

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**REQUEST CASE No.54 of 2023**

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Ashwani Kumar Pandey Son of Late Kamala Dutt Pandey, Sole Proprietor, Pandey Brother, resident at Surya Vihar Colony, Gali No. 3, Madhuri Apartment, 2nd Floor,, Police Station- Dhanbad Mufassil, District- Dhanbad.

... .. Petitioner/s

Versus

1. The General Manager, Eastern Central Railway, Hajipur.
2. The Deputy Chief Engineer (Con), East Central Railway, Dhanbad.

... .. Respondent/s

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**Appearance :**

|                      |   |                                       |
|----------------------|---|---------------------------------------|
| For the Petitioner/s | : | Mr.Uma Shankar Tiwary, Advocate       |
| For the UOI          | : | Mr.Bindhyachal Rai, Sr. Panel Counsel |
| For the GM           | : | Mr.Manoj Kumar Singh, CGC             |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**ORAL JUDGMENT**

**Date : 23-08-2024**

Heard learned counsel for the parties.

2. This application has been moved seeking appointment of an Arbitrator invoking the powers of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.

3. Petitioner and the respondent entered into an agreement through letter of acceptance dated 28.08.2007 (Annexure-1). The said agreement contains an arbitration Clause-64. The petitioner invoked the said arbitration clause vide communication dated 03.09.2012 and 11.01.2023, for the appointment of an arbitrator; but to no avail.

4. The learned counsel for the petitioner



specifically wants the appointment of a retired judge of the High Court to be the Arbitrator.

5. It is pointed out that the Hon'ble Supreme Court has taken a consistent view that, if a party having responsibility of appointing an arbitrator, does not do so within 30 days of demand being made by the other party, the right to make an appointment would not be automatically forfeited. The appointment can still be made, however, before the other party moves the court under Section 11. Once the dispute is placed before the court, the right to appoint ceases to exist. Going by the dictum of the above decisions, it is argued that the respondent is, thus, interdicted from making any appointment of arbitrator as of now.

6. The learned counsel for the respondents, however, points out that especially when the dispute is with respect to a value above Rs. 50 lakhs, there should be an Arbitral Tribunal appointed of three persons, one of whom should be from the Indian Railways (Accounts) Service. It is, hence, the petitioner was issued with a panel of three names. Later the respondents have filed a counter affidavit with a panel of Railway officers for appointment as Arbitrator.

7. The learned counsel for the petitioner



specifically relies on the decisions in **Central Organization for Railway Electrification v. ECL-SPIC-SMO-MCML(JV) A Joint Venture Company; (2020) 14 SCC 712, Punj LLOYD vs. Petronet MHB Ltd.; (2006) 2 SCC 638 and Datar Switchgears Ltd. v. Tata Finance Ltd. & Anr.; (2000) 8 SCC 151.**

8. In this context, it has to be noticed that the respondent has submitted his total claims before the Presiding Arbitrator, but in between 2015 to 20.08.2018, due to absence of full Coram, no sitting was held.

9. In this circumstances, this Court was inclined to suggest that two persons may be indicated by the petitioner and one another person, as has been stated by the learned Counsel for the respondents, to be appointed from the Indian Railway(Accounts) Service, so as to ensure that an Arbitral Tribunal is appointed and that experts who are aware of the nature of work, is dealing with the issue.

10. Faced with this situation, the petitioner suggested the names at Sl. Nos. 8 and 11 from Annexure R/1 of the counter affidavit. Hence, Shri Hemant Kumar Singh (IRSE) Retd. Addl. Director General/RDSO, 106A, Ashok Nagar, Basharatpur, Gorakhpur (U.P.)- 273004 and Shri Ram Prakash



Sharma, (IRSEE) Retd. PCEE/CR, Tower B 3, Flat No. 1103, Palm Grove Heights, Ardee City, Sector-52, Gurugram (Haryana)-122011 are appointed as the two members of the Tribunal.

11. The Indian Railways shall, within a period of two weeks, appoint a person of their choice and intimate the petitioner. The Arbitral Tribunal shall take up the matter and decide the issue after issuing notice to the parties and giving adequate opportunity of hearing.

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

13. Interlocutory application, if any, shall also stand disposed of.

**(K. Vinod Chandran, CJ)**

Anushka/-

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