

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.84 of 2023

M/s Sahil Projects- Prachi (JV) a partnership firm registered under the Indian Partnership Act, 1932 having its registered office at 104, Sachhi Palace, Sahdeo Mahto Marg, Boring Road, Patna, Bihar through its authorized representative Shri Brajesh Mishra, Son of Jangbahadur Mishra, aged about 48 years, Gender- Male, resident of 104, Sachhi Palace, Sahdeo Mahot Marg, Boring Road, Patna, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway having its office at Mahendru Ghat, 1st Floor, Patna- 800004.
2. The Chief Administration Officer (Con.), Mahendru Ghat, 1st Floor, Patna- 800004.
3. The Chief Engineer (Con.)/ North, East Central Railway (Construction Organization), Mahendru Ghat, 1st Floor, Patna- 800004.
4. The Deputy Chief Engineer (Con./1), East Central Railway (Construction Organization), Samastipur.
5. The Executive Engineer, (Con.), Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Lal Babu Singh, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Kumar Priya Ranjan, CGC
		Mr. Sandeep Kumar, Advocate
		Mr. Vibhuti Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT
Date : 02-02-2024

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 dated 09.03.2017 (Annexure-1). The said agreement



contains an arbitration Clause- 63 and 64. The petitioner invoked the said arbitration clause vide communication dated 24.12.2021 (Annexure-8) and notice dated 18.05.2022 (Annexure-9), 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.

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 provided the entire panel in the counter affidavit as produced at Annexure-B.

9. In this circumstance, 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. 9 and 10 from Annexure-B. Hence, Shri Bharat Prasad Gupta (IRSE) Retd. CAO/C/N/ECR and Shri Ratnesh Kumar Bariar, Retd. ED/RITES (IRSE) 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)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	03.02.2024
Transmission Date	

