

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.67 of 2022

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M/s. Phular Construction Company Pvt. Ltd. having its Registered Office At Phular, P.O. Mansurpur, District- Vaishali through its Managing Director Sri Umesh Prasad Singh, (Male), aged about 61 years, Son of Late Nand Kishor Singh Resident of 112, Khabra @ Kiratpur Gurdas, P.O. Khabra, P.S.- Muzaffarpur Sadar, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The East Central Railway having its Zonal Office at Rail Niketan, Hajipur, District- Vaishali through its General Manager, East Central Railway, Hajipur, District- Vaishali.
2. The General Manager, East Central Railway having its Zonal Office at Rail Niketan, Hajipur, District- Vaishali.
3. The Chief Administrative Officer (North), East Central Railway At and P.O. Mahendrughat, District- Patna.
4. The Chief Engineer (Con)(North/East), East Central Railway At and P.O. Mahendrughat, District- Patna.
5. The Deputy Chief Engineer (Con)(BTH), East Central Railway At and P.O.- Bettiah, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar Agrawal, Advocate
For the Respondent/s : Mr.Kumar Sachin, CGC

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
ORAL ORDER

3 15-02-2023 This application has been filed under Sections 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of an independent Arbitrator for resolution of the dispute arising out of an agreement dated 12.03.2019 bearing agreement No. ECR/CAO/Con/Wt/Agt/41 between the parties, a copy of which has been brought on record by way of Annexure-2 to this application. Clause 64 of the said agreement contains an Arbitration Clause.



A counter affidavit has been filed on behalf of the respondents. The respondents have not disputed the existence of dispute and the arbitration clause in the agreement. They have suggested four names for appointment of the sole Arbitrator, which are as under :-

- "1. Sri Vinod Kumar Verma (IRSEE) Former PCSTE/CORE.
2. Sri Alok Kumar Tewari (IRSME), Former Addl. Member (EnHM).
3. Sri Rajiv Chaudhry (IRSE), Former GM/NCR.
4. Sri Ashok Kumar Harit (IRSE) Retd. GM/DLW."

The persons aforesaid are admittedly retired employees of the respondents.

Learned counsel appearing on behalf of the petitioner has argued that the persons, whose names have been suggested in the counter affidavit for appointment of the Arbitrator, are disqualified by operation of sub-section (5) of Section 12 of the Act. Sub-section (5) of Section 12 of the Act reads as under :

"12(5). Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator."
Provided that parties may, subsequent to disputes having arisen between



them, waive the applicability of this sub-section by an express agreement in writing.

He has drawn the Court's attention to the Seventh Schedule as referred to in sub-section (5) of Section 12 of the Act, Clause (1) of which reads thus :-

"1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party."

Learned counsel for the petitioner has submitted that the petitioner has not waived the applicability of sub-section (5) of Section 12 of the Act.

In the present application, the petitioner has suggested five names of retired Judges of this Court. Learned counsel for the petitioner and learned counsel for the respondents have agreed on the name of Mr. Justice Navaniti Prasad Singh, a retired Chief Justice of the High Court of Kerala, to be appointed by this Court as the Sole Arbitrator.

Accordingly, Mr. Justice Navaniti Prasad Singh, a retired Chief Justice of the High Court of Kerala is appointed as the Sole Arbitrator, in exercise of jurisdiction under Section 11(6) of the Act, to resolve the dispute arising out of the agreement in question.



Let this order be communicated to Mr. Justice
Navaniti Prasad Singh on his e-mail id.

This case stands disposed of.

(Chakradhari Sharan Singh, ACJ)

Rajesh/-

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