

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.96 of 2023

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M/s Binod Construction through its proprietor-Binod Kumar Singh, Gender Male, age about 55 years, son of Bikramadity Singh, Resident of B12, Shivlok Colony, Raipur Road, Ladpur, Dehradun, Uttarakhand.

... .. Petitioner/s

Versus

1. The Union of India through, Chairman, Railway Board, New Delhi.
2. The General Manager, East Central Railway, Hazipur, Vaishali, Bihar.
3. The Divisional Railway Manager, East Central Railway, Danapur, Patna.
4. The Divisional Engineer (HQ), East Central Railway, Danapur, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Krishna Mohan Mishra, Advocate Mr.Prasoon Kumar, Advocate.
For the Respondent/s	:	Mr. Kumar Priya Ranjan, CGC Mr. Sandeep Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT
Date : 12-01-2024

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 24.09.2019 (Annexure-1). The said agreement contains an arbitration Clause- 81.(1) and 81.(3). The petitioner invoked the said arbitration clause vide communication dated 10.05.2023 (Annexure-4) and notice dated 19.06.2023



(Annexure-5), 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 four names, as per letter dated 05.12.2023, produced as Annexure-G along with



the counter affidavit.

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 not only filed the communication regarding the panel as Annexure-G, but provided the entire panel in the counter affidavit as produced at Annexure-F.

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. 11 and 24 from Annexure R/F. Hence, Shri Bharat Prasad Gupta (IRSE) Retd. CAO/C/N/ECR



and Shri Rakesh Goyal, (IRSE) Retd. Addl. Member (CE)/Rly.
Board 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)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.01.2024
Transmission Date	

