or completion (expiry of the period) of contract and where this provision is not complied with, the claim(s) of the contractors shall be deemed to have been waved and absolutely barred and the Corporation shall be discharged and released of liabilities under the contract.

It is further provided that the Arbitrator may, from time to time, with the consent of the parties enlarge the time for making and publishing the award.

The venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

The Arbitrator shall be deemed to have entered on the reference on the date he issued notice to both the Parties fixing the date of the first hearing.

The work under the Contract shall, if reasonably possible continue during the arbitration proceeding and no payment due or payable to the Contractor shall be withheld on account of such proceedings.

The cost of arbitration shall be borne by the parties as per the decision of the Arbitrator.

The Arbitrator shall give separate award in respect of each dispute or difference referred to him.

Subject as aforesaid the Arbitration Act, 1940 shall apply to the Arbitration proceedings under this clause.”

Undisputedly, after several rounds of litigation before different foras, petitioner invoked the aforesaid arbitration clause vide written notice dated 21st of December, 2021 (Annexure-6, page-60). In terms thereof, the Managing



Director of the respondent Corporation appointed the sole arbitrator in terms of the order dated 15th of January, 2022 (Annexure-7, page-72).

Assailing such action, in support of his contentions, learned counsel for the petitioner refers to and relies upon the decision in **Perkins Eastman Architects DPC & Ors. Vs. HSCC (India) Ltd., (2020) 20 SCC 760**, and **TRF Ltd. Vs. Energo Engineering Projects Ltd., (2017) 8 SCC 377**.

In opposition, Shri Anjani Kumar, learned Senior Advocate for the respondent refers to and relies upon a decision in **Central Organisation for Railway Electrification Vs. ECI-SPIC-SMO-MCML (JV) A joint venture company, (2020) 14 SCC 712**.

In Railways Electrification (supra), the issue was with regard to non-compliance of the procedure mutually agreed upon between the parties in referring the dispute to arbitration.

In the considered opinion of the Court, the said decision does not deal with the issue in hand, which is, as to whether in view of Section 12(5) of the Arbitration and Conciliation Act, 1996, the Managing Director of the respondent Corporation was disqualified from nominating a person as an arbitrator, other than himself.



It cannot be disputed that by virtue of the said provision that Managing Director stands disqualified. However, the issue in hand is no longer *res integra* for, as has been held by Hon'ble the Apex Court in the case of Perkins (*supra*) TRF (*supra*), Central Organisation (*supra*) and (2019) 5 SCC 755, the Managing Director having entailed disqualification for being nominated, would also stand disqualified from nominating an arbitrator.

Hence, the present petition needs to be allowed.

Today, there is no dispute about-(a) the legality, validity and binding effect of a written agreement dated 19.04.2011 and subsequently entered into between the parties to the *lis*; (b) the existence of arbitration clause contained therein; (c) the existence of dispute(s) arising there from; (d) the dispute arisen out of the agreement being civil in nature; (e) no legal impediment in the adjudication of the dispute by the learned Arbitrator; (f) Petitioner having exhausted the channel available for resolution of dispute.

As such, Hon'ble Mr. Justice Vikash Jain, Former Judge of this Court is appointed as learned Arbitrator to adjudicate all disputes arising out of agreement dated 15.05.1993 entered into between the parties to the *lis*. This



would be in place of an arbitrator appointed in terms of written communication dated 15th January, 2022.

All pleas and issues raised, on merits, are left open to be considered and decided by the learned Arbitrator.

Learned Arbitrator shall be entitled to fee as per the schedule of the Act.

Since the dispute arises out of an agreement of the year 1993, the hearing be expedited.

Parties are directed to fully cooperate and not take any unnecessary adjournment.

The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

It is expected of the learned Arbitrator to decide the issues expeditiously.

Joint Registrar (List) is directed to communicate the order to the learned Arbitrator.

Learned counsel for the parties to communicate the order to the learned Arbitrator. Also, parties are directed to appear before him, through physical/digital mode on 7th of September, 2022 and apprise him of passing of this order.



Parties shall file their statement of claims before the learned Arbitrator on such date of hearing which he may fix, as per mutual convenience.

The Request Petition stands disposed of in the above terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.08.2022
Transmission Date	

