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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 586 of 2023

Bablu Halder
-versus
Union of India & Ors.

Mr. Kausik Chatterjee
Mr. Nilanjan Adhikari
Mr. Debajit Kundu
... For the petitioner

Mr. Sudipto Kumar Mazumdar
Mr. Ajoy Kumar Singhania
Mr. Sourab Kar
...For the respondents

Pursuant to the order dated 2nd May, 2023 passed in this writ petition, the learned Deputy Solicitor General, Circuit Bench, Jalpaiguri, has taken instruction from his client. He fairly concedes to the observations made by this Court in the order dated 2nd May, 2023. The learned Deputy Solicitor General, Circuit Bench, Jalpaiguri, on behalf of the respondents on specific instruction consents to the relegation of the matter to arbitration with only modification in the order of 2nd May, 2023 that the recording of rent paid by the petitioner should be replaced by licence fees as has been demanded by the respondents by a letter dated 19th April, 2023 and paid by the petitioner again cash receipt issued on 20th April, 2023. The letter dated 19th April, 2023 and the cash receipt dated 20th April, 2023

produced in Court today are taken on record. On a perusal of the documents made over to Court it is admitted position that licence fee was demanded by the respondents and the same was also paid by the petitioner. The word rent has been used erroneously.

The word rent paid by the petitioner is replaced by the word licence fee paid by the petitioner in the order dated 2nd May, 2023. Let such correction be incorporated in the order dated 2nd May, 2023 which shall now be read and meant with such correction.

The petitioner through his advocate, Mr. Kausik Chattherjee with Nilanjan Adhikari also agrees to the disputes as indicated in the order dated 2nd May, 2023 to be referred to arbitration.

Although, the parties agree to refer the disputes to arbitration but there is no specific agreement for the same between the parties except the mention of the word disputes to be resolved through arbitration in the agreement between the parties.

As the parties consent to refer the issue to arbitration, this Court even while exercising writ jurisdiction and in absence of an written arbitration agreement or agreement borne out of exchange of letter can record that the petitioner shall file a statement of claim to which a counter be filed by the respondents without objecting to the non-existence of the arbitration agreement.

The parties further consent that Mr. Bikramaditya Ghosh, learned advocate, practicing in the Circuit Bench at Jalpaiguri, be appointed as the arbitrator. Being alive to the provisions of Arbitration and Conciliation Act, 1996 and the judgment delivered by the Hon'ble Supreme Court in this regard, I direct the petitioner to write a letter referring to this order proposing the reference of disputes as indicated in this order to the arbitration of Mr. Bikramaditya Ghosh, learned advocate within a fortnight from date. The Competent Officer of the North-East Frontier Railways preferably respondent no.2 shall accept the proposal by a reply letter within a month from the date of receipt of the petitioner's letter. The parties will then be free to proceed with the arbitration.

In the event of failure on the part of the North-East Frontier Railways in accepting the petitioner's proposal for arbitration then the petitioner shall be entitled to approach this Court for appointment of an arbitrator under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996.

In the event of petitioner's failure to send the proposal for arbitration within the time frame provided, this order along with the consent of arbitration recorded therein should automatically lapse and the writ petition shall be treated to have been dismissed with the interim

order being vacated. The respondents shall be free to take such steps as may be available to them in law.

The writ petition is accordingly disposed of.

The disposal of the writ petition will, however, not stand in the way in the Railways accepting the arrears of licence fees and petitioner in making payment thereof without prejudice to their respective rights and contentions as per the petitioner's application dated 3rd May, 2023 for deposit of the arrears licence fees.

(Arindam Mukherjee, J.)