

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.52 of 2023

Life line Hospital & Research Centre, Rep. through Hemant Kumar, Male, aged about 45 years, S/o Shri Niranjan Prasad Singh, at Nipania, Main Road, Ward No. 01, P.S.-Begusarai, Dist.-Begusarai, Barauni, Bihar.

... .. Petitioner/s

Versus

The Employees State Insurance Corporation through State Medical Commissioner, Regional Office, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna-800001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bipin Bihari, Advocate

For the Respondent/s : Mr.Sudhir Kumar Bijpuria, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 07-10-2023

The request is for the appointment of an Arbitrator.

2. Learned counsel for the respondent submits that there is a specific provision provided under the arbitration clause for resolution of disputes and in pursuance of that there was a Committee constituted which conducted an inquiry in which the petitioner and his representative participated. The Committee has categorically found that excess payment was made.

3. Learned counsel for the request petitioner submits that according to the specific arbitration Clause-26, as is seen from Annexure-3, a reference shall be made for arbitration by the SSMCs/SMCs/D (M) D/M.S. who will give a written award of their decision. In fact, no such reference was made by the



respondent and as of now there could be no arbitration conducted by the employees of the respondent going by Section 12(5) of the Arbitration & Conciliation Act, 1996.

Clause 26 of the agreement is extracted hereunder:-

“(26) ARBITRATION:- If any dispute or differences of any kind whatsoever (the decision whereof is not herein otherwise provided for) shall arise between the ESIC and the Hospital upon or in relation to or in connection with or arising out of the Agreement, shall be referred to for arbitration by the SSMCs/SMCs/D (M) D/M.S. who will give written award of his decision to the parties. The decision of the arbitrator will be final and binding. The provisions of the Arbitration and Conciliation Act, 1996 shall apply to the arbitration proceedings. The venue of the arbitration proceedings shall be at Patna.”

4. The contention of the respondent as is found from the counter affidavit is that a Committee was constituted comprising of SMO-Bihar, two doctors from the ESIC Model Hospital, Phulwarisharif, Patna and one from ESIC Medical College Hospital, Bihta and a Dental Surgeon with Pharmacist and Assistant Director (Medical) from the Regional Office, Patna. It is Annexure-F Committee Report that is relied on by the petitioner. The arbitration clause does not provide for any reference to a Committee constituted by the respondent. In fact, Section 12(5) stands against such constitution of a Committee



comprising of the employees of the respondent. In such circumstances, it is only proper that an Arbitrator be appointed to decide the dispute.

5. As such, as agreed by the parties, Hon'ble Mr. Justice Shailesh Kumar Sinha, a former Judge of the Patna High Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of the agreement entered into between the parties to the *lis*.

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

7. The learned Arbitrator shall be entitled to fee as per the schedule of the Act.

8. Since the dispute arises out of an agreement dated 1st of March, 2016, the hearing be expedited.

9. The question of limitation, if at all raised, shall also be decided by the Arbitrator.

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

11. Learned counsel for the parties also undertake to communicate the order to the learned Arbitrator.

12. The Arbitral Tribunal shall issue notice to the respondent.



13. The Request Petition stands disposed of in the
above terms.

(K. Vinod Chandran, CJ)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	10.10.2023
Transmission Date	

